



**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.

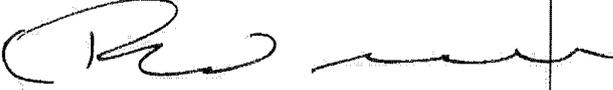


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Signatures

 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  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.