



**Fair Work**  
OMBUDSMAN



**Australian Government**  
**Fair Work Building**  
**& Construction**

# Memorandum of Understanding

*Collaboration between Inspectorates*



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*Date*

1. This Memorandum of Understanding (MOU) is made on 5 November 2012.

*Parties*

2. This MOU is made between the Office of the Fair Work Ombudsman (FWO) and the Office of the Fair Work Building Industry Inspectorate (FWBC).

*Purpose*

3. FWBC and the FWO (the Agencies) acknowledge the complementary nature of their work. The Agencies are committed to maintaining a close working relationship with each other wherein knowledge, skills and capabilities can be shared to deliver stronger workplace relations outcomes for the Australian citizenry.
4. This MOU establishes an agreed framework regarding the cross-vesting of powers and functions between personnel of the Agencies. In particular, this MOU enables the:
  - 4.1. appointment of Fair Work Inspectors as Fair Work Building Industry Inspectors (FWBI Inspectors)
  - 4.2. appointment of FWBI Inspectors as Fair Work Inspectors
  - 4.3. framework for Fair Work Inspectors and FWBI Inspectors to assist each other in operational activities, and
  - 4.4. sharing of operational information between Fair Work Inspectors and FWBI Inspectors.
5. The cross-vesting of powers and operational activities will provide greater service delivery in regional locations where either agency requires additional operational capability on an ad hoc basis.

*Existing arrangements*

6. This MOU replaces all previous agreements between the Agencies that relate to the appointment and associated operational activities of Fair Work Inspectors and FWBI Inspectors.

*Appointment of Fair Work Building Industry Inspectors as Fair Work Inspectors*

- 7.1. The Fair Work Ombudsman is responsible for appointing Fair Work Inspectors under section 700 of the *Fair Work Act 2009*.
- 7.2. On receiving a request from the Fair Work Ombudsman, or otherwise upon agreement between the Agency heads, the FWBC Chief Executive may consent to the appointment of FWBI Inspectors as Fair Work Inspectors.
- 7.3. As a standing request, the FWBC Chief Executive agrees to the ongoing appointment of nominated FWBC Inspectors as Fair Work Inspectors in the following locations:
  - 7.3.1. Darwin, Northern Territory
- 7.4. The locations outlined in the preceding paragraph can be amended by written agreement between the MOU Managers at any time.
- 7.5. The FWO will provide FWBC personnel appointed as Fair Work Inspectors with an Inspector identification card.

- 7.6. A FWBI Inspector appointed as a Fair Work Inspector must only exercise the powers and functions of a Fair Work Inspector with the consent of the FWO manager who is responsible for the relevant operational activity.
- 7.7. FWBI Inspectors who are appointed as Fair Work Inspectors under this agreement, must conduct operational activities undertaken on behalf of the FWO in accordance with the Fair Work Ombudsman's Delegation of Powers and Directions to Fair Work Inspectors.

*Appointment of Fair Work Inspectors as Fair Work Building Industry Inspectors*

- 8.1. The FWBC Chief Executive is responsible for appointing Fair Work Building Industry Inspectors under section 59 of the Fair Work (Building Industry) Act 2012.
- 8.2. On receiving a request from the FWBC Chief Executive, the Fair Work Ombudsman may agree to the appointment of Fair Work Inspectors as FWBI Inspectors.
- 8.3. As a standing request, the Fair Work Ombudsman agrees to the ongoing appointment of nominated Fair Work Inspectors as FWBI Inspectors in the following locations:
  - 8.3.1. Hobart, Tasmania
  - 8.3.2. Launceston, Tasmania
- 8.4. The locations outlined in the preceding paragraph can be amended by written consent between the MOU Managers.
- 8.5. FWBC will provide FWO personnel appointed as FWBI Inspectors with an inspector identification card.
- 8.6. A Fair Work Inspector appointed as a FWBI Inspector must only exercise the powers and functions of a FWBI Inspector with the consent of the FWBC manager who is responsible for the relevant operational activity.
- 8.7. Fair Work Inspectors who are appointed as FWBI Inspectors under this agreement, must conduct operational activities undertaken on behalf of FWBC in accordance with the FWBC Chief Executive's Delegation of Powers and relevant Directions.

*Operational activities*

- 9.1. For the purpose of this agreement, operational activities include all functions, powers and activities of Fair Work Inspectors and FWBI Inspectors associated with conducting investigations, targeted audits and educational campaigns.
- 9.2. The Agencies must undertake all operational activities under the scope of this MOU in a manner that is consistent with the FWO Field Operations Manual.
- 9.3. The Agencies will explore opportunities to conduct cooperative operational activities where appropriate. Where operational activities involve both building industry participants and other workplace parties, the Agencies will work collaboratively to determine the most appropriate mechanism to progress the matter.
- 9.4. FWBC will ensure that any penalty infringement notice issued by an FWBI Inspector, acting as a Fair Work Inspector, specifies payment to the FWO. This will ensure that any penalties paid are remitted to the FWO.

- 9.5. Where an employer is required to remit moneys to employees and is unable to locate the employees to facilitate such payment, FWBC is to ensure such moneys are forwarded to the FWO as unclaimed moneys.

*Shared obligations of the Agencies*

- 10.1. The Agencies must ensure, as far as possible, that all personnel engaged in the provision of operational activities are of good character.
- 10.2. For all other purposes, including remuneration, occupational health and safety, insurance etc, personnel will continue to be considered an employee of their engaging agency.
- 10.3. The Agencies must advise each other of any serious complaints or criticism made against any Personnel that are, or have been, engaged in operational activities resulting from this MOU. This includes, but is not limited to, any allegations, inquiries, investigations and breaches of the Public Service Act 1999 and applicable APS values and code of conduct. If such circumstances arise, the Agencies will communicate the nature of the issue to the MOU Manager within two working days or as soon as practicable.
- 10.4. At the request of either the Fair Work Ombudsman or the FWBC Chief Executive, personnel who are, or have been, involved in the provision of operational activities resulting from this MOU can be removed from service. This extends to requesting the revocation of appointments as Fair Work Inspectors and FWBI Inspectors insofar as they relate to the scope of this MOU.
- 10.5. Alternatively, where considered appropriate (for example, in the interest of the Agency's reputation of security), the Fair Work Ombudsman or FWBC Chief Executive may revoke an appointment unilaterally and at their discretion.
- 10.6. Upon termination of an employee or revocation of dual-appointment under this agreement, identification cards must be collected and returned to each MOU manager.

*Exchange of information*

- 11.1. The Agencies will ensure access to information required by personnel to conduct their duties pursuant with this agreement, legislative directions and operational guidance.
- 11.2. In accordance with relevant legislation, directions and/or delegations on sharing official information, personnel from the Agencies are authorised to share information that relates to the proper conduct of operational activities provided in this MOU.
- 11.3. Where information regarding operational activities is required to be exchanged, this will occur pursuant to legislative information disclosure provisions, and generally without a formal notice.
- 11.4. The Agencies can request status reports on operational activities that have been, or are currently being, undertaken as a result of this MOU (all reports are subject to any legislative obligations of confidentiality or disclosure). Any such reports must, at a minimum, detail the last action, current status and issues, next action (and relevant time frame) and other such information.
- 11.5. The Agencies agree to secure all Official Information received as a result of the operations of this MOU against loss and unauthorised access, use, modification or disclosure.
- 11.6. In all other circumstances, the Agencies must not, without prior written authorisation of the other agency, disclose any Official Information to a third person (unless required to do so by law).

- 11.7. If either Agency becomes aware of any act or practice which may breach an Information Privacy Principle, the Agencies will communicate the nature of the issue to the MOU Manager within two working days or as soon as practicable.

*Learning and development*

- 12.1. Personnel are required to have undergone appropriate training prior to being nominated for dual appointment.
- 12.2. The Agencies will work together to ensure that personnel are provided with learning opportunities and resources. Either agency may request and/or provide training to personnel who are involved in the provision of operational activities.
- 12.3. The cost of providing additional training, including travel, accommodation, training providers or materials is to be covered by the agency requiring the training, or as determined by the MOU Managers.

*Administrative and Governance Arrangements*

13. MOU Managers

- 13.1. The MOU Managers are the incumbents of the following positions:

- 13.1.1. FWO – Executive Director, Dispute Resolution and Compliance  
13.1.2. FWBC – Chief of Field Operations

- 13.2. The MOU Managers will confer on an as-needed basis, however, they will meet biannually at a minimum.

14. Security

- 14.1. Each agency agrees to notify the other agency immediately if it becomes aware that a Security Incident has occurred in relation to the performance of this MOU.

15. Indemnity

- 15.1. Each Agency indemnifies the other from and against any:

- 15.1.1. cost or liability incurred  
15.1.2. loss of or damage to property, or  
15.1.3. loss or expense incurred in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid arising from either an act or omission in connection with the conduct of operational activities described in this MOU.

16. Dispute resolution

- 16.1. In the unlikely event that a dispute arises, the Agencies will convene a meeting of the MOU Managers who will attempt to settle the dispute by direct negotiation. Should the MOU Managers fail to settle the dispute within 14 calendar days, the matter will be referred to the Fair Work Ombudsman and FWBC Chief Executive for resolution.



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16.2. If the Fair Work Ombudsman and FWBC Chief Executive are unable to resolve the dispute, the dispute will be referred to an independent third person with power:

- 16.2.1. to mediate and recommend some form of non-binding resolution, or
- 16.2.2. to intervene and direct some form of resolution, in which case the Agencies will be bound by that resolution.

16.3. Despite the existence of a dispute, the Agencies will (unless requested in writing by the other agency not to do so) continue to operate in accordance with this MOU.

**17. Duration, termination & variation**

17.1. This agreement commences on the date referenced in clause 1, and continues to operate unless terminated by either agency.

17.2. Either agency may, by 3 months notice, for any reason and in its absolute discretion, terminate this MOU.

17.3. Alternatively, the MOU may be terminated by written agreement, effective the date specified in that agreement.

17.4. This MOU can be varied by the Agencies at any time. Variations become operative when they are in writing and signed by the MOU Managers and appended as an Attachment to this MOU.

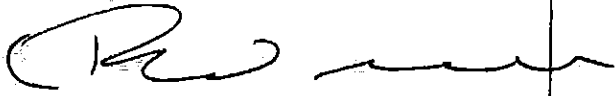
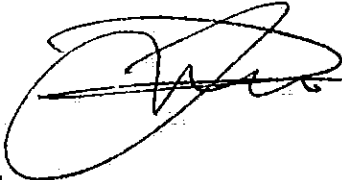




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Signatures

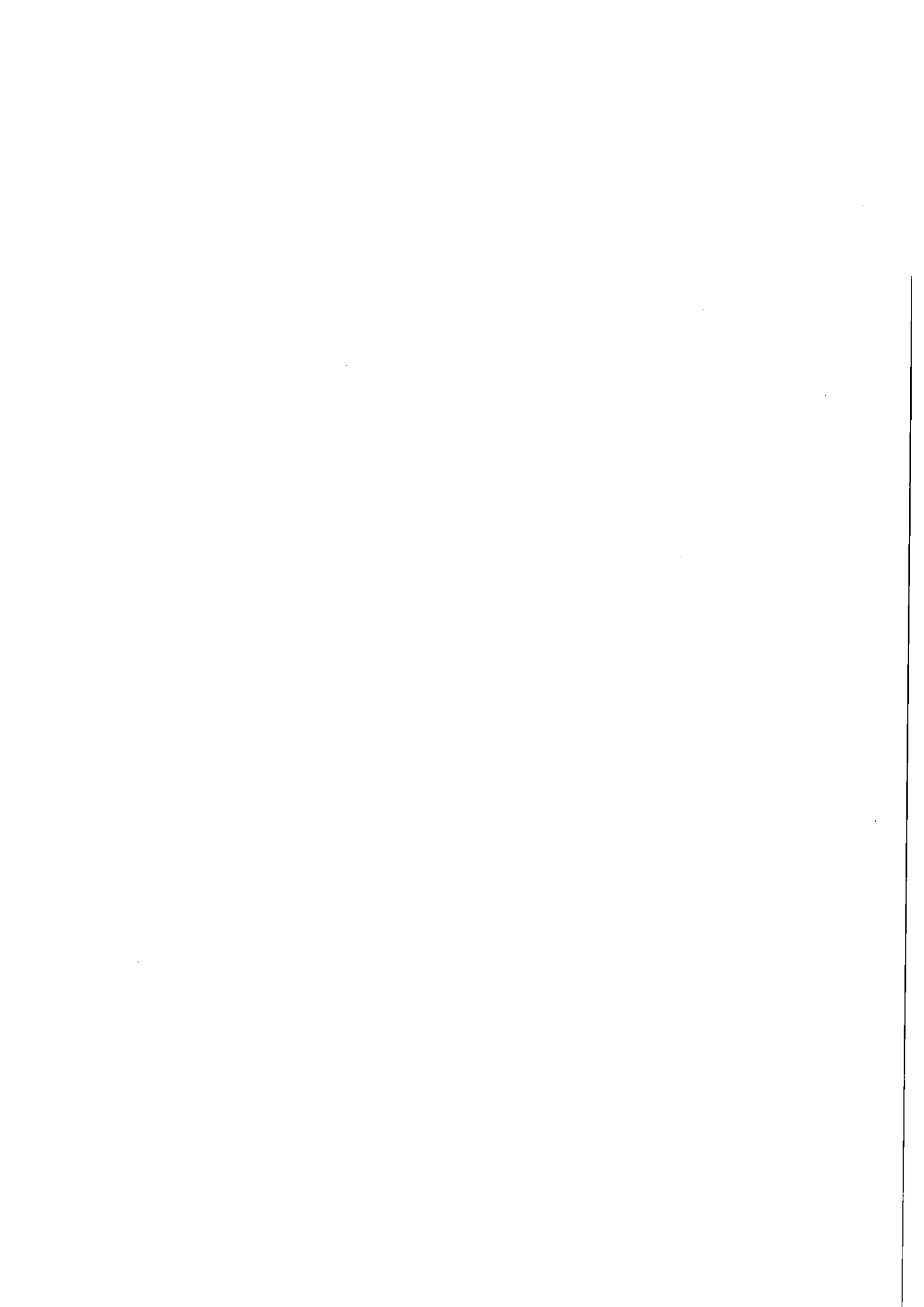
 Nicholas Wilson Fair Work Ombudsman Date: 7 November 2012	 Leigh Johns Director, Fair Work Building and Construction Date: 11 FEBRUARY 2013
 Witness THOMAS O'SHEA Full name: Date: 7 NOVEMBER	 Witness PAUL ARCHER Full name: Date: 11 February 2013.



