



Australian Government

Fair Work Building  
& Construction

## **Manager, Professional Standards Broadband 3.2 (EL 2)**

Fair Work Building and Construction (FWBC) regulates workplace laws in the building and construction industry, through education and enforcement. The agency is focused on ensuring compliance with laws in areas including unlawful industrial action, coercion, right of entry, freedom of association and discrimination together with administration of the Building Code 2013.

This position is located in the Professional Standards Unit ('PSU') that forms part of the Office of the Director reporting to the Director. The main purpose of the PSU is to review and make recommendations of the operational aspects of the Operations and Legal Groups.

The Director is responsible for the operations of the PSU and will report to the FWBC Director. The Director will drive continuous improvement in the conduct of investigations and legal cases, and provide feedback on those improvements across the agency.

It is highly desirable that applicants can demonstrate a well-developed understanding of investigative procedures and audit reporting applicable to a regulatory environment in the APS with relevant prior experience in a similar role.

The successful applicant must be able to obtain and maintain a security clearance at a Baseline Level. Applicants should also be aware that frequent interstate travel will be required in this position.

### **Duties**

The successful applicant will undertake the following functions:

- Manage the operations of the PSU
- Plan and implement the agency's Quality Assurance Reviews
- Manage agency File Review activities
- Manage agency Internal Review activities
- Assist agency Executive Board members develop and implement operational policy and procedures through the provision of support services
- Manage results and recommendations to FWBC on the findings of PSU activities, and provide feedback on the effectiveness of continuous improvements across the agency

### **Selection Criteria**

#### **Strategic thinking**

- Focuses strategically
- Harnesses information and opportunities
- Shows judgment, intelligence and commonsense

**Achieves results**

- Builds organisational capability and responsiveness
- Uses professional expertise
- Implements change and deals with uncertainty
- Ensures closure and delivers on intended results

**Productive working relationships**

- Nurtures internal and external relationships
- Facilitates cooperation and partnerships
- Guides, mentors and develops people

**Personal drive and integrity**

- Engages with risk and shows personal courage
- Commits to action
- Displays resilience

**Communicates with influence**

- Communicates clearly
- Negotiates persuasively



## **Assistant Manager, Professional Standards Broadband 3.1 (EL 1)**

Fair Work Building and Construction (FWBC) regulates workplace laws in the building and construction industry, through education and enforcement. The agency is focused on ensuring compliance with laws in areas including unlawful industrial action, coercion, right of entry, freedom of association and discrimination together with administration of the Building Code 2013.

The functions of the agency are grouped into two main operational areas – Operations and Legal Groups. This position is located in the Professional Standards Unit ('PSU') that forms part of the Office of the Director reporting to the agency head ('Director'). The main purpose of the PSU is to review and make recommendations of the operational aspects of Operations and Legal Groups.

The Assistant Manager, Professional Standards will report to the Manager, Professional Standards ('Manager'). The Assistant Manager will be responsible for assisting the Manager to drive continuous improvement in the conduct of investigations and legal cases, and provide feedback on those improvements across the agency.

### **Duties**

The successful applicant will undertake the following functions:

- Assist the Manager conduct the operations of the PSU
- Undertake Quality Reviews in accordance with Quality Assurance Proposals
- Assist in managing the agency's File Review and Internal Review process
- Conduct File Reviews and Internal Reviews as required
- Provide detailed reports on the results of Quality, File and Internal Review activities
- Conduct Code of Conduct investigations
- Assist the Manager in the role of 'Head of Internal Audit'
- Assist FWBC management in the development and implementation of operational/legal policy and procedures through the provision of support services
- Assist in the effective introduction and development of a risk framework in accordance with the Commonwealth Risk Management Policy
- Other projects and duties as required

It is highly desirable that applicants can demonstrate a sound understanding of investigative procedures and audit reporting applicable to a regulatory environment in the APS with relevant prior experience in a similar role.

The successful applicant must be able to obtain and maintain a security clearance at a Baseline



Level as well complete the 'Good Character Declaration' for a FWBI Inspector. Applicants should also be aware that interstate travel will be required in this position.

