



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

Interpretation – definitions are at the end of the General Terms

Parties FWBC and AAT

Name OFFICE OF FAIR WORK BUILDING INDUSTRY INSPECTORATE (“FWBC”)

Address

Telephone

Fax

FWBC MOU Manager

Name ADMINISTRATIVE APPEALS TRIBUNAL (“AAT”)

Address Level 7, 55 Market Street, Sydney NSW 2000

Telephone [REDACTED]

Fax [REDACTED]

AAT MOU Manager [REDACTED] Executive Director, Operations

- 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.
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General terms

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 JONNS
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 Philip 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.