APPENDIX A – DEFINITIONS

In this MOU, unless the context indicates otherwise:

The Agencies	means: a. the FWO, and b. FWBC.
FWBI Inspector	means a person appointed an Inspector pursuant to section 59 of the <i>Fair Work (Building Industry) Act 2012</i> .
Attachment	means a document attached to this Memorandum of Understanding and includes the Attachment as amended or replaced from time to time by agreement in writing between the Parties.
Fair Work Inspector	means a person appointed an Inspector pursuant to section 700 of the <i>Fair Work Act 2009</i> .
Fair Work Ombudsman	means the Fair Work Ombudsman appointed under section 687 of the <i>Fair Work Act 2009</i> .
Official Information	means any information developed, received or collected by or on behalf of a Party to which the other Party gains access under or in connection with this Memorandum of Understanding, and includes the Contract Material and the terms of the Memorandum of Understanding.
Office of the Fair Work Ombudsman	means the Office of the Fair Work Ombudsman established under section 696 of the <i>Fair Work Act 2009</i> .
Operational Activities	includes all functions, powers and activities of Fair Work Inspectors and FWBI Inspectors associated with conducting investigations, targeted audits and educational campaigns.
Operational Authority	means the person who holds primary operational and/or managerial responsibility for an Operational Activity.
MOU Managers	means the persons specified (by name or position) or any substitute notified to the FWO.





Administrative  
Appeals  
Tribunal



Australian Government  
Fair Work Building  
& Construction

# Fair Work Building Industry Inspectorate & Administrative Appeals Tribunal

## Memorandum of Understanding/Funding Arrangement

To ensure the independent discharge of statutory duties or obligations by the AAT in respect of  
the Examination Notice Regime

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Details Section

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Interpretation – definitions are at the end of the General Terms

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Parties FWBC and AAT

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Name OFFICE OF FAIR WORK BUILDING INDUSTRY INSPECTORATE ("FWBC")

Address

Telephone

Fax

FWBC MOU Manager

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Name ADMINISTRATIVE APPEALS TRIBUNAL ("AAT")

Address Level 7, 55 Market Street, Sydney NSW 2000

Telephone 02 9391 2491

Fax 02 9391 5538

AAT MOU Manager Megan Cassidy, Executive Director, Operations

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- Recitals
- A FWBC is an independent statutory office created by the FWBI Act. FWBC is responsible for providing advice, education and compliance in relation to Commonwealth workplace laws in the building and construction industry.
  - B The AAT is a statutory agency established by the *Administrative Appeals Tribunal Act 1976* (Cth) to provide independent merits review of administrative decisions. The AAT consists of a President, other Presidential Members, Senior Members and Members.
  - C Chapter 7, Part 1, Division 3 of the FWBI Act establishes a new statutory regime with respect to the application and/or issue of an Examination Notice pursuant to the FWBI Act.
  - D This regime imposes functions on Nominated AAT Presidential Members.
  - E The object of this MOU is to facilitate the provision of unencumbered funds from FWBC to the AAT so that the AAT can independently discharge its statutory obligations that arise as a result of the regime and the FWBI Act.
  - F FWBC and AAT have agreed on the terms recorded in this MOU.
-

## **General terms**

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### **1. Background**

- 1.1 The FWBI Act commenced operation on 1 June 2012.
- 1.2 Chapter 7, Part 2, Division 3 of the FWBI Act establishes a new statutory regime in respect of the issue of an Examination Notice (the Examination Notice Regime).
- 1.3 The Examination Notice Regime prescribes (relevantly):
  - a) a nomination process whereby Nominated AAT Presidential Members are nominated
  - b) the circumstances in which the FWBC Director may make an application to a Nominated AAT Presidential Member for an Examination Notice
  - c) the circumstances a Nominated AAT Presidential Member must consider when determining whether to issue an Examination Notice, and
  - d) procedures relating to the application and/or issue of an Examination Notice.

### **2. Purpose of MOU**

- 2.1 The primary purpose of this MOU is to establish a mechanism to transfer funds from the FWBC to the AAT to give effect to the Examination Notice Regime by enabling the provision of unencumbered annual funding from FWBC to the AAT for the purpose of ensuring Nominated AAT Presidential Members and the AAT as an agency can independently discharge their respective duties under the Examination Notice Regime

### **3. Commitment of the parties**

- 3.1 The parties undertake to adhere to the provisions of this MOU in good faith, with a commitment to work co-operatively in a spirit of mutual trust and respect in order to ensure that the Government and the Australian people receive the best possible outcomes.

### **4. Commencement and Operation**

- 4.1 This MOU will commence on the Commencement Date for a period of three (3) years, after which time it is to be reviewed by the parties.

### **5. Unencumbered funding**

- 5.1 FWBC agrees to:
  - a) provide the AAT with unencumbered funding in accordance with the terms set out in Schedule A to this MOU (Funding) for the purpose of allowing the AAT to independently discharge its obligations pursuant to the Examination Notice Regime, and
  - b) comply with any standard request form and procedural arrangements made by the AAT for dealing with requests by the FWBC Director for the issue of examination notices by Nominated AAT Presidential Members.
- 5.2 Specifically, the AAT agrees to:

- a) establish standard administrative arrangements in respect of the Examination Notice Regime, including (but not limited to) the development of a standard request form and internal protocols for dealing with requests for the issue of examination notices by Nominated AAT Presidential Members
- b) facilitate the nomination of AAT Presidential Members by the Minister pursuant to section 44 of the FWBI Act
- c) establish and maintain a register of Nominated AAT Presidential Members nominated by the Minister in accordance with section 44 of the FWBI Act
- d) provide training and support to Nominated AAT Presidential Members, relevant AAT staff, members and/or office holders, and
- e) provide registry support to facilitate the consideration of the FWBC Director's applications for the Issue of Examination Notices pursuant to section 45 of the FWBI Act.

#### **6. State AAT Registry Contacts**

- 6.1 The AAT agrees to nominate registry contacts in each State and Territory of Australia (State AAT Registry Contacts) who will:
- a) be the primary point of contact in relation to applications made by the FWBC Director pursuant to section 45 of the FWBI Act in that State or Territory; and
  - b) provide registry support to facilitate the consideration of such applications.
- 6.2 The AAT agrees to provide FWBC with a list of State AAT Registry Contacts and their respective contact details as soon as practicable after the commencement of this MOU.

#### **7. MOU Manager**

- 7.1 FWBC and the AAT have each appointed a MOU Manager referred to in the Details Section of this MOU.
- 7.2 Each party's MOU Manager is to be the primary point of contact in relation to matters dealt with in relation to this MOU (except in relation to applications in the circumstances set out in clause 6.1 of this MOU).
- 7.3 If either FWBC or the AAT wishes to change the details of their appointed MOU Manager, that party will notify the other party in writing of the new contact details as soon as practicable.

#### **8. Notices**

- 8.1 Unless otherwise stated, any notice under this MOU is only effective if it is in writing and addressed to the other party's MOU Manager at the postal, email or facsimile address listed in the Details Section of the MOU.

## **9. Varying and Termination**

- 9.1 FWBC or the AAT may mutually vary or terminate this MOU at any time by the written consent of the FWBC Director and the Registrar of the AAT.

## **10. Dispute Management**

- 10.1 The parties will use their best endeavour to resolve any differences or difficulties in a pragmatic manner to achieve agreed objectives of this MOU and the FWBI Act generally.
- 10.2 The parties agree their respective MOU Managers are the first point of contact for the other party in relation to any disputes arising under this MOU.
- 10.3 Matters that are not resolved will be referred to the FWBC Director and the Registrar of the AAT for mutual review and determination.

## **11. MoU not legally binding**

- 11.1 This MoU is not legally binding and the parties do not intend that it or any part of it be legally binding. It serves only as a record of the parties' separate intentions in relation to the operation of funding arrangements to ensure independent discharge of statutory duties or obligations by the AAT in respect of the Examination Notice Regime.

## **12. Interpretation**

### **12.1 Definitions**

These meanings apply unless the contrary intention appears:

**AAT** means the agency the details of which are set out in the Details Section of this MOU.

**AAT Presidential Member** has the same meaning as "AAT presidential member" as defined in section 4(1) of the FWBI Act.

**Details Section** means the section of this MoU headed "Details Section".

**Examination Notice** has the same meaning as "examination notice" in section 4(1) of the FWBI Act.

**FWBC** means the agency the details of which are set out in the Details Section of this MOU.

**FWBC Director** means the person appointed to act as Director of the Fair Work Building Industry Inspectorate under section 16 of the FWBI Act.

**FWBI Act** means the *Fair Work (Building Industry) Act 2012*, including any accompanying regulations.

**MOU** means this Memorandum of Understanding.

**Nominated AAT Presidential Member** has the same meaning as "nominated AAT presidential member" as defined in section 4(1) of the FWBI Act.

**Commencement Date** means 1 June 2012.

### **12.2 Headings**

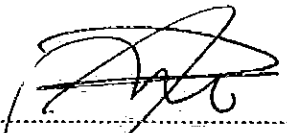


Headings are for convenience only and do not affect the Interpretation of this MoU.

**EXECUTED** as an agreement

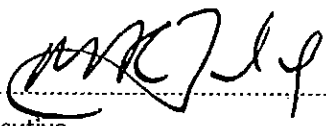
**Signing Page**

SIGNED FOR AND ON BEHALF OF FWBC  
OFFICE OF THE FAIR WORK BUILDING INDUSTRY INSPECTORATE BY

  
-----  
Executive - **ACTING DIRECTOR**

**LEIGH JOHN'S**  
-----  
Name of Executive  
(Print Name)

**4 JUNE 2012**  
-----  
Dated

  
-----  
Executive

**MURRAY FURLONG**  
-----  
Name of Executive  
(Print Name)

**6 JUNE 2012**  
-----  
Dated

SIGNED FOR AND ON BEHALF OF THE  
ADMINISTRATIVE APPEALS TRIBUNAL

  
-----  
Executive      **Phillip Kellow**  
                         Registrar

-----  
Name of Executive  
(Print Name)

**8 JUNE 2012**  
-----  
Dated

-----  
Executive

-----  
Name of Executive  
(Print Name)

-----  
Dated

## Schedule A

### 1. Funding

- a) FWBC agrees to pay the AAT a funding amount of \$13,000 (+GST) per financial year in 2012/13, 2013/14 and 2014/15 (pro rata) in accordance with the following:

Financial year	Funding amount	Funding payable
2012/2013 (provided the proclamation date of s.45 of the FWBI Act is 1 June 2012)	[\$13,000] + GST	July 2012
2013/2014	[\$13,000] + GST	July 2013
2014/2015	[\$13,000] + GST	July 2014

### 2. Invoicing

- a) The AAT agrees to invoice FWBC for the funding amounts for each financial year at the start of that financial year in July.
- b) Funding for each financial year becomes due and payable when FWBC receives an invoice from the AAT. Payment terms will be 30 days unless otherwise agreed in writing between FWBC and AAT.