## **Selection Criteria**

### **Technical Skills**

- Sound understanding of investigative procedures, legal processes, internal audit functions in a regulatory environment, with knowledge of or the ability to quickly acquire knowledge of the roles and functions of the FWBC
- High order written and verbal communication skills
- Ability to brief the Director, FWBC Audit & Risk Committee as well as FWBC management members at all levels on matters of operational and strategic concern
- Sound knowledge or the ability to acquire knowledge of FWBC operational files, processes and activities including the use of FWBC statutory powers
- Knowledge of the Commonwealth Risk Management Policy and its impact on the FWBC, as well as Internal Audit activities relevant to a small agency in the APS
- Demonstrated high level proficiency in using the Microsoft Office suite and database systems, in particular MS Excel spreadsheets/charting and use of SharePoint.

### **Strategic thinking**

- Focuses strategically
- Harnesses information and opportunities
- Shows judgment, intelligence and commonsense

### **Achieves results**

- Builds organisational capability and responsiveness
- Uses professional expertise
- Implements change and deals with uncertainty
- Ensures closure and delivers on intended results

### **Productive working relationships**

- Nurtures internal and external relationships
- Facilitates cooperation and partnerships
- Guides, mentors and develops people

### **Personal drive and integrity**

- Engages with risk and shows personal courage
- Commits to action
- Displays resilience

### **Communicates with influence**

- Communicates clearly
- Negotiates persuasively



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## Senior Professional Standards Officer Broadband 2.3 (APS 6)

Fair Work Building & Construction (FWBC) regulates workplace laws in the building and construction industry, through education and enforcement. The agency is focused on ensuring compliance with laws in areas including unlawful industrial action, coercion, right of entry, freedom of association and discrimination together with administration of the Building Code 2013.

This position is located in the Professional Standards Unit ('PSU') that forms part of the Office of the Director reporting to the Director. The main purpose of the PSU is to review and make recommendations of the operational aspects of the Operations and Legal Groups.

The Professional Standards Unit undertakes the following tasks:

- Research and draft reports for the FWBC Director
- On behalf of the Head of Internal Audit function, oversee internal audit function
- Provide assistance and support to the Audit Committee
- Conduct quality reviews on operational and legal branch activities
- Conduct Tier 1 and Tier 2 file reviews arising from complaints
- Conduct internal investigations and audits
- Manage the content of the Investigator Resource Page
- Manage the content of the Operations Manual
- Implement policy changes under the direction of the Executive.

## Duties

Reporting to the Manager, Professional Standards, the typical duties of a Senior Officer may include:

- Conducting reviews of FWBC activities (operations and/or legal)
- Assisting in the oversight or conduct of internal audits
- Conducting reviews arising from complaints
- Preparing detailed reports for the Director Professional Standards
- Assist in the administration of the Investigations Resource Page and FWBC Operations Guide using MS SharePoint
- Using the FWBC case management system and other information technology generally in completing the above duties
- Liaise with other areas within the agency in relation to PSU matters
- Other duties as directed.

## **Selection Criteria**

The successful applicant will be a workplace relations practitioner experienced in conducting investigations and/or legal activities at FWBC. The applicant should have:

- High level written communications skills
- High level analytical skills
- Project Management skills with the ability to meet deadlines and manage a varied workload
- Well-developed information technology skills
- Be able to provide high level advice to senior management,
- Possess excellent interpersonal and communication skills, have the capacity to work individually or as a member of a team, and to deal with conflict in a professional manner.



A blue-tinted photograph of three people in a professional setting. One person in the center is wearing a white hard hat and a light-colored shirt. The other two people are partially visible on either side, also in professional attire. The text 'Section 2 - Investigations' is overlaid in large, bold, white letters.

# Section 2 - Investigations

## Review of investigations

### Purpose of this chapter

This chapter explains the role, function and purpose of the Professional Standards Unit (PSU) and the Review of Investigations.

### About the Professional Standards Unit

The PSU is part of the Office of the Director and reviews the investigations of the operations and legal branches of FWBC.

The PSU ensures FWBC decisions follow Australian Public Service (APS) values and are:

- reasonable
- fair
- timely
- transparent.

### Handling complaints

A person has the right to ask for an impartial review of a FWBC decision. During an investigation when it is thought a person may be dissatisfied with the decision made by FWBC, all correspondence must advise the person of their right to seek a review.

When a person makes a complaint about a FWBC decision:

- discuss the reasons for that decision with the relevant case officer
- if necessary, discuss the decision with the state director
- communicate those reasons to the complainant.

