



Australian Government
**Australian Building and
Construction Commission**

22 December 2016

Michael Campbell
Acting Fair Work Ombudsman
The Office of the Fair Work Ombudsman
Level 9, 414 La Trobe Street
Melbourne VIC 3000

Dear Michael

I write to you in your capacity as Acting Fair Work Ombudsman. As you are aware, the *Building and Construction Industry (Improving Productivity) Act 2016 (BCIIP Act)* has expressly tasked me with ensuring that *building employers* and *building contractors*, as defined in the BCIIP Act, comply with their wages and entitlements obligations and the general protections provisions of the *Fair Work Act 2009*. The scope of my functions in this regard revolve around the definition of *building work* in the BCIIP Act, which is often referred to as the commercial construction industry to the exclusion of the domestic building sector.

I will undertake my functions in respect of wages and entitlements and general protections matters through two streams of activity within the Australian Building and Construction Commission (**ABCC**): the proactive and the reactive.

Proactively, I will ensure that compliance audits of wages and entitlements form part of compliance audits conducted under the Building Code 2016. I consider it very important that contractors who seek to undertake Commonwealth funded work comply with their wages and entitlements obligations and that this is actively audited by the ABCC as part of broader Building Code activities. Also, as part of the ABCC's proactive compliance stream, I intend to undertake targeted wages and entitlements audit and compliance campaigns on commercial construction sites. This may include targeted campaigns in respect of certain types of sites or certain trades or professions.

It is in respect of the reactive work, and the provision of advice and information, that I write this letter and seek to engage with you and your agency.

Given the jurisdiction of my agency is a subset within your broader jurisdiction, there is potential for overlap and duplication of work between our two organisations. I am conscious to find a complementary way for our agencies to work together that represents both a responsible use of taxpayer funds, and which, importantly, also provides an efficient, effective and consistent means for employees and employers to seek assistance and advice in respect of wages and entitlements and general protections issues. I

consider this is particularly important in respect of reactive compliance activity and the provision of information to industry.

As you are aware, in 2013 our agencies were directed by Government to implement a transfer of the wages and entitlements functions from my former agency to the Fair Work Ombudsman (FWO). It was in that context we exchanged letters formalising that transfer and its processes. On 1 December 2016, I wrote to Fair Work Ombudsman Natalie James to formally rescind that arrangement.

It is a priority goal for me to ensure that the ABCC provides support and assistance, and undertakes investigations in relation to wages and entitlements and general protections arising from *building work*, to the same high standard as that provided by the FWO to building industry participants in recent years.

To facilitate further discussion between the ABCC and the FWO, I outline below a draft engagement proposal. Once we have agreed, in broad terms, to the nature of our engagement moving forward, I intend to formalise it by releasing a reference guide for the handling of such matters by ABCC staff.

Proposed processes for handling incoming wages and entitlements and general protections enquiries

1. Information and advice – website materials and PACT tool

The FWO, and its website, have become the authoritative source for the public about wages and entitlements and general protections under the *Fair Work Act 2009*. The FWO has a significant body of technical and practical expertise in engaging with the public to respond to general wages and entitlements and general protections queries, whether that is through the online 'Pay and Conditions Tool' (PACT) or by providing a wealth of practical information and advice through the FWO website.

It is clear that the FWO's years of experience in developing, refining and maintaining its resources, and the significant capital investment in infrastructure, the FWO website, and personnel, are not able to simply be replicated by the ABCC, nor would it be an efficient use of Commonwealth resources for the ABCC to attempt to do so.

Accordingly, I seek your agreement that the ABCC will direct callers to the FWO website and PACT in the first instance for general enquiries about wages and entitlements and general protections, and for any enquiries that relate substantially to matters other than *building work* as defined by the BCIIIP Act. The ABCC will not direct any specific enquiries regarding *building work* to the FWO, and would anticipate that the FWO direct any enquiries it may receive about those matters to the ABCC.

2. Building work requiring investigation

I propose that any wages and entitlements or general protections matters received by the FWO that are assessed as relating to *building work* and that require investigation will be referred to the ABCC for action.

3. Sharing of information

As part of these arrangements I propose that the FWO and the ABCC share relevant information regarding their respective activities relating to building and construction work, as required or requested from time to time, in order to facilitate the monitoring by the ABCC of industry conditions. I will use this information to assess the extent to which, if any, the arrangements set out above should be supplemented by additional specialised functions located within the ABCC.

Subject to your in-principle agreement with the proposed processes I have outlined above, I will arrange for a reference guide for ABCC staff to be created. I will provide this reference guide to you for comment before releasing it internally. I also seek to work together to ensure guidance material issued to ABCC staff aligns with similar material at the FWO.

I again thank you for your continued assistance in seeking an agreement between our agencies that ensures that public value and the efficient delivery of services to the industry are aligned with my commitment to faithfully carry out all of the functions of the Australian Building and Construction Commissioner.

I look forward to the ongoing cooperation between our agencies.

Yours sincerely



Nigel Hadgkiss
Commissioner
Australian Building and Construction Commission