### 3. Payment of Funding

- a) Payment will be made to the AAT's nominated bank account via EFT.



## Memorandum of Understanding – ABR Public and Non Public data

MOU Details			
MOU number:	1421.01	Replaces MOU number:	Nil
Registrar:	The Registrar of the Australian Business Register		
ABR:	The Australian Business Register		
Registrar's Partnership Manager:	Name:	Sandee Harris	
	Position:	Partnership Manager	
	Postal address:	PO Box 9977, BRISBANE QLD 4001	
	Email address:	sandra.harris@abr.gov.au	
	Telephone:	(07) 3149 5944	Mobile:
Agency Head:	Commissioner		
Agency:	Office of the Australian Building and Construction Commissioner		
Agency's Partnership Manager:	Name:	Seamus Flynn	
	Position:	Investigator	
	Postal address:	GPO Box 9927, ADELAIDE SA 5001	
	Email address:	seamus.flynn@abcc.gov.au	
	Telephone:	(08) 8402 9253	Mobile:
Frequency of meetings:	Annually and as required.		
Relevant privacy laws:	For the Registrar:	The Privacy Act 1988 (Cth)	
	For the Agency Head:	The Privacy Act 1988 (Cth)	
Function/s to support:	See Item 2 of Schedule 1		
Supply of ABR data:	See Schedule 3		

### Accepted and agreed

**Signed by:**

L. Johns,  
Commissioner,  
Office of the Australian Building and Construction  
Commissioner

Signature: 

Date: 06/10/2011

**Signed by:**

M. Jackson,  
Deputy Registrar,  
Australian Business Register

Signature: Mark Jackson

Date: 18 October 2011

## Memorandum of Understanding – ABR Public and Non Public data

### 1. Parties

This Memorandum of Understanding (MOU) is between:

- the Registrar, and
- the Agency Head.

### 2. Function of this MOU

The ABR contains details about entities who have registered for an Australian Business Number (ABN) under the *A New Tax System (Australian Business Number) Act 1999 (The ABN Act)*. This MOU:

- identifies which details in the ABR are to be supplied by the Registrar to the Agency Head, and
- sets out the conditions under which the Registrar will supply those details to the Agency Head.

*Note - The Registrar can make some details in the ABR publicly available (see s26(5) of the ABN Act), but can only disclose other details in given circumstances (see s30(3) of the ABN Act).*

### 3. Commencement and duration of this MOU

This MOU commences on the date it is signed by the last party to sign it, and continues until terminated:

- by the parties at any time by mutual agreement, or
- by either party giving the other not less than 30 days notice.

### 4. Effect of this MOU

This MOU does not create legally enforceable obligations between the parties, and revokes and replaces the existing arrangements (if any) identified in the MOU details.

### Provision and use of ABR data

#### 5. Providing ABR data

The Registrar will arrange for data sets:

- containing those details recorded in the **ABR records**, for those relevant entities, as indicated in Schedule 2,
- to be supplied to the Agency Head by the channel/s, method/s, in the format/s, and at the frequency and time/s as indicated in Schedule 3.

#### 6. Using ABR data

Subject to clause 7, details in ABR records provided to the Agency Head may only be used for the purposes of performing the specific function/s identified in Item 2, of Schedule 1. The Agency Head is responsible for assessing the suitability of those details for those uses.

## **Memorandum of Understanding – ABR Public and Non Public data**

### **7. When ABR details may not be used**

The Registrar can give the Agency Head a notice under this clause if:

- an ABR record containing a relevant detail has been provided to the Agency Head, and
- the Registrar is later prevented by law from disclosing that detail in that ABR record.

Where the Registrar gives a notice under this clause identifying a relevant detail, the Agency Head must (unless the Agency has separately verified that detail with, or otherwise obtained it from, another source) ensure the Agency promptly:

- deletes that detail from the relevant ABR Record/s contained in the Agency's database/s, and
- ceases making that detail available to any other agency or entity.

### **8. Agency Head to notify Registrar of changes in circumstances**

The Agency Head will immediately notify the Registrar if:

- the Agency ceases to have the status identified in Item 1 of Schedule 1,
- the (position of) Agency Head ceases to have the status identified in Item 1 of Schedule 1, or
- a function identified in Item 2 of Schedule 1 is not, or ceases to be a function of the Agency.

If - due to a change in circumstances or for any other reason - the law no longer allows the Registrar to disclose ABR data or detail/s in it to the Agency Head, the Registrar will not make that disclosure.

### **9. Agency Head to notify Registrar if required to disclose ABR records**

If the Agency Head or the Agency is required by law to disclose, to another person, any ABR record/s provided by the Registrar, the Agency Head will advise the Registrar as soon as practicable so the Registrar can seek a protective order or other relief from that disclosure (if the Registrar wishes to do so).

### **10. Support**

The Registrar will arrange support to assist the Agency Head and the Agency in dealing with client enquiries relating to the ABR. Contact and escalation points for this support are as follows:

- general enquiries concerning the ABR can be sent by email to [ABREnquiries@ato.gov.au](mailto:ABREnquiries@ato.gov.au), and
- for specific enquiries concerning the ABR, contact the Registrar's **Partnership Manager**.

### **11. Branding requirements**

The Agency Head may not use the ABR brand without the express written permission of the Registrar.

### **12. Fees**

No fees are payable by the Agency Head or the Agency for the supply of ABR records, or the provision of support, under this MOU.

## Memorandum of Understanding – ABR Public and Non Public data

### Administration

#### 13. Partnership Managers to administer this MOU

The parties' Partnership Managers are to:

- monitor and evaluate the operation and progress of this MOU, and report on that operation and progress to - and as required by - their respective heads,
- meet at the frequency indicated in the MOU Details to administer this MOU and the relationship of the parties (but can hold those meetings by any means, and can attend them through a nominee), and
- co-ordinate the provision of the annual **Statement of Accreditation** referred to in clause 14.

A party's Partnership Manager is the person identified as such in the MOU Details, or such other person as that party otherwise notifies the other party of from time to time.

#### 14. Annual Statement of Accreditation

Within 30 days of each anniversary of the commencement of this MOU, the Registrar is to:

- provide to the Agency Head a Statement of Accreditation in the form set out in Schedule 4 (or in such other form as the Registrar otherwise notifies the Agency Head), and
- notify the Agency Head when that Statement of Accreditation falls due.

The Agency Head is to confirm, by completing and returning that Statement of Accreditation, that the Agency Head has complied with the provisions of this MOU during the relevant annual period.

If a Statement of Accreditation is not returned by its due date, the Registrar will suspend the provision of non-public ABR data under this MOU until it is provided.

### Operational provisions

#### 15. Mutual assistance

The parties will be open, honest, co-operative and responsive to each other, respecting each other's functions and roles, and providing each other with positive assistance whenever possible.

#### 16. Use and release of information

Each party must comply with all laws that govern its use and release of information, including under:

- the ABN Act, and
- and **relevant privacy laws** as indicated in the MOU Details.

ABR records provided to the Agency Head under this MOU contain information protected by *section 30 of the ABN Act*, and that section will apply notwithstanding any provisions of this MOU.

*Note - Information protected by s30 of the ABN Act can only be disclosed by the Agency to its officers, employees or contractors – or by any of them to others – if its expressly allowed by s30(3) of that Act, otherwise they may commit an offence (punishable by up to 2 years imprisonment) under s30(2) of that Act.*



## Memorandum of Understanding – ABR Public and Non Public data

### 17. Confidentiality

A party may only disclose Confidential Information of the other party if that disclosure doesn't breach any law (including under the relevant privacy laws) and is made:

- in response to requests for information from Parliamentary committees or inquiries, or
- with the prior written approval of the other party (and provided it complies with any terms and conditions imposed as part of that approval by that other party), or
- as required by applicable government direction, policy or law.

**Confidential Information** of a party means information relating to the business affairs or clients of that party which is confidential in nature and the other knows (or should reasonably know) is confidential, but excluding information which becomes public knowledge other than through the other party's fault or negligence.

*Note - The ABN Act prohibits the disclosure of protected information to Ministers and certain elected officials.*

### 18. Privacy complaints

If a party receives a complaint alleging an interference with the privacy of an individual by the other party:

- the party receiving that complaint will immediately notify the other of the nature of that complaint and such details of that complaint as are necessary to minimise any (or further) interference, and
- each party is to keep the other informed as to the progress of that complaint as it relates to the other's actions in connection with that allegation of interference.

### Data exchange provisions

### 19. Responsibilities in relation to data

The information held by a party relating to its clients and other third persons (its data) may not be accurate, up-to-date, complete or error-free. However, each party is responsible for:

- acting in accordance with, and meeting obligations imposed on it by, this MOU and the law,
- amending its data within a reasonable time of it being formally notified by a person of changes to their details or of any inaccuracy, omission, defect or error in that data relating to them,
- taking reasonable measures to check its data is free from malicious computer codes, and
- testing data it receives from the other to check that data is free from malicious computer codes.

## Memorandum of Understanding – ABR Public and Non Public data

### 20. Third party claims relating to data

If a party receives notice of a claim directed against it by a third person concerning any alleged error, defect, inaccuracy or omission in the data provided to, or received from, the other party under this MOU:

- the party receiving that notice will be responsible for responding to that claim, and is to notify the other party of that claim within 7 days of that receipt,
- each party is to provide the other with all reasonable assistance in relation to that claim, and
- where the claim is the result of that other party's failure to act in accordance with its responsibilities under this MOU or the law, the receiving party may request that other party to reimburse its reasonable costs in responding to and meeting that claim.

### 21. Data integrity, confidentiality and protection

Each party will, in relation to the data provided to it by the other party under this MOU:

- notify the other party as soon as practicable of any possible error or defect in that data,
- take all reasonable measures to maintain the confidentiality of that data,
- ensure that data is only used for the purposes for which the data was provided and is only accessed by persons who have a legitimate 'need to know' to perform their duties and with the knowledge of applicable secrecy provisions and related penalties,
- ensure:
  - that data is not copied or replicated to any other transportable media other than for the purpose of system back-up, and that such transportable media and system back-ups are stored in a secure environment e.g. a lockable commercial grade cabinet,
  - that discs on or in which that data is provided to it by the other are securely disposed of when no longer required:

*Note: Normal Agency data destruction processes include incineration, cutting, shredding, sanding or grinding so that the disc can no longer be read.*

- that keys, passwords or other mechanisms provided by the other to decrypt or gain access to those discs or electronic files are stored securely and separately from that data, and,
- ensure that data is protected – against loss, destruction, or unauthorised access, modifications, disclosure, recording or use – by such other security safeguards as are reasonable in the circumstances,
- ensure that data is not transferred, or allowed to be accessed by persons, outside Australia (unless otherwise permitted under this MOU) without the other party's prior approval,
- comply with any reasonable request of the other party to deal with that data in a particular way, and
- notify the other party as soon as practicable of any possible or actual breach of security or confidentiality which may have compromised the confidentiality or integrity of that data.

## Memorandum of Understanding – ABR Public and Non Public data

### 22. Review of data integrity procedures, systems and safeguards

Each party may review the systems, procedures and security safeguards that the other party has in place for maintaining the confidentiality and integrity of its data, but a party seeking to conduct any such review:

- must give the other party reasonable notice of that review, and first consult with that other party as to the scope and criteria of that review,
- must comply with the other party's reasonable requirements and directions while on its premises, and
- must not remove any material from the other party's premises without its prior written approval.

### About this MOU

### 23. Variation of this MOU

Either party may propose a variation of this MOU by giving the other a notice setting out details of the proposal. Unless otherwise indicated, this MOU can only be varied by agreement of the parties in writing.

#### Variation Version Control

<i>Version</i>	<i>Date</i>	<i>Author</i>	<i>Change</i>

### 24. Dispute resolution

The parties must attempt to resolve any dispute concerning this MOU by negotiations between the Partnership Managers. However, if those negotiations fail to resolve that dispute:

- either party may give the other a notice setting out specific details of that dispute, and reporting the failure of negotiations to resolve it, and
- if that dispute is not resolved through negotiation between the Partnership Managers, that dispute is to be referred upward, through the parties' equivalent management levels until resolved.

### 25. Notices

A notice under this MOU must be:

- in writing and marked for the attention of the recipient's Partnership Manager,
- sent to the recipient's Partnership Manager's relevant address (as identified in the MOU Details or as the recipient has otherwise notified the sender) by facsimile, email transmission, hand delivery or pre-paid post, (where possible electronic delivery is to be preferred), and
- signed by, or sent from the email address of, the sender's Partnership Manager or other authorised officer.