Most complaints are resolved when the complainant receives more information on the reasons why a decision has been.

If the complaint is not resolved by providing more information about the decision, a written complaint can be submitted to the PSU to begin a formal review of the decision. This is

called a 'File Review'.

There are three levels of procedural review:

- Tier One Review – establishes if the original decision was correct and if the inspector followed the correct FWBC policy
- Tier Two Review – the case is re-investigated by FWBC
- Tier Three Review – a review is conducted by or on behalf of the Commonwealth Ombudsman.

A File Review can be conducted prior to the finalisation of an investigation.

### **Quality and internal reviews**

After an investigation review, the PSU recommends changes to operational activities as part of a continuous improvement process.

There are two types of reviews:

- quality reviews
- internal reviews.

#### **Quality reviews**

A quality review examines a cross-section of FWBC practices to identify and recommend improvements that can be made to existing procedures.

During a quality review individual decisions are assessed in order to:

- establish if agency procedures are followed
- determine if those procedures are effective
- recommend whether new procedures are necessary or existing ones be removed or simplified
- assess the quality, service and value of the matter.

#### **Internal reviews**

An internal review examines the details of a specific investigation to identify areas for improvement. Internal reviews are conducted on cases where FWBC has commenced litigation and has been unsuccessful, or obliged to discontinue the case because of flaws in the investigation that had not been identified earlier.





# Professional Standards Unit

## File Reviews

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### 1. Introduction

FWBC has established a Professional Standards Unit (PSU) to undertake reviews of agency operational and legal activities. To ensure the integrity of these reviews the PSU operates as a separate unit located in the Office of the Director.

FWBC is committed to ensure its decisions are impartial, reasonable, fair, timely and transparent. Australian Public Service (APS) employees must adhere to the APS Code of Conduct and behave in a way that upholds APS Values and relationships.

The operations of the PSU form an integral part of FWBC providing its services in a fashion that demonstrates adherence to APS Values and provides the opportunity for continuous improvement of our service delivery to the Australian community.

The PSU is involved in a range of reviews that broadly speaking fall into three categories.

- i. **'Quality Review'** proactively examines agency activities to identify systemic problems and recommend improvements that can be made to existing operational and legal procedures. A quality review is a proactive activity
- ii. **'Internal File Review'** examines unsuccessful litigation, discontinued litigations without undertakings or financial settlements, or where the agency has received criticism from the bench.
- iii. **'File Review'** relates to a citizen's right to have a decision taken by FWBC independently reviewed in fashion consistent with Australian Government standards. A file review is a reactive activity.

The commencement of all reviews is authorised by the Director. As a general practice decisions on subsequent distribution of findings and reports is at the discretion of the Director.

## 2. Quality Reviews

The purpose of quality review is to proactively assess and determine the following:

- whether Operational and Legal activities comply with FWBC procedures;
- rate matters for quality, service and value;
- attempt to identify any systemic mistakes or misunderstandings by staff of procedures;
- identify high performance areas/practices that can be used as emulative models; and,
- assist FWBC to identify opportunities for improvement in agency procedure and practice.

Quality reviews are not designed as a performance management tool, rather as a means for identifying scope for development at the organisational level. Notwithstanding this, if critical issues are identified, these will be brought to the attention of Operations management for their consideration.

Quality reviews are usually undertaken on activity undertaken by FWBC Operations or Legal areas. As quality reviews are a proactive activity, there is more flexibility in the manner in which these are conducted with each group of reviews tailored to a particular circumstance.

Generally, there are a number of ways in which a matter may be subject to a quality review. These include:

- a request from the FWBC Director or Operations/Legal management that a particular category of matters or processes require examination to assess their effectiveness;
- an assessment is required to identify if a particular category of matters or processes have a higher than acceptable risk of non-compliance with formal procedures; or
- random selection of matters to assess if procedures generally are being adhered to in a particular area.

Quality reviews are undertaken with a specific focus in a particular area as well as looking more generally at the conduct of the matter against FWBC procedures.

Usually after consultation with FWBC Executive members, the Manager PSU develops a detailed work plan identifying the matters to be reviewed. The work plan will also include any specific issues to be examined as well as planned timeframes for completion of the review. The PSU will contact the relevant area Managers and notify them of the review. This is accompanied by a formal request for the TRIM Files to be forwarded to a PSU member. At the completion of the review, the files are returned to the office concerned.

Quality reviews will focus primarily on examination of formal records in TRIM, AIMS and Document Centre, however PSU will where necessary conduct discussions with relevant



FWBC Officers as part of the quality review to examine conduct of a matter if formal records are lacking.

#### **a. Reporting Quality Reviews**

Reports of quality reviews are raised as separate TRIM files rather than integrated into an existing TRIM file.

Quality review reports tend to comprise two tiers, with a detailed review report of each case or matter examined that is then coupled to an Outcomes Report containing matters of a similar category or region. These reports are provided to senior FWBC management for their consideration of any systemic issues identified, proposed changes recommended and any future quality reviews to be undertaken. Individual reports can be made available to staff involved in the conduct of the matter under review to assist in raising awareness of specific areas of concern.

Summary Reports on findings are provided to the FWBC Audit Committee along with progress reports on report recommendations and their subsequent implementation by the relevant area.

### **3. Internal File Reviews**

Where FWBC has been unsuccessful in litigation it has initiated, or the agency has discontinued litigation without obtaining an undertaking and/or financial settlement, the PSU may conduct a review of the matter. An internal file review may also be triggered by adverse comments from the bench relating to FWBC process or investigative actions.

This category of review examines the formal Operational and Legal records available and conducts discussions with relevant staff who have been involved in the conduct of the matter. The determinations available are:

- process and decision correct;
- decision correct but the file and/or process is deficient; or
- decision incorrect as the file and/or process is deficient.

A detailed report is compiled for the FWBC Director and Audit Committee. Briefings of findings and recommendations can be conducted at the discretion of the Director.

### **4. File Reviews**

FWBC has adopted a three tier approach to the conduct of file reviews that are both based on and consistent with:

- The approach set out in agency procedural manuals and guides; and
- standards prescribed by the Commonwealth Ombudsman generally.

External parties to an investigation may request a review if they are dissatisfied with the:



- service provided to them; or
- the investigation outcome.

A matter where litigation has commenced is not subject to the file review process.

To date file reviews have only been conducted on investigations handled by Operations. As a consequence this document will focus on the review of those activities. Other areas of the agency where a formal review is requested, should contact PSU to ensure a process that meets expected standards is used.

Advice to the public of their right to seek a review of a decision should be included in all correspondence where there is potential for the person concerned to be dissatisfied with the decision taken by FWBC. Information on file reviews is publically available on the FWBC website.

#### **a. Steps for staff handling an initial review request**

A party making a request for review of a decision would normally contact the Investigator or relevant Team Leader in the first instance. In these circumstances, the following steps should be adopted:

- (a) The officer should try and resolve the issue prior to implementing a formal file review process. *(NB: This can be challenging, but an attempt should be made to work through the issues. Staff should bear in mind that, in many instances, the party wishing to seek a review may be under considerable stress and emotional strain. Staff must at all times, remain courteous and professional assisting the person to the best of their abilities. Experience indicates that many complaints can be resolved at this stage by explaining what steps were taken and the considerations involved in making a decision during the course of the investigation.)*
- (b) Where the issue is unable to be informally resolved the officer should:
  - provide the contact details of the relevant Manager (i.e. State/Regional Manager as appropriate) to the party raising concerns; and
  - immediately brief his or her Team Leader and relevant Manager on the issue and the previous action taken to resolve the matter.

A review usually involves the assessment of procedures and decisions taken by an Investigator and their Team Leader. Given this, it is envisaged that the officer best placed to handle further action on the matter will be the Manager.

If the party contacts the Manager because they are dissatisfied with the earlier discussion undertaken with the Investigator or their Team Leader, then the Manager should:

- discuss the grievance;
- further attempt to informally resolve the matter; and
- if unable to resolve the matter, advise the party of their right to a formal review.

Regardless of the outcome, the relevant Manager must raise a formal report of the matter and forward to the Manager, Professional Standards (Manager PSU). An entry must also be made in AIMS and the TRIM file recording the events.

#### **b. Considering the APS Code of Conduct**

If a Manager believes that the conduct under review may constitute a breach of the APS Code of Conduct, the matter must be immediately referred to the relevant Senior Executive Service (SES) officer. The SES officer will liaise with relevant areas and confirm whether the conduct under review needs to be subject of further action, such as a formal Code of Conduct investigation.