## **Memorandum of Understanding – ABR Public and Non Public data**

### **26. Obligations on termination**

This clause and the following clauses survive the termination of this MOU:

- Clause 6 Using ABR data
- Clause 7 When ABR details may not be used
- Clause 16 Use and release of information
- Clause 17 Confidentiality
- Clause 18 Privacy complaints
- Clause 19 Responsibilities in relation to data
- Clause 20 Third party claims relating to data
- Clause 21 Data integrity, confidentiality and protection

## Memorandum of Understanding – ABR Public and Non Public data

### Schedule 1

Note - This schedule can only be changed by written agreement of the parties – see clause 23.

#### Item 1 Status of Agency and Agency Head

The Agency is an 'Agency' within the meaning of the *Public Service Act 1999*, and the Agency Head is the 'Agency Head' of the Agency within the meaning of that Act.

#### Item 2 Purposes

##### Purpose of disclosure

The Registrar's disclosure of ABR records under this MOU is for the purpose of the Agency Head carrying out functions of the Agency – Section 30(3)(c)(i) & 30(3)(d)(i) of the ABN Act.

##### Functions to support

The specific function/s that ABR data can be used to support is/are:

- To identify and verify entity information for the purpose of carrying out investigation and compliance activities.
- To identify entities for the purpose of education, support and programs targeted toward specific industries
- Verify and identify changes and/or discrepancies between ABR data and the information held in the departments database

## Memorandum of Understanding – ABR Public and Non Public data

### Schedule 2

#### ABR data items available

The data items available are listed below or as otherwise agreed in writing by the parties' Partnership Managers from time to time.

Records	Details	
<i>Public ABR data</i>	Entity legal name	The name of the entity that appears on official documents or legal papers
	ABN	Australian Business Number (ABN). The unique 11-digit Identifier issued to entities registered in the ABR
	ABN date of effect	The date from which an ABN becomes active
	ABN cancellation date of effect	If the Registrar has cancelled the entity's registration in the ABR – the date of cancellation
	Business Trading name(s)	Business name registered for the entity under the law of a State or Territory, or if a business name is not registered for the entity – any name by which suppliers or clients know the entity
	GST date of effect	The date of effect of any goods and services tax (GST) registration
	GST cancellation date of effect	The date of effect of any GST cancellation
	DGR status	Deductible gift recipient (DGR) status. Any statement required to be entered on the ABR in relation to the entity's status as a deductible gift recipient
	ACN and ARBN	The entity's Australian Company Number (ACN)/ Australian Registered Body Number (ARBN) (if any)
	Entity type	A description of the entity – for example, partnership, sole trader
	Principal place of business	The State or Territory in which the entity's principal place of business is located, and the postcode relating to the location
	Replacement ABN	If the Registrar has changed the entity's ABN – the date of each change and the entity's previous ABN
<i>Non Public ABR data</i>	Service of notice address	The entity's principal postal address for service of notices
	Business address	The entity's principal place of business.
	ANZSIC code	Australian and New Zealand Standard Industrial Classification (ANZSIC) code. The primary type of industry the business is working in.
	ANZSIC code description	The description of the ANZSIC code classification
	Email address	The entity's email address
Associate details	The names of associates – for example, public officers, directors or trustees associated with the entity	

## Memorandum of Understanding – ABR Public and Non Public data

### Schedule 3

#### Supply of ABR data

The channel, method, format and frequency of supply of data will be in accordance with:

- selections indicated in the following table, or
- as otherwise agreed in writing by the parties' Partnership Managers from time to time.

Supply channel	Method	Format	Frequency
Data disc <input checked="" type="checkbox"/>	<p>Supplied on data disc.</p> <ul style="list-style-type: none"> <li>▪ Delivered by secure courier service to the Partnership Manager or other nominated contact, and</li> <li>▪ A passphrase supplied to extract the encrypted files – delivered by email upon advice from the Partnership Manager that the disc has been received.</li> </ul>	<p>Data sets supplied as compressed tab delimited files.</p> <ul style="list-style-type: none"> <li>▪ Classified at the In-confidence level,</li> <li>▪ Encrypted with self extracting encryption.</li> <li>▪ Filtered as requested by the Partnership Manager in accordance with the filters offered at the time of the data set being produced.</li> </ul>	<p>Produced at the selected frequency</p> <p><input type="checkbox"/> Monthly</p> <p><input checked="" type="checkbox"/> Quarterly</p> <p><input type="checkbox"/> 6 monthly</p> <p><input type="checkbox"/> Annually, or</p> <p><input type="checkbox"/> Ad hoc (as requested by the Agency's Partnership Manager)</p> <ul style="list-style-type: none"> <li>▪ Sent no later than 10 working days from the agreed schedule or requested date.</li> <li>▪ The Registrar's Partnership Manager will notify the Agency's Partnership Manager if there is likely to be a delay in delivery.</li> </ul>
Bulk data exchange <input type="checkbox"/>	<p>Supplied via secure online mailbox or secure online transfer protocol.</p> <p><a href="http://www.dataatransfer.ato.gov.au">www.dataatransfer.ato.gov.au</a></p>	<p>Data sets supplied as compressed tab delimited files.</p> <ul style="list-style-type: none"> <li>▪ Classified at the In-confidence level,</li> <li>▪ Filtered as requested by the Partnership Manager in accordance with the filters offered at the time of the data set being produced.</li> </ul>	<p>Produced at the selected frequency</p> <p><input type="checkbox"/> Monthly,</p> <p><input type="checkbox"/> Quarterly,</p> <p><input type="checkbox"/> 6 monthly,</p> <p><input type="checkbox"/> Annually, or</p> <p><input type="checkbox"/> Ad hoc (as requested by the Agency's Partnership Manager).</p> <ul style="list-style-type: none"> <li>▪ Uploaded no later than 10 working days from the agreed schedule or requested date.</li> <li>▪ The Registrar's Partnership Manager will notify the Agency's Partnership Manager if there is likely to be a delay in delivery.</li> </ul>

## Memorandum of Understanding – ABR Public and Non Public data

Supply channel	Method	Format	Frequency
<p>ABR Agency services File download <input type="checkbox"/></p>	<p>Data sets containing updates relating to records as nominated by the Agency.</p> <ul style="list-style-type: none"> <li>▪ Via internet across HTTP through the ABR's Agency services website: <a href="http://www.agency.abr.gov.au">www.agency.abr.gov.au</a></li> <li>▪ During encrypted and authenticated sessions.</li> </ul>	<p>Data sets supplied in downloadable files.</p> <ul style="list-style-type: none"> <li>▪ Classified at the In-confidence level</li> <li>▪ In XML format according to the agreed ABR schema.</li> </ul>	<p>Files produced at the selected frequency:</p> <p><input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly (Subject to system availability).</p>
<p>ABR Agency services Search screens <input type="checkbox"/></p>	<p>A data set for the entity selected:</p> <ul style="list-style-type: none"> <li>▪ Via internet across HTTP through the ABR's Agency services website: <a href="http://www.agency.abr.gov.au">www.agency.abr.gov.au</a></li> <li>▪ During encrypted and authenticated sessions.</li> </ul>	<p>Data records in a structured view:</p> <ul style="list-style-type: none"> <li>▪ Using a search screen interface</li> <li>▪ Classified at the In-confidence level.</li> </ul>	<p>Available on demand (subject to system availability).</p>
<p>ABR Web Services <input type="checkbox"/></p>	<p>Data sets:</p> <ul style="list-style-type: none"> <li>▪ Using encrypted and authenticated machine to machine transactions</li> <li>▪ Via secure encrypted dedicated connection, or</li> <li>▪ Via internet across HTTP using a secure authentication method.</li> </ul>	<p>Data sets or records:</p> <ul style="list-style-type: none"> <li>▪ Classified at the In-confidence level</li> <li>▪ In XML format according to the agreed ABR schema.</li> </ul>	<p>Available on demand (subject to system availability).</p>



## Memorandum of Understanding – ABR Public and Non Public data

### Schedule 4

#### Annual Statement of Accreditation

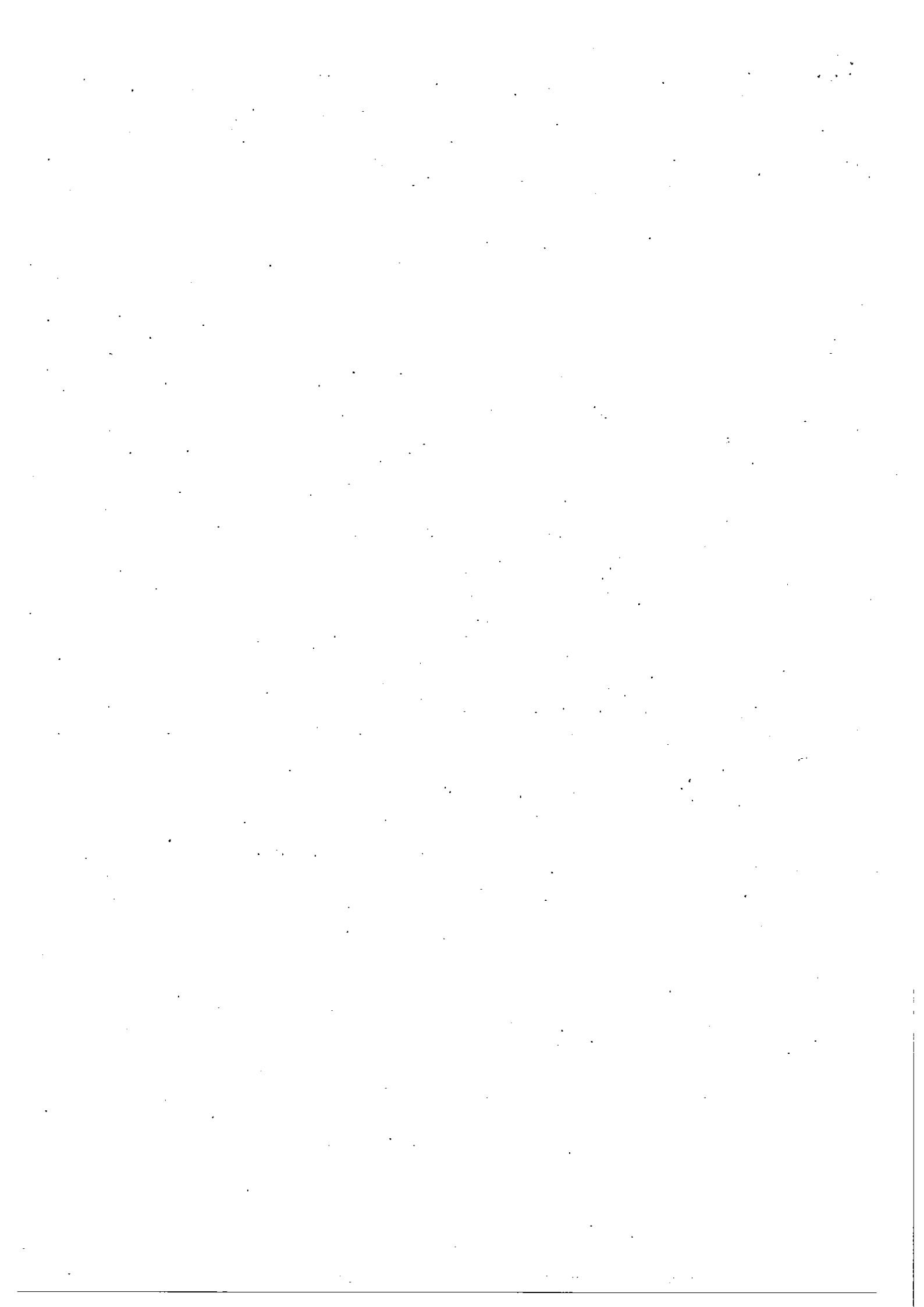
This Statement of Accreditation must be completed annually by the Agency Head in accordance with Clause 14 of the Memorandum of Understanding (MOU).

Completion of this form by the Agency Head formally assures the Registrar that all terms and conditions, as agreed in the MOU, are being complied with. Particular emphasis should be paid to key items outlined below.

Access to ABR records and services will be terminated if assurance cannot be provided.

MOU Clause	Category
6	Using ABR data
7	When ABR details may not be used
8	Agency Head to notify Registrar of changes in circumstances
9	Agency Head to notify Registrar if required to disclose ABR records
16	Use and release of information
17	Confidentiality
18	Privacy complaints
19	Responsibilities in relation to data
20	Third party claims relating to data
21	Data integrity, confidentiality and protection

I, <Agency Head name>, assure the Registrar that all terms and conditions are being complied with, as agreed in MOU <enter MOU number> between the Registrar of the ABR and <Agency name>.