#### **c. Procedural fairness for the original Investigator**

As in any investigation by a Commonwealth agency, the Investigator has an obligation to afford procedural fairness to the parties involved. With respect to file reviews, this obligation in turn extends to the manner in which a reviewing officer deals with the original Investigator that is subject of the complaint.

#### **d. When a review request is made before the outcome is determined**

At times, a party to a complaint may request a review in relation to an investigation where it appears to FWBC that a file review is not yet appropriate.

In cases where an investigation is in progress, but no determination has been made as to the outcome of the case, the investigation will continue until an outcome is determined. Any concerns about the process to date that have been raised by the party seeking the review will be passed to the Manager, the Investigator and Team Leader for consideration in the ongoing investigation. Any outstanding concerns at the completion of the investigation can be considered as part of a formal file review process if required.

#### **e. Commencing a File Review**

Should the cause of the complaint not be resolved informally or with the Manager, then the three tiered formal file review process applies. Decisions on the type of review to be undertaken, rests with the Manager PSU. The PSU has the following responsibilities:

- liaison and correspondence with the aggrieved party seeking the review;
- manage the allocation of matters subject to a file review;
- ensure timeframes allocated for file reviews are met;
- report on file review outcomes both internally and externally; and
- manage requests and liaison with the Commonwealth Ombudsman.

A file review may also be commenced by FWBC on its own initiative as a procedure to examine the manner in which an investigation was carried out.

### **5. Tier 1 File Reviews**

A Tier 1 file review involves an examination of the existing investigation file for the purpose of reviewing the process undertaken and the decision(s) made in relation to the matter. A Tier 1



file review is not a re-investigation of the original complaint. One of the following persons can undertake a Tier 1 file review:

- the Manager of the office who conducted the investigation;
- another Manager or senior officer within the Group;
- another senior officer within FWBC; or
- PSU.

A Tier 1 file review is required to be completed within 30 days of receipt by the reviewing officer. At the completion of the review, the officer is required to forward a report to the Manager detailing:

- a general description of the investigation and review;
- whether procedures followed are consistent with the relevant FWBC operational guides and/or other relevant formal procedures/requirements;
- if procedures were not followed, what steps were adopted and what were the outcomes of that failure;
- was the decision correct, regardless of the procedures not being properly followed and recorded; and
- a formal outcome of the review using one of the five categories below.

**a. The following are the formal outcomes from a Tier 1 File Review**

***Outcome 1 - Process and decision correct***

In these instances, the reviewing officer determines the original Investigator conducted the investigation in accordance with FWBC procedures. In addition, the reviewing officer further determines that, based on the evidence gathered throughout the investigation, the outcome determined by the original Investigator was one which was reasonably open to that outcome.

***Outcome 2 - Decision correct but file or process is deficient***

In these instances, the reviewing officer determines that the overall decision is the most appropriate, but identifies deficiencies in the investigation process or gaps in the evidence gathered. Some common examples of Outcome 2 determinations are:

- the file contained no documentation showing how a contravention was quantified (such as time and wages calculations for strike pay matters);
- one area of investigation was not sufficiently explored or explained (e.g. a threshold issue regarding whether the complainant was a building industry participant);
- witness information was not present on the file (e.g. a complainant statement was not obtained, or there was no record of a relevant witness being interviewed); or
- not all alleged or identified contraventions have been addressed adequately in the file (such as the file does not explain why certain alleged contraventions were unproven).



While these actions may not necessarily alter the outcome of the investigation, the purpose of this process is to educate the original Investigator reduce the risk of repetition.

### ***Outcome 3 - File to be considered for re-investigation within the region***

In some instances, the reviewing officer establishes the outcome of the original investigation was determined without sufficient inquiry and evidence.

In deciding whether the re-investigation would be best conducted within the regional office or by the PSU, the reviewing officer should consider all of the circumstances of the investigation and the request for file review. It is only cases where there are no elements that would make a Tier 2 review more appropriate (see below) that a re-investigation within the region should be proposed.

### ***Outcome 4 - File to be considered for a Tier 2 Review***

In some circumstances, the reviewing officer will establish that the outcome of the original investigation was determined without sufficient inquiry and evidence, and that the matter should be re-investigated.

Circumstances that would make the escalation to a Tier 2 review the appropriate recommendation include where:

- third parties (media, members of parliament) have an interest in the case
- concerns have been raised concerning the independence or impartiality of the original investigation
- there are no suitable Investigators available within the region to undertake a re-investigation
- there appear to be systemic issues that need broader consideration throughout the FWBC.

## **b. Person provides new or additional evidence during Tier 1 Review**

The purpose of the file review process is not to provide an avenue for a complainant to make further allegations beyond those previously investigated, but rather to seek recourse to the circumstances of a previous investigation. Accordingly, in circumstances where new evidence (as opposed to evidence that ordinarily would have been obtained in a standard investigation) arises which may potentially change the outcome of the investigation, consideration should be given to an escalation to Tier 2 for a re-investigation of the complaint.

Should a complainant make further allegations of potential contraventions that were not investigated during the initial investigation, it may be appropriate to direct the information back to the original Investigator for their consideration or alternately lodge a new complaint for investigation.

Should the result of the review require the matter to be re-opened, the case duration remains the original date of the complaint being lodged rather than any later date.

## **c. Concluding a Tier 1 File Review**

The conclusion of a Tier 1 file review requires the reviewing officer to reach a formal determination. A review report includes not only the determination but a summary of findings

based on the available evidence, detailing any identified deficiencies and any suggested remedial action. If a recommendation includes that the matter be reinvestigated at a Tier 2 file review then the report should identify if this should be by another Investigator within the region or using another resource (such as PSU staff).

A review report template and the outcome of review letter are available to assist in preparing the report. Once the report of the review is completed, it should be forwarded with the review file to the Manager PSU. The Manager PSU will advise the complainant of the results of the review and liaise with the relevant officer/s and manager of the outcomes and any necessary further action recommended.

While separate files are kept by PSU relating to a file review, key activities and correspondence should also be placed on the original investigation AIMS reference and TRIM file.

Results of file reviews are communicated to the FWBC Director and Executive Team as well as the FWBC Audit Committee.

## 6. Tier 2 File Reviews

A Tier 2 file review involves a '*de novo*' or new investigation of the matter. A decision to commence a Tier 2 file review is made by the Manager PSU. Usually a Tier 2 file review would not take place unless:

- a Tier 1 file review has already been conducted that recommends a Tier 2 file review be undertaken;
- where there appear to be systemic issues that need broader consideration throughout FWBC;
- if a review request cannot be resolved through a Tier 1 file review. For example, if there is no suitable senior officer available to undertake the re-investigation or other special circumstances; or
- at the request of the Commonwealth Ombudsman.

The responsibility for the conduct of a Tier 2 file review will remain with the PSU and can be undertaken by:

- the PSU; or
- another officer of FWBC.

It is envisaged Tier 2 file reviews will only take place on complex matters. While recognising there will be variations taking into account the specific nature of a *de novo* investigation, generally the course of enquiries conducted, will be in accordance with FWBC procedures.

When a Tier 2 file review is undertaken, the original TRIM files are obtained by the reviewing officer and the evidence contained in it will be copied for reinvestigation purposes. The original file will be kept intact for evidentiary purposes.



In most instances it is expected that the Tier 2 file review will be conducted as a field based investigation, with personal contact with the parties seen as a vital and important tool to satisfactorily conclude the matter.

At the completion of the review, the reviewing officer is required to forward a Report to the Manager PSU detailing:

- a general description of the investigation and review;
- whether procedures followed are consistent with the formal procedures laid down;
- if procedures were not followed what steps were adopted and what were the outcomes of that failure;
- whether the decision was correct, regardless of whether procedures were not being properly followed and recorded; and
- a formal outcome of the review using one of the four categories below.

The following are the formal outcomes that can be used from a Tier 2 file review:

- case outcome, consistent with the existing AIMS classification framework ranging from 'no further action' to 'litigation recommended';
- where the reviewing officer determines that contraventions have occurred, those matters will be processed in accordance with normal FWBC litigation policy;
- where the FWBC procedures have been adhered to, and the process and decision are correct, the original decision will be upheld; or,
- file to be considered for referral to the Commonwealth Ombudsman or other external agency as appropriate.

The Manager PSU will consider the findings and outcomes of the Tier 2 file review and after consultation with senior management, advise the complainant accordingly.