**Australian Government**  
**Fair Work Building  
& Construction**

**Fair Work Building Industry Inspectorate & Office of the Commonwealth Ombudsman**

**Memorandum of Understanding/Funding Arrangement**

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**Details Section**

**Interpretation – definitions are at the end of the General Terms**

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<b>Parties</b>	<b>FWBC and CO</b>
<b>Name</b>	<b>OFFICE OF FAIR WORK BUILDING INDUSTRY INSPECTORATE ("FWBC")</b>
<b>Address</b>	Level 2, 553 St Kilda Road, Melbourne VIC 3004
<b>Telephone</b>	03 9954 2548
<b>Fax</b>	02 6267 4979
<b>FWBC MOU Manager</b>	Murray Furlong
<b>Name</b>	<b>OFFICE OF THE COMMONWEALTH OMBUDSMAN ("CO")</b>
<b>Address</b>	Level 5, 14 Chllders Street, Canberra City ACT 2601
<b>Telephone</b>	1300 362 072
<b>Fax</b>	02 6276 0123
<b>CO MOU Manager</b>	Ms Erica Welton, Director, Inspections Team

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- Recitals**
- A** FWBC is an independent statutory office created by the *Fair Work (Building Industry) Act 2012* (FWBI Act). FWBC is responsible for providing advice, education and compliance in relation to Commonwealth workplace laws in the building and construction industry.
  - B** The CO is an independent statutory office created by the *Ombudsman Act 1976*. The Office of the Commonwealth Ombudsman promotes fairness and accountability in government administration by providing an independent complaints-handling service for members of the public and by overseeing government agency compliance with legislation conferring selected intrusive and coercive powers.
  - C** Chapter 7, Part 1, Division 3 of the FWBI Act establishes a new statutory regime with respect to the application and issue of an Examination Notice, and the conduct of subsequent Examinations pursuant to the FWBI Act.
  - D.** This regime prescribes certain functions to be performed by the CO.
  - E.** The object of this MOU is to facilitate the provision of unencumbered funds from the FWBC to the CO and to set out an agreed formula to calculate any additional funding, so that the CO can independently discharge its statutory obligations that arise as a result of the regime and the FWBI Act.
  - F.** FWBC and CO have agreed on the terms recorded in this MOU.

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**Date of agreement** See Signing page

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## General terms

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### 1. Background

- 1.1 The FWBI Act commenced operation on 1 June 2012.
- 1.2 Chapter 7, Part 1, Division 3 of the FWBI Act establishes a new statutory regime in respect of the issue of an Examination Notice and the conduct of subsequent Examinations (the Examination Regime).
- 1.3 The Examination Regime provides (relevantly):
  - a) the FWBC Director is to notify the Commonwealth Ombudsman that an Examination Notice has been issued, and provide the Commonwealth Ombudsman a copy of the Examination Notice and relevant accompanying documents in accordance with section 49 of the FWBI Act;
  - b) the FWBC Director is to give the Commonwealth Ombudsman a copy of a notice issued pursuant to section 50 (3) or (4) of the FWBI Act that varies the Examination Notice;
  - c) the FWBC Director is to provide the Commonwealth Ombudsman with a report, videotape and transcript of the Examination in accordance with 54A(1) and (2) of the FWBI Act;
  - d) the Commonwealth Ombudsman is to review the exercise of the powers under Chapter 7, Part 1, Division 3 of the FWBI Act by the FWBC Director and any person assisting the FWBC Director, and may do anything incidental or conducive to the performance of that function;
  - e) the Commonwealth Ombudsman is to prepare and present to the Parliament a report about examinations conducted under Chapter 7, Part 1, Division 3 in accordance with section 54A(6) of the FWBI Act; and
  - f) the Commonwealth Ombudsman may prepare and present to the Parliament such other reports about the results of reviews in accordance with section 54A(7) of the FWBI Act.

### 2. Purpose of MOU

- 2.1 The primary purpose of this MOU is to establish a mechanism to transfer funds from the FWBC to the CO to give effect to the Examination Regime by enabling the provision of unencumbered annual funding from FWBC to the CO for the purpose of ensuring the Commonwealth Ombudsman and the CO as an agency can independently discharge their respective duties under the Examination Regime. This MOU also addresses the provision of any additional funding from the FWBC to the CO.

### 3. Commitment of the parties

- 3.1 The parties undertake to adhere to the provisions of this MOU in good faith, with a commitment to work co-operatively in a spirit of mutual trust and respect in order to ensure that the Government and the Australian people receive the best possible outcomes.

#### **4. Commencement and Operation**

- 4.1 This MOU will commence on the Commencement Date and operate for a period of three (3) years.
- 4.2 Notwithstanding clause 4.1 of this MOU, FWBC or the CO may exercise an option to review this MOU after a period of not less than one (1) year from the Commencement Date.

#### **5. Unencumbered funding**

- 5.1 FWBC agrees to provide the CO with unencumbered funding in accordance with the terms set out in Schedule A to this MOU (Funding) for the purpose of allowing the CO to independently discharge its obligations pursuant to the Examination Regime.
- 5.2 In addition to the Funding provided in Schedule A, FWBC agrees to provide the CO with unencumbered funding in accordance with the terms set out in Schedule B to this MOU (Additional Funding).

#### **6. MOU Manager**

- 6.1 FWBC and the CO have each appointed a MOU Manager
- 6.2 Each party's MOU Manager is to be the primary point of contact in relation to matters dealt with in relation to this MOU (except in relation to applications in the circumstances set out in clause 7.1 of this MOU).
- 6.3 If either FWBC or the CO wishes to change the details of their appointed MOU Manager, that party will notify the other party in writing of the new contact details as soon as practicable.

#### **7. Notices**

- 7.1 Unless otherwise stated, any notice under this MOU is only effective if it is in writing and addressed to the other party's MOU Manager or the agency head of each party at the postal, email or facsimile address listed in the Details Section of the MOU.

#### **8. Varying and Termination**

- 8.1 FWBC or the CO may mutually vary or terminate this MOU at any time by the written consent of the FWBC Director and the Commonwealth Ombudsman or anyone acting in these positions.

#### **9. Dispute Management**

- 9.1 The parties will use their best endeavour to resolve any differences or difficulties in a pragmatic manner to achieve agreed objectives of this MOU and the FWBI Act generally.
- 9.2 The parties agree their respective MOU Managers are the first point of contact for the other party in relation to any disputes arising under this MOU.
- 9.3 Matters that are not resolved will be referred to the FWBC Director and Commonwealth Ombudsman for mutual review and determination.

#### **10. MOU not legally binding**

- 10.1 This MOU is not legally binding and the parties do not intend that it or any part of it be legally binding. It serves only as a record of the parties' separate intentions in relation to the provision

of funding to ensure independent discharge of statutory duties or obligations by the CO in respect of the Examination Regime.

## **11. Interpretation**

### **11.1 Definitions**

These meanings apply unless the contrary intention appears:

**Additional Funding** means the additional unencumbered funding to be provided by the FWBC to the CO, in accordance with the terms set out in Schedule B to this MOU.

**CO** means the agency the details of which are set out in the Details Section of this MOU.

**Commencement Date** means the date this MOU is made.

**Commonwealth Ombudsman** has the same meaning as "Commonwealth Ombudsman" in section 4(1) of the FWBI Act.

**Details Section** means the section of this MOU headed "Details Section".

**Examination** has the same meaning as "examination" in section 51(1) of the FWBI Act.

**Examination Notice** has the same meaning as "examination notice" in section 4(1) of the FWBI Act.

**FWBC** means the agency the details of which are set out in the Details Section of this MOU.

**FWBC Director** means the person appointed to act as the Director of the Fair Work Building Industry Inspectorate under section 15 of the FWBI Act.

**FWBI Act** means the *Fair Work (Building Industry) Act 2012*, including any accompanying regulations.

**Legal Costs** means expenditure for legal services obtained from a provider external to the Commonwealth Ombudsman.

**MOU** means this Memorandum of Understanding.

### **11.2 Headings**

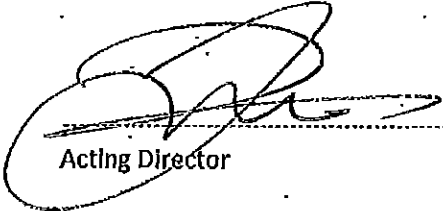
Headings are for convenience only and do not affect the interpretation of this MOU.

**EXECUTED** as an agreement



Signing Page

SIGNED FOR AND ON BEHALF OF THE  
OFFICE OF THE FAIR WORK BUILDING INDUSTRY INSPECTORATE BY



Acting Director

LEIGH JOHNS

Name  
(Print Name)

19/7/2012

Dated



Witness

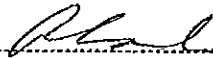
LOUISE CATO

Name  
(Print Name)

19/7/12

Dated

SIGNED FOR AND ON BEHALF OF THE  
OFFICE OF THE COMMONWEALTH OMBUDSMAN



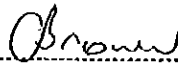
Acting Commonwealth Ombudsman

ALISON LARKINS

Name  
(Print Name)

30/7/2012

Dated



Witness

COLLEEN BROWN

Name  
(Print Name)

30/7/12

Dated

## Schedule A

### 1. Funding

- a) FWBC agrees to pay the CO a funding amount of \$150,000 for 2012/13, \$100,000 in 2013/14 and \$100,000 in 2014/15 (+ GST) in accordance with the following:

Financial year	Funding amount	Funding payable
2012/2013	\$150,000 + GST	July 2012
2013/2014	\$100,000 + GST	July 2013
2014/2015	\$100,000 + GST	July 2014

### 2. Invoicing

- a) The CO agrees to invoice FWBC for the funding amounts for each financial year at the start of that financial year in July.
- b) Funding for each financial year becomes due and payable when FWBC receives an invoice from the CO. Payment terms will be 30 days unless otherwise agreed in writing between FWBC and CO.

### 3. Payment of Funding

- a) Payment will be made to the CO's nominated bank account via EFT.

## Schedule B

### 1. Additional Funding

- a) At the end of each six (6) months from the commencement of each financial year for the duration of this MOU, the CO and the Director of the FWBC agree to review the number of additional examinations likely to be conducted by the FWBC for the rest of the financial year. If both the CO and the Director agree that the number of examinations has exceeded or is likely to exceed ten (10) for that financial year, the FWBC agrees to provide the CO with additional funding. Funding for each additional examination is to be calculated in accordance with the terms set out in this Schedule.
- b) If at any time during a financial year, the CO incurs Legal Costs, exceeding \$4,000:
  - i. relating to the exercise of the CO's powers under the FWBI Act (for example, where an issue arises regarding the interpretation of the Act and legal advice is required to resolve the issue); or
  - ii. as a result of legal proceedings that challenge the CO's functions and/or exercise of powers under the FWBI Act

the Director of the FWBC agrees to reimburse the CO for those Legal Costs incurred in excess of \$4,000.

### 2. Calculation of Additional Funding for each additional examination

- a) The amount of funding for each additional examination is 7 per cent of the standard staff cost for an EL 1 in each of the relevant financial year, plus GST.
- b) The standard staff cost for an EL 1 in 2012/13, 2013/2014 and 2014/15 shall be determined from the departmental costing template available from the Department of Finance and Deregulation.

For example:

The standard staff cost for an EL 1 in 2012/13 is \$148,488. An additional examination is calculated as follows:  $\$148,488 \times 7\% = \$10,394.16 + \text{GST}$ .

### 3. Invoicing

- a) The CO will invoice FWBC for the Additional Funding in respect of additional examinations when the amount has been agreed to by the Director of the FWBC and CO.
- b) The CO will invoice FWBC at the end of a financial year for Additional Funding in respect of Legal Costs in accordance with the limitations outlined at paragraph 1(b) of this schedule (Schedule B).

- c) Payment terms will be 30 days unless otherwise agreed in writing between FWBC and CO.

**4. Payment of Funding**

- a) Payment will be made to the CO's nominated bank account via EFT.



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**Fair Work Building  
& Construction**

# Memorandum of Understanding



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#### Date

1. This Memorandum of Understanding (MOU) is made on 18 July 2013.

#### Parties

2. This MOU is made between the Office of the Fair Work Building Industry Inspectorate (FWBC) and the Department of Immigration and Citizenship (DIAC).

#### Status of MOU

3. The Parties do not intend this MOU to create legal relations or constitute a legally binding contractual agreement between them. Notwithstanding this clause, the Parties will comply with the terms of this MOU.