An internal report of the outcomes to the Executive of FWBC will also consider:

- any identified deficiencies in the original investigation;
- training recommendations; and
- additional enforcement measures where appropriate.

Template documents used during the administration of a Tier 2 file review are usually derived from those used during a Tier 1 File Review.



## 7. Tier 3 File Reviews

In instances where an investigation has been subjected to both Tier 1 and Tier 2 file reviews and the person seeking review remains aggrieved, the Manager PSU must contact the person in writing and refer them to the Commonwealth Ombudsman.

A Tier 3 file review is one undertaken externally by the Commonwealth Ombudsman to investigate the administrative actions of FWBC. The Commonwealth Ombudsman can decide which matters to investigate and how the investigation is to be carried out. However, it is envisaged the Commonwealth Ombudsman will carry out Tier 3 file reviews based on:

- a person seeking a review who has not been satisfied with the conduct or outcome of an earlier Tier 1 and/or Tier 2 file review; or
- a review conducted by the Ombudsman on their own account.

All inquiries and correspondence from the Commonwealth Ombudsman should be directed to the FWBC Group Counsel and Manager PSU.

## 8. Commonwealth Ombudsman

The Office of the Commonwealth Ombudsman (Commonwealth Ombudsman) is established by the Ombudsman Act 1976 and is empowered to investigate the administrative actions of prescribed government departments and agencies, including the FWBC. The term “administrative action” is not defined by the *Ombudsman Act 1976* but the Commonwealth Ombudsman interprets it broadly to include administrative decisions, policy development, the exercise of statutory powers, and other matters (including the FWBC’s own investigation and file review procedures). The Commonwealth Ombudsman is principally concerned with correcting maladministration.

The Commonwealth Ombudsman may receive contact from persons who are dissatisfied with the outcome of an FWBC’s file review. This may result from a referral from the FWBC, as a Tier 3 file review request procedure to the Commonwealth Ombudsman.

In addition, the Commonwealth Ombudsman may receive contact from parties to or persons affected by an FWBC investigation at any time (even if that person has not requested that the FWBC conduct a file review). Most contacts made to the Commonwealth Ombudsman about the FWBC are likely to relate to an alleged unreasonable delay or error in decision making during the FWBC’s investigation or file review process.

The Commonwealth Ombudsman’s role is not to be an advocate for individual persons but an impartial investigator. The Commonwealth Ombudsman’s investigations and recommendations will help the FWBC monitor and continually improve its processes, as well as providing an extra level of review to persons dissatisfied with the outcome of the FWBC’s investigations and/or file review process.

From time to time, the Commonwealth Ombudsman also may conduct an own motion investigation regarding the FWBC’s administrative actions, even if no contact from persons about the FWBC’s actions has been made.

In dealings with the Commonwealth Ombudsman, FWBC staff should ensure that due process is observed in responding to Commonwealth Ombudsman inquiries. This will also assist in

demonstrating the FWBC is open and transparent about its activities, and that the Commonwealth Ombudsman is provided with all necessary information to enable it in ensuring government agencies are accountable and that deficiencies in administrative decision making are minimised.

It is also important for FWBC staff to follow these procedures because failing to do so may of itself constitute an administrative deficiency.

#### **a. Provision of information to the Commonwealth Ombudsman**

Section 13 of the Fair Work (Building Industry) Act 2012 provides that the Director may disclose certain information if it is reasonably believed that it is likely to assist in the administration or enforcement of a law of the Commonwealth, a state or a territory.<sup>1</sup> The Director has delegated this power to:

- Chief Counsel
- Executive Manager – Operations
- General manager – Building Code
- FWBI Inspectors engaged as Executive Level Band 1 or 2 employees

Staff should check to establish if they are able to release information to the Commonwealth Ombudsman in accordance with the [Delegated Powers List](#). If unsure, contact should be made with their Manager prior to providing information.

The Ombudsman Act 1976 includes protections for agencies and their staff who provide information that the Commonwealth Ombudsman has formally requested or information that the agency or staff reasonably believe is relevant to a Commonwealth Ombudsman investigation. The protections include that the:

- information cannot be used in evidence against the person (other than for giving false or misleading information);
- disclosure does not breach the Privacy Act 1988; or
- disclosure does not affect a claim that may be made for legal professional privilege.

The FWBC must provide information requested by the Commonwealth Ombudsman unless the information is outside the Commonwealth Ombudsman's jurisdiction because it is not related to administrative action, or the Attorney General exempts the FWBC from providing the information.

If a FWBC officer has a concern that information requested by the Commonwealth Ombudsman should not be provided for the above reasons, the officer should discuss this with their Manager. Failure to provide required information or providing false or misleading information to the Commonwealth Ombudsman could result in criminal charges or other action.

As noted above, any direct requests for information from the Commonwealth Ombudsman should be made via the Chief Counsel or Manager PSU in the first instance. Accordingly,

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<sup>1</sup> FWBI Act 2012; s 64 (2) (b).



FWBC staff should immediately advise of any request for information made directly to them by the Commonwealth Ombudsman.

#### **b. Results of a Commonwealth Ombudsman investigation**

The Commonwealth Ombudsman can investigate administrative actions of the FWBC. The Commonwealth Ombudsman can decide which matters to investigate and how the investigation is to be carried out. However, the investigation must be in private and the Commonwealth Ombudsman cannot release the information publicly except as permitted by the relevant sections of the *Ombudsman Act 1976*.

During an investigation, the Commonwealth Ombudsman has the power to:

- require a person or agency to provide documents or other written records relevant to an investigation (even if the information is confidential, sensitive, incriminating or subject to legal professional privilege) (s9);
- require a person to attend a specified place and answer questions (s9);
- formally examine witnesses (s13); and
- visit agency premises and inspect documents (s14).

At the conclusion of its investigation, the Commonwealth Ombudsman will determine if an administrative deficiency has occurred. In reaching this decision, the Commonwealth Ombudsman will take into consideration factors including whether the action or inaction:

- involved an unreasonable delay;
- was unlawful, unreasonable, unjust, oppressive, improperly discriminatory;
- was poorly explained;
- involved a decision which failed to take account of relevant information or was based on irrelevant grounds; or
- lacked procedural fairness.

The Commonwealth Ombudsman may make recommendations about how any maladministration may be remedied, or report to the relevant minister or to Parliament. The Office of the Director will consider the Commonwealth Ombudsman's findings and, if required, initiate action to address any recommendations.

## **9. Conclusion**

Results of PSU review activities are maintained by the PSU for reporting purposes.

The file review and quality assurance review process is designed to form an integral component of a continuous improvement process in the operations of FWBC. This can only be achieved through engendering a positive and non-adversarial attitude to the review process.



Source: <<https://www.fwbc.gov.au/compliance-and-enforcement/how-we-investigate/request-review>> viewed 4 March 2016.

## REQUEST A REVIEW

Parties involved in an investigation can request a review for any, some, or all of these reasons:

- a Fair Work Building Industry Inspector's behavior was unprofessional
- they believe the process was unsatisfactory
- they don't agree with the outcome

You can request a review by speaking in the first instance to the Fair Work Building Industry Inspector involved in the matter or their manager. If you don't agree with the outcome of those discussions you can request a review through [sending us an email](#), or by [writing to us by mail](#).

To help us identify what the problem is, your request should contain some details of the investigation and the reason(s) why you want it reviewed.

## HOW ARE REVIEWS ARE CONDUCTED?

We're committed to ensuring reviews remain impartial and transparent. For this to happen, reviews may go through up to three tiers of our review process:

- conducting a process review (we do this to check whether the original Fair Work Building Industry Inspector followed the correct investigation process)
- redoing the investigation (this is done by our specialist File Review Team)
- referring the person who made the complaint to the Commonwealth Ombudsman.

Sometimes you will be contacted by the reviewer to discuss aspects of the case. At the end of the review a report of the findings is made and you will be formally advised of the result.

## COMPLAINTS ABOUT FAIR WORK BUILDING INDUSTRY INSPECTORS

Fair Work Building Industry Inspectors are employees of Fair Work Building & Construction (FWBC), as well as Commonwealth Government employees, and must follow the Australian Public Service Code of Conduct.

If you think a Fair Work Building Industry Inspector has behaved unprofessionally, you can ask for their conduct to be reviewed.

You can do this with the Fair Work Building Industry Inspector or with their manager. If the manager can't resolve your complaint, they will ask the relevant director to review it.

## NEED TO REQUEST A REVIEW?

If you require more information about requesting a review, you can contact us on the FWBC Hotline on 1800 003 338.