#### Purpose

4. DIAC and the FWBC (the Agencies) acknowledge the complementary nature of their work.
5. DIAC is responsible for ensuring compliance with the *Aliens Act Repeal Act 1984*, *Australian Citizenship Act 2007*, *Australian Citizenship Act (Transitional and Consequential) Act 2007*, *Immigration (Education) Act 1971*, *Immigration (Education) Charge Act 1992*, *Immigration (Guardianship of Children) Act 1946*, *Migration Act 1958*, *Migration Agents Registration Application Charge Act 1997*, *Migration (Health Services) Charge Act 1991*, *Migration (Sponsorship Fees) Act 2007* and the *Migration (Visa Application) Charge Act 1997* and associated Regulations. DIAC is committed to enriching Australia through the well-managed entry and settlement of people in to Australia.
6. The FWBC was established under the *Fair Work (Building Industry) Act 2012* (the FWBI Act). FWBC's primary responsibility is to enforce Commonwealth Workplace Laws in the commercial building and construction industry through education, advice and compliance activities.
7. The FWBC consists of the Director of the Fair Work Building Industry Inspectorate, the staff of the Fair Work Building Industry Inspectorate (FWBC staff) and Fair Work Building Industry Inspectors appointed under section 59 of the FWBI Act. The Director of the Fair Work Building Industry Inspectorate is a Fair Work Building Industry Inspector by force of section 59A of the FWBI Act. The Director of the Fair Work Building Industry Inspectorate may delegate (where allowed) part of their functions and powers under the FWBI Act or any other Act to FWBC staff or to a Fair Work Building Industry Inspector.
8. The FWBC has been delegated responsibility to assist in monitoring three subclass 457 sponsor obligations, as detailed in clause 17 of this agreement. The FWBC is committed to working cooperatively with DIAC in order to discharge this function within the existing program of field visits which are already undertaken in accord with the FWBC's role under the Fair Work Act 2009 and the Building Code 2013.



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9. The FWBC's methodology in relation to the responsibilities will comprise a combination of proactive and reactive compliance activities. Each agency will report on their performance under this agreement, measured in relation to the number of referrals to DIAC resulting from the FWBC's activities, or in relation to the outcomes of those referrals. In addition, the FWBC undertakes to conduct at least one targeted campaign each year in an industry that engages a high proportion of subclass 457 employees.
10. This MOU establishes an agreed framework regarding the:
  - 10.1. appointment of Fair Work Building Industry Inspectors as Migration Inspectors
  - 10.2. FWBC's role in monitoring three Temporary Work (Skilled) subclass 457 - Standard Business Sponsorship (Subclass 457) obligations;
  - 10.3. sharing of, and ready access to, operational information between the FWBC and DIAC; and
  - 10.4. mutual agreement regarding the scope of education and compliance activities.

**Personnel**

11. The MOU Managers are the incumbents of the following positions:
  - 11.1. FWBC – Group Manager Field Operations
  - 11.2. DIAC - Global Manager, Operational Integrity
12. The MOU Managers will confer on an as-required basis.
13. Each MOU Manager may appoint a Liaison Manager to perform functions under this MOU. Formal Interactions between the FWBC and DIAC should occur through the following relevant Liaison Managers in the first instance:

<i>Role</i>	<i>Functions</i>	<i>Phone</i>	<i>E-mail</i>
Executive Director, Field Operations	Investigation referrals Requests for information Technical advice requests Joint operations	03 85093014	murray.gregor@fwbc.gov.au

<i>Role</i>	<i>Functions</i>	<i>Phone</i>	<i>E-mail</i>
Director, Operational Integrity Program Lead	457 Sponsor Monitoring	(03) 9235 3600	vic.sponsor.monitoring@immi.gov.au

14. MoU liaison managers to meet as required in person or by teleconference.

**Appointment of Fair Work Building Industry Inspectors as Migration Inspectors**

15. Both parties acknowledge that Fair Work Building Industry Inspectors will be appointed as inspectors for the purposes of the Migration Act by operation of section 140V. This appointment will occur on 1 July 2013. Any Fair Work Building Industry Inspectors appointed after 1 July 2013 will also be appointed as





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inspectors for the purposes of the Migration Act on the day that they are appointed as a Fair Work Building Industry Inspector.

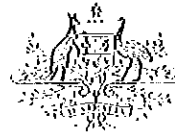
#### Monitoring 457 visa obligations

16. DIAC is responsible for the administration of visas, and is responsible for enforcing compliance with sponsorship obligations and visa conditions.
17. In addition to the FWBC's functions under the FW Act, the FWBC is empowered, by Ministerial Direction no. 58, to monitor three key aspects of sponsor's compliance with the sponsorship obligations, specifically:
  - 17.1. The obligation to ensure equivalent terms and conditions of employment (regulation 2.79 of the *Migration Regulations*), specifically the obligation contained at regulation 2.79(3)(a) which requires sponsors to ensure that the Subclass 457 visa holders are receiving at least the same salary as that which was approved at nomination;
  - 17.2. The obligation to ensure the primary sponsored person works or participates in the nominated occupation (regulation 2.86 of the *Migration Regulations*), specifically that the sponsored person is performing duties consistent with the relevant ANZSCO code occupation that was approved at nomination; and
  - 17.3. The obligation to cooperate with inspectors (regulation 2.78 of the *Migration Regulations*).
18. Fair Work Building Industry Inspectors will not undertake monitoring activities in relation to any obligations outside of those listed above in clause 17, or in relation to any visa other than the 457 subclass.
19. Fair Work Building Industry Inspectors will not be undertaking any investigations in relation to potential breaches of the Employer Sanctions legislation.
20. Fair Work Building Industry Inspectors will have no role in the setting, assessment or determination of whether a Subclass 457 visa holder is receiving the market salary rate as defined in regulation 2.79(2) of the *Migration Regulations*.
21. Fair Work Building Industry Inspectors will be appointed as Migration Inspectors; however, they will operate independently of the Secretary or DIAC's direction and report directly to the Fair Work Building Industry Inspectorate.
22. Fair Work Building Industry Inspectors will be responsible for the identification of prima facie contraventions relating to the obligations detailed in clause 17. Fair Work Building Industry Inspectors will refer the following outcomes to DIAC:
  - 22.1. Compliance with nominated salary and/or nominated position is satisfactory;
  - 22.2. Compliance with nominated salary and/or nominated position cannot be confirmed;
  - 22.3. Concerns with salary and/or nominated position identified;
  - 22.4. Sponsor advised that no 457 visa holders are employed; and
  - 22.5. Sponsor refused to cooperate with inspectors.



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23. Fair Work Building Industry inspectors will refer matters to DIAC using a referral template that has been approved by both Liaison Managers.
24. DIAC will be responsible for conducting all additional monitoring or enforcement action associated with referrals relating to suspected contraventions of migration legislation. FWBC inspectors will not be delegated to take any enforcement action to bar, cancel, infringe or apply for a civil penalty (or any other sanction action that may be taken against approved sponsors).
25. FWBC staff will not be responsible for providing information to the public regarding obligations under the migration legislation, and will refer any enquiries to DIAC. In addition, any complaints received by the FWBC that solely relate to migration laws or visa obligations will be referred to DIAC.
26. The agencies acknowledge that compliance activities may involve contraventions of both Commonwealth workplace laws and migration laws. For clarity, the agencies agree to the following arrangements:
  - 26.1. Contravention of the FW Act – FWBC is responsible for investigation and enforcement action;
  - 26.2. Contravention of migration laws – FWBC will refer findings of monitoring activities to DIAC, who is responsible for any compliance or enforcement action;
  - 26.3. Contravention of both the FW Act and migration laws – FWBC and DIAC will conference and agree on who is responsible for ensuring the appropriate enforcement outcome is achieved, and the timeframes within such outcomes will be delivered. Any disagreements may be dealt with in accordance with clause 50 of this agreement.
27. The FWBC will consider the use of 457 visa arrangements and any intelligence provided by DIAC regarding levels of non-compliance in particular industries when developing future education and compliance activities.
28. Fair Work Building Industry Inspectors who are appointed as Migration Inspectors will only undertake assessments relating to the obligations set out in clauses 17 of this MOU, and will undertake activities in accordance with any legislative Directions issued by the FWBC or an appropriate authority.

#### Access and resources

29. DIAC will provide designated FWBC staff access to necessary data and information to enable the FWBC to fulfil its 457 visa monitoring functions. At a minimum DIAC will provide the following information in a transferrable and accessible format:
  - 29.1. A list of all employer sponsors, including (where known) legal name, trading name, ABN/ACN, address and contact details;
  - 29.2. Visa holder approval information, including position description and approved salary for 457 visa holders; and
  - 29.3. Pro-forma templates.
30. Each Agency may make additional requests for information directly through the relevant Liaison Manager. Such requests will be made on an ad-hoc basis and will be processed in accordance with legislative disclosure provisions and operational guidance. Request may relate to (but not be limited to):



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- 30.1. Visa holder details;
- 30.2. Visa class status;
- 30.3. Monitoring or Site Visit outcomes;
- 30.4. Documentary evidence; and
- 30.5. Compliance history checks.

- 31. Requests will be made in writing, and must specify the purpose of the request, including the law or program the Agency is seeking to enforce or administer.
- 32. Liaison Managers will agree on the content, format and delivery of each request. Liaison Managers will also agree on which of these requests are to be considered urgent. Urgent requests will be actioned and finalised by Liaison Managers, or a nominated officer, within 3 working days. All other requests will be provided within a time period agreed to by the Liaison Managers.
- 33. If for any reason, an Agency declines a request, a response will be issued in writing, including a reason for non-disclosure, within 3 working days.

#### Exchange of Information

- 34. In accordance with relevant legislation, directions and/or delegations on sharing official information, personnel from the Agencies are authorised to share information that relates to the proper conduct of operational activities provided in this MOU.
- 35. Where information regarding operational activities is required to be exchanged, this will occur pursuant to legislative information disclosure provisions, and generally without recourse to a formal notice.
- 36. The Agencies will provide information about the outcome of any referrals or relevant matters as soon as practicable after finalisation or prior to initiating legal proceedings.
- 37. The Agencies agree to secure all Official Information received as a result of the operations of this MOU against loss and unauthorised access, use, modification or disclosure.
- 38. If either Agency becomes aware of any act or practice which may breach an Information Privacy Principle, the Agencies will communicate the nature of the issue to the MOU Manager within two working days or as soon as practicable.

#### Shared obligations of the Agencies

- 39. For all other purposes, including but not limited to remuneration, occupational health and safety, and insurance, personnel will continue to be considered an employee of their engaging agency.
- 40. The Agencies will exchange information regarding the operation of this MOU on a regular basis, including prior to Senate Estimates hearings in February, May and October. An annual report will be prepared at the end of each financial year prior to the release of each Agency's annual report.
- 41. Reporting arrangements, including delivery dates and formats will be agreed between MOU Managers or their representatives on each occasion.



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42. The Agencies will consult prior to making any public statements that may impact the operations of the other agency.
43. The Agencies must advise each other of any formal complaints against any personnel that are, or have been, engaged in operational activities resulting from this MOU. This includes, but is not limited to, any allegations, inquiries, investigations and breaches of the *Public Service Act 1999 (Cth)* and applicable APS values and code of conduct. If such circumstances arise, the Agencies will communicate the nature of the issue to the MOU Manager within two working days or as soon as practicable.

#### Training and Support

44. DIAC will consult with FWBC and provide necessary training for Fair Work Building Industry Inspectors appointed as Migration Inspectors in order to fulfil the terms of the legislated functions.
45. In addition, DIAC will provide the FWBC with copies of relevant learning and development and operational guidance materials upon commencement of this MOU, and as they are created or updated.
46. DIAC will provide legislative or technical advice, through an appropriately qualified Liaison Manager, to assist the FWBC fulfil its obligations in relation to 457 visas. This advice may be provided upon request from FWBC, or initiated by DIAC in relation to technical issues.

#### Administrative and Governance Arrangements

##### *Costs*

47. Unless otherwise agreed between the Parties, each Agency will pay its own costs of and incidental to the preparation, negotiation, completion and performance of this MOU.

##### *Security*

48. Each Agency agrees to notify the other Agency immediately if it becomes aware that a Security Incident has occurred in relation to the performance of this MOU.

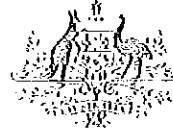
##### *Indemnity*

49. Each Agency indemnifies the other from and against any:
  - 49.1. cost or liability incurred
  - 49.2. loss of or damage to property, or
  - 49.3. loss or expense incurred in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid arising from either an act or omission in connection with the conduct of operational activities described in this MOU.



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*Dispute resolution*

50. In the unlikely event that a dispute arises, the Agencies will convene a meeting of the MOU Managers who will attempt to settle the dispute by direct negotiation. Should the MOU Managers fail to settle the dispute within 14 calendar days, the matter will be referred to the Director of the Fair Work Building Industry Inspectorate and the Secretary.
51. If the Director of the Fair Work Building Industry Inspectorate and the Secretary are unable to resolve the dispute, the dispute will be referred to an independent third person with power:
  - 51.1. to mediate and recommend some form of non-binding resolution, or
  - 51.2. to intervene and direct some form of resolution, in which case the Agencies will be bound by that resolution.
52. In the unlikely event that a dispute is referred to an independent third person, each Agency shall;
  - 52.1. pay its own costs of complying with clauses 50 and 51; and
  - 52.2. pay 50% of any costs charged by the Independent third person.
53. Despite the existence of a dispute, the Agencies will (unless requested in writing by the other agency not to do so) continue to operate in accordance with this MOU.

*Duration, termination & variation*

54. This MOU commences on the date referenced in clause 1, and continues to operate unless terminated by either Agency.
55. There is to be a formal annual review of the MoU.
56. Either Agency may, by 30 days' notice, for any reason and in its absolute discretion, terminate this MOU. Termination must be in writing addressed to either the Director of the Fair Work Building Industry Inspectorate or the Secretary.
57. Alternatively, the MOU may be terminated by written agreement, effective the date specified in that agreement.
58. This MOU can be varied by the Agencies at any time. Variations become operative when they are in writing and signed by the MOU Managers and appended as an Attachment to this MOU.



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SIGNED for and on behalf of )  
 The Commonwealth Department of )  
 Immigration and Citizenship )  
 by Louise Smith )  
 Global Manager Operational Integrity )  
 State Director South Australia )

*[Handwritten Signature]*

Signed

*18th July 2013*

Date

In the Presence of:

*[Handwritten Signature]*

[WITNESS' SIGNATURE]

*THOMAS O'SHEA*

[PRINTED NAME OF WITNESS]

SIGNED for and on behalf of )  
 The Fair Work Building Industry Inspectorate )  
 by Heather Hausler )  
 Group Manager )  
 Field Operations )

*[Handwritten Signature]*

Signed

*18th July 2013*

Date

In the Presence of:

*[Handwritten Signature]*

[WITNESS' SIGNATURE]

*THOMAS O'SHEA*

[PRINTED NAME OF WITNESS]



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Department of Immigration and Citizenship



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**APPENDIX A – DEFINITIONS**

In this MOU, unless the context indicates otherwise:

The Agencies	means: a. the FWBC, and b. DIAC.
Attachment	means a document attached to this Memorandum of Understanding and includes the Attachment as amended or replaced from time to time by agreement in writing between the Parties.
ANZSCO	means the Australian and New Zealand Standard Classification of Occupations as defined by the Australian Bureau of Statistics.
Employer Sanctions Legislation	refers to the offences and civil penalty provisions contained in Subdivision C of Division 12 of the Migration Act.
Fair Work Act	means the <i>Fair Work Act 2009</i>
Fair Work (Building Industry) Act	means the Fair Work (Building Industry) Act 2012
Fair Work Building Industry Inspector	means a person appointed an Inspector pursuant to section 59 of the <i>Fair Work (Building Industry) Act 2012</i> .
Liaison Manager	means those persons who occupy the roles set out in clause 11 of this MOU.
Market rate	has meaning from regulations 2.72(10)(c) and 2.79(2) which relevantly provides that the terms and conditions of employment are no less favourable than the terms and conditions that are provided, or would be provided, to an Australian citizen or Australian permanent resident to perform equivalent work in the person's workplace at the same location.
Migration Act	means the Migration Act 1958
Migration Regulations	means the Migration Regulations 1994
Official Information	means any information developed received or collected by or on behalf of a Party to which the other Party gains access under or in connection with this Memorandum of Understanding, and includes the Contract Material and the terms of the Memorandum of Understanding.
Fair Work Building & Construction	means the Office of the Fair Work Building Industry Inspectorate established under section 26J of the <i>Fair Work (Building Industry) Act 2012</i> .



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Operational Activities	Includes all functions, powers and activities of Fair Work Building Industry Inspectors and DIAC Inspectors associated with conducting investigations, audits and campaigns.
Migration Inspector	means a person appointed an Inspector pursuant to section 140V
Monitoring	means those activities set out in clauses 17, 18, 19, 20, 21 and 22 of this MOU.
MOU Managers	means the persons specified (by name or position) or any substitute notified to the FWBC.
Secretary	means the Secretary of the Department of Immigration and Citizenship.





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# Memorandum of Understanding

*between*

*Fair Work Building & Construction*

*and*

*the State of Victoria through the Construction Code  
Compliance Unit, Department of Treasury and Finance*

### *Definitions*

1. In this MOU, unless the contrary intention appears, the following definitions will apply:

**Business Day** means any day that is not a Saturday, Sunday or a public holiday appointed as such under the *Public Holidays Act 1993 (Vic)* in Melbourne.

**Commonwealth Workplace Laws** means a designated building law as defined by section 4 of the *Fair Work (Building Industry) Act 2009*.

**Government Agency** means any public or statutory body, department, administrative or judicial body, commission, instrumentality, office, agency, entity or authority of the Crown in right of the State of Victoria or the Commonwealth of Australia.

**Law** means:

- (a) principles of law or equity established by decisions of courts within the Commonwealth of Australia;
- (b) statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of Victoria, any local government or a Government Agency;
- (c) the Constitution of the Commonwealth;
- (d) binding requirements and mandatory approvals (including conditions) of the Commonwealth, State of Victoria or a Government Agency which have the force of law; and
- (e) guidelines of the Commonwealth, the State of Victoria or a Government Agency which have the force of law.

**MOU** means this Memorandum of Understanding as amended from time to time.

**Party and Parties** means severally the parties to this MOU.

### *Interpretation*

2. In this MOU, unless the context indicates to the contrary:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and the words in the plural include the singular;
- (c) clause headings are inserted for convenience only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and the State of Victoria amended or replaced from time to time; and
- (e) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

### *Commencement and Operation*

3. This Memorandum of Understanding (MOU) will take effect from 1 June 2013.



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**Fair Work Building  
& Construction**

4. This MOU will be in effect for a period of three (3) years, after which time it will be reviewed by the parties to this MOU, unless it has been terminated in accordance with Clause 29 of this MOU.

*Parties*

5. This MOU is made between the Office of the Fair Work Building Industry Inspectorate (FWBC) and the State of Victoria through the Construction Code Compliance Unit (CCCU) of the Department of Treasury and Finance Victoria (DTF).

*Context*

6. FWBC was established under the *Fair Work (Building Industry) Act 2012*. FWBC's primary responsibility is to enforce Commonwealth Workplace Laws in the building and construction industry through education, advice and compliance activities.
7. DTF is a department in the State Government of Victoria and the CCCU is a unit in DTF established to monitor compliance with the Victorian Code of Practice for the Building and Construction Industry (Victorian Code) and the Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry (Victorian Guidelines).
8. FWBC and DTF (the Parties) acknowledge the complementary nature of the work they undertake within the building and construction sector. Accordingly, the Parties are committed to maintaining close working relationships with each other wherein knowledge, skills and capabilities can be shared to deliver stronger workplace relations outcomes in the construction industry for the Australian citizenry.
9. The Parties undertake to adhere to the provisions of this MOU in good faith, with a commitment to work cooperatively in the spirit of mutual trust and respect.

*Areas of Collaboration*

10. The Parties agree to share information in relation to:
  - a. alleged contraventions of Commonwealth Workplace Laws; and
  - b. alleged contraventions of the Victorian Code and the Victorian Guidelines.
11. In addition, the Parties are committed to collecting, analysing and sharing relevant industry data and information held by the Parties and communicating and sharing the latest research findings.
12. Any request for the FWBC to disclose information will be subject to sections 64 and 65 of the *Fair Work (Building Industry) Act 2012*.
13. Where appropriate, the Parties will collaborate on the development of consistent education materials.
14. Notwithstanding the terms of this MOU and subject to any relevant Law, the Parties acknowledge that each Party has absolute discretion in deciding whether to share any information to the other Party.

*Shared obligations of the Parties*

15. A Party who provides information as a result of the operation of this MOU to the other Party (Official Information) may set out the terms on which the other Party must use the Official Information.
16. Unless otherwise agreed by the Parties, each Party must keep all Official Information of the other Party strictly confidential except to the extent that a Party is required by Law to disclose any Official Information.

17. If a party is required by Law to disclose any Official Information, that Party must notify the other Party within 24 hours of becoming aware that disclosure of the Official Information is required by Law.
18. The Parties agree to exercise reasonable care to ensure that all Official Information is protected against loss and unauthorised access, use, modification or disclosure.
19. The Parties will cooperate to ensure that they do not cause the other to breach any privacy obligations that Party has at Law.
20. If either Party becomes aware of any act or practice which may breach the terms of this MOU, the Party must communicate the nature of the issue within 24 hours of becoming aware of the issue to the other Party.
21. Each party's obligations under this MOU will survive termination of this MOU and will continue in relation to Official Information until the Official Information becomes part of the public domain.

#### *Administrative and Governance Arrangements*

#### 22. MOU Managers

- a. The MOU Managers are the incumbents of the following positions:
  - i. FWBC – Executive Director of Field Operations (Eastern)
  - ii. DTF – CCCU Investigations Manager
- b. The MOU Managers will confer on an as-needed basis. However, they will meet annually at a minimum. The first meeting will be held on 1 August 2013.

#### *Information Sharing Process*

23. All requests for Information should be made to the MOU Managers and all provision of information should be carried out via the MOU Managers.
24. The MOU Managers must each keep a register of Official Information both provided and received under this MOU.

#### *Dispute Resolution*

25. The Parties will use their best endeavours to resolve any differences or difficulties in a pragmatic manner to achieve the agreed objectives of this MOU.
26. In the unlikely event that a dispute arises, the Parties agree that the respective MOU Managers are the first point of contact for the other party in relation to any disputes arising under this MOU.
27. Matters that remain unresolved as between the MOU Managers for 20 Business Days, will be referred to the FWBC Chief Executive and CCCU Director for mutual review and determination.
28. Despite the existence of a dispute, the Parties will (unless requested in writing by the other Party not to do so) continue to operate in accordance with this MOU.

#### *Termination & Variation*



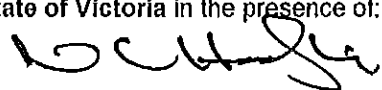
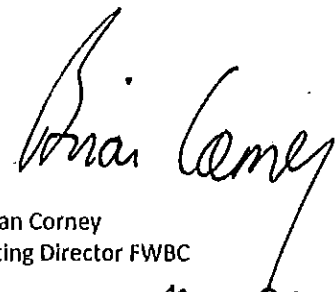


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29. Either Party may for any reason and in its absolute discretion, terminate this MOU by written notice to the other Party.
30. This MOU can be varied by agreement of the Parties at any time. Variations become operative when they are in writing, signed by the MOU Managers and attached as an Attachment to this MOU.

*Not Legally Binding*

31. This MOU is not intended to create legal relations or constitute a legally binding contractual agreement between the Parties.

*Signatures*

<p>Signed sealed and delivered by Nigel Hadgkiss a duly authorised officer of the Department of Treasury and Finance for and on behalf of the State of Victoria in the presence of:</p>  <p>Nigel Hadgkiss Director, CCCU</p> <p>Date: 23 May 2013</p>	 <p>Brian Corney Acting Director FWBC</p> <p>Date: 23 May 2013</p>
 <p>Witness: MURRAY GREGOR</p> <p>Date: 23 MAY 2013</p>	<p>CATHY CATO.</p>  <p>Witness: CATO.</p> <p>Date: 23 May 2013</p>

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# Memorandum of Understanding

*between*  
*Fair Work Building & Construction*  
*and*  
*the Department of Justice and Attorney General -*  
*Queensland Building Construction Compliance Branch*



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### *Defintlons*

1. In this MOU, unless the contrary Intention appears, the following definitions will apply:

**Business Day** means any day that is not a Saturday, Sunday or a public holiday appointed as such under the *Public Holidays Act 1983* (Qld) in Queensland.

**Commonwealth Workplace Laws** means a designated building law as defined by section 4 of the *Fair Work (Building Industry) Act 2009* (Cth).

**Government Agency** means any public or statutory body, department, administrative or judicial body, commission, instrumentality, office, agency, entity or authority of the Crown in right of the State of Queensland or the Commonwealth of Australia.

**Law** means:

- (a) principles of law or equity established by decisions of courts within the Commonwealth of Australia;
- (b) statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of Queensland, any local government or a Government Agency;
- (c) the Constitution of the Commonwealth;
- (d) binding requirements and mandatory approvals (including conditions) of the Commonwealth, State of Queensland or a Government Agency which have the force of law; and
- (e) guidelines of the Commonwealth, the State of Queensland or a Government Agency which have the force of law.

**MOU** means this Memorandum of Understanding as amended from time to time.

**Party and Parties** means severally the parties to this MOU.

### *Interpretation*

2. In this MOU, unless the context indicates to the contrary:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and the words in the plural include the singular;
- (c) clause headings are inserted for convenience only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and the State of Queensland amended or replaced from time to time; and
- (e) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.





*Commencement and Operation*



**Australian Government**  
**Fair Work Building**  
**& Construction**

3. This Memorandum of Understanding (MOU) will take effect from 1 November 2013.
4. This MOU will be in effect for a period of three (3) years, after which time it will be reviewed by the parties to this MOU, unless it has been terminated in accordance with Clause 29 of this MOU.

*Parties*

5. This MOU is made between the Office of the Fair Work Building Industry Inspectorate (FWBC) and the State of Queensland through the Queensland Building Construction Compliance Branch (BCCB) of the Department of Justice and Attorney-General (DJAG).

*Context*

6. FWBC was established under the *Fair Work (Building Industry) Act 2012*. FWBC's primary responsibility is to enforce Commonwealth Workplace Laws in the building and construction industry through education, advice and compliance activities.
7. DJAG is a department in the State Government of Queensland and the BCCB is a unit in DJAG established to monitor compliance with the Queensland Code of Practice for the Building and Construction Industry (Queensland Code) and the Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (Queensland Guidelines).
8. FWBC and DJAG (the Parties) acknowledge the complementary nature of the work they undertake within the building and construction sector. Accordingly, the Parties are committed to maintaining close working relationships with each other wherein knowledge, skills and capabilities can be shared to deliver stronger workplace relations outcomes in the construction industry for the Australian citizenry.
9. The Parties undertake to adhere to the provisions of this MOU in good faith, with a commitment to work cooperatively in the spirit of mutual trust and respect.

*Areas of Collaboration*

10. The Parties agree to share information in relation to:
  - a. alleged contraventions of Commonwealth Workplace Laws; and
  - b. alleged contraventions of the Queensland Code and the Queensland Guidelines.
11. In addition, the Parties are committed to collecting, analysing and sharing relevant industry data and information held by the Parties and communicating and sharing the latest research findings.
12. Any request for the FWBC to disclose information will be subject to sections 64 and 65 of the *Fair Work (Building Industry) Act 2012*.
13. Where appropriate, the Parties will collaborate on the development of consistent education materials.
14. Notwithstanding the terms of this MOU and subject to any relevant Law, the Parties acknowledge that each Party has absolute discretion in deciding whether to share any information with the other Party.

*Shared obligations of the Parties*

15. A Party who provides information as a result of the operation of this MOU to the other Party (Official Information) may set out the terms on which the other Party must use the Official Information.



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16. Unless otherwise agreed by the Parties, each Party must keep all Official Information of the other Party strictly confidential except to the extent that a Party is required by Law to disclose any Official Information.
17. If a party is required by Law to disclose any Official Information, that Party must notify the other Party within 24 hours of becoming aware that disclosure of the Official Information is required by Law.
18. The Parties agree to exercise reasonable care to ensure that all Official Information is protected against loss and unauthorised access, use, modification or disclosure.
19. The Parties will cooperate to ensure that they do not cause the other to breach any privacy obligations that Party has at Law.
20. If either Party becomes aware of any act or practice which may breach the terms of this MOU, the Party must communicate the nature of the issue within 24 hours of becoming aware of the issue to the other Party.
21. Each party's obligations under this MOU will survive termination of this MOU and will continue in relation to Official Information until the Official Information becomes part of the public domain.

*Administrative and Governance Arrangements*

22. MOU Managers

- a. The MOU Managers are the incumbents of the following positions:
  - i. FWBC – Executive Director of Field Operations (Eastern)
  - ii. DJAG – BCCB Operations Manager
- b. The MOU Managers will confer on an as-needed basis. However, they will meet annually at a minimum. The first meeting will be held on 26 November 2013.

*Information Sharing Process*

23. All requests for Information should be made to the MOU Managers and all provision of Information should be carried out via the MOU Managers.
24. The MOU Managers must each keep a register of Official Information both provided and received under this MOU.

*Dispute Resolution*

25. The Parties will use their best endeavours to resolve any differences or difficulties in a pragmatic manner to achieve the agreed objectives of this MOU.
26. In the unlikely event that a dispute arises, the Parties agree that the respective MOU Managers are the first point of contact for the other party in relation to any disputes arising under this MOU.
27. Matters that remain unresolved as between the MOU Managers for 20 Business Days will be referred to the FWBC Chief Executive and BCCB Director for mutual review and determination.
28. Despite the existence of a dispute, the Parties will (unless requested in writing by the other Party not to do so) continue to operate in accordance with this MOU.



Queensland Government  
*Termination & Variation*



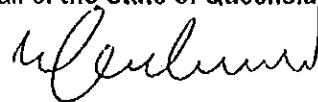



Australian Government  
Fair Work Building  
& Construction

- 29. Either Party may for any reason and in its absolute discretion, terminate this MOU by written notice to the other Party.
- 30. This MOU can be varied by agreement of the Parties at any time. Variations become operative when they are in writing, signed by the MOU Managers and attached as an Attachment to this MOU.

*Not Legally Binding*

- 31. This MOU is not intended to create legal relations or constitute a legally binding contractual agreement between the Parties.

*Signatures*

<p>Signed sealed and delivered by Wayne Jenkinson a duly authorised officer of the Department of Justice and Attorney-General for and on behalf of the State of Queensland:</p>  <p>Director, BCCB</p> <p>Date: 26 November 2013</p>	 <p>Murray Gregor Executive Director – Field Operations Eastern Fair Work Building &amp; Construction</p> <p>Date: 26 November 2013</p>
<p>Witness:</p>  <p>ROBERT WICKS</p> <p>Date: 26 November 2013</p>	<p>Witness:</p>  <p>ROBERT WICKS</p> <p>Date: 26 November 2013</p>

11



**Industrial  
Relations**



**Australian Government**  
**Fair Work Building  
& Construction**

# Memorandum of Understanding

*between*

*Fair Work Building & Construction*

*and*

*NSW Industrial Relations – Construction Compliance Unit*



## Industrial Relations



Australian Government

Fair Work Building  
& Construction

### *Definitions*

1. In this MOU, unless the contrary intention appears, the following definitions will apply:

**Business Day** means any day that is not a Saturday, Sunday or a public holiday appointed as such under the *Public Holidays Act 2010 (NSW)* in Sydney.

**Commonwealth Workplace Laws** means a designated building law as defined by section 4 of the *Fair Work (Building Industry) Act 2009*.

**Government Agency** means any public or statutory body, department, administrative or judicial body, commission, instrumentality, office, agency, entity or authority of the Crown in right of the State of New South Wales or the Commonwealth of Australia.

**Law** means:

- (a) principles of law or equity established by decisions of courts within the Commonwealth of Australia;
- (b) statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of New South Wales, any local government or a Government Agency;
- (c) the Constitution of the Commonwealth;
- (d) binding requirements and mandatory approvals (including conditions) of the Commonwealth, State of New South Wales or a Government Agency which have the force of law; and
- (e) guidelines of the Commonwealth, the State of New South Wales or a Government Agency which have the force of law.

**MOU** means this Memorandum of Understanding as amended from time to time.

**Party and Parties** means severally the parties to this MOU.

### *Interpretation*

2. In this MOU, unless the context indicates to the contrary:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and the words in the plural include the singular;
- (c) clause headings are inserted for convenience only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and the State of New South Wales amended or replaced from time to time; and
- (e) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

### *Commencement and Operation*

3. This Memorandum of Understanding (MOU) will take effect from 20 December 2013.



## Industrial Relations



Australian Government  
Fair Work Building  
& Construction

4. This MOU will be in effect for a period of three (3) years, after which time it will be reviewed by the parties to this MOU, unless it has been terminated in accordance with Clause 29 of this MOU.

### *Parties*

5. This MOU is made between the Office of the Fair Work Building Industry Inspectorate (FWBC) and the State of New South Wales through the NSW Industrial Relations Construction Compliance Unit of The Treasury.

### *Context*

6. FWBC was established under the *Fair Work (Building Industry) Act 2012*. FWBC's primary responsibility is to enforce Commonwealth Workplace Laws in the building and construction industry through education, advice and compliance activities.
7. The Treasury is a department in the State Government of New South Wales and the CCU is a unit in NSW Industrial Relations established to monitor compliance with the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (NSW Guidelines).
8. FWBC and NSW IR (the Parties) acknowledge the complementary nature of the work they undertake within the building and construction sector. Accordingly, the Parties are committed to maintaining close working relationships with each other wherein knowledge, skills and capabilities can be shared to deliver stronger workplace relations outcomes in the construction industry for the Australian citizenry.
9. The Parties undertake to adhere to the provisions of this MOU in good faith, with a commitment to work cooperatively in the spirit of mutual trust and respect.

### *Areas of Collaboration*

10. The Parties agree to share information in relation to:
  - a. alleged contraventions of Commonwealth Workplace Laws; and
  - b. alleged contraventions of the NSW Guidelines.
11. In addition, the Parties are committed to collecting, analysing and sharing relevant industry data and information held by the Parties and communicating and sharing the latest research findings.
12. Any request for the FWBC to disclose information will be subject to sections 64 and 65 of the *Fair Work (Building Industry) Act 2012*.
13. Where appropriate, the Parties will collaborate on the development of consistent education materials.
14. Notwithstanding the terms of this MOU and subject to any relevant Law, the Parties acknowledge that each Party has absolute discretion in deciding whether to share any information to the other Party.

### *Shared obligations of the Parties*

15. A Party who provides information as a result of the operation of this MOU to the other Party (Official Information) may set out the terms on which the other Party must use the Official Information.
16. Unless otherwise agreed by the Parties, each Party must keep all Official Information of the other Party strictly confidential except to the extent that a Party is required by Law to disclose any Official Information.



## Industrial Relations



Australian Government  
Fair Work Building  
& Construction

17. If a party is required by Law to disclose any Official Information, that Party must notify the other Party within 24 hours of becoming aware that disclosure of the Official Information is required by Law.
18. The Parties agree to exercise reasonable care to ensure that all Official Information is protected against loss and unauthorised access, use, modification or disclosure.
19. The Parties will cooperate to ensure that they do not cause the other to breach any privacy obligations that Party has at Law.
20. If either Party becomes aware of any act or practice which may breach the terms of this MOU, the Party must communicate the nature of the issue within 24 hours of becoming aware of the issue to the other Party.
21. Each party's obligations under this MOU will survive termination of this MOU and will continue in relation to Official Information until the Official Information becomes part of the public domain.

### *Administrative and Governance Arrangements*

#### 22. MOU Managers

- a. The MOU Managers are the incumbents of the following positions:
  - i. FWBC – Executive Director of Field Operations (Eastern)
  - ii. NSW IR – Director, Compliance
- b. The MOU Managers will confer on an as-needed basis. However, they will meet annually at a minimum. The first meeting will be held in December 2013.

### *Information Sharing Process*

23. All requests for Information should be made to the MOU Managers and all provision of Information should be carried out via the MOU Managers.
24. The MOU Managers must each keep a register of Official Information both provided and received under this MOU.

### *Dispute Resolution*

25. The Parties will use their best endeavours to resolve any differences or difficulties in a pragmatic manner to achieve the agreed objectives of this MOU.
26. In the unlikely event that a dispute arises, the Parties agree that the respective MOU Managers are the first point of contact for the other party in relation to any disputes arising under this MOU.
27. Matters that remain unresolved as between the MOU Managers for 20 Business Days, will be referred to the FWBC Chief Executive and the NSW IR Executive Director for mutual review and determination.
28. Despite the existence of a dispute, the Parties will (unless requested in writing by the other Party not to do so) continue to operate in accordance with this MOU.

### *Termination & Variation*

29. Either Party may for any reason and in its absolute discretion, terminate this MOU by written notice to the other Party.





# Industrial Relations







# Australian Government Fair Work Building & Construction

30. This MOU can be varied by agreement of the Parties at any time. Variations become operative when they are in writing, signed by the MOU Managers and attached as an Attachment to this MOU.

*Not Legally Binding*

31. This MOU is not intended to create legal relations or constitute a legally binding contractual agreement between the Parties.

*Signatures*

<p>Signed sealed and delivered by Vicki Telfer a duly authorised officer of The Treasury for and on behalf of the State of New South Wales in the presence of:</p>  <p>Executive Director NSW IR</p> <p>Date: 20/12/13</p>	 <p>Executive Director FWBC MURRAY GREIG</p> <p>Date: 20/12/13</p>
<p>Witness:</p>  <p>Date: 20/12/13</p>	<p>Witness:</p>  <p>Date: 20.12.13</p>

