

Details Section

Interpretation – definitions are at the end of the General Terms

Parties **FWBC and CO**

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

Address Level 2, 553 St Kilda Road, Melbourne VIC 3004

Telephone 03 9954 2548

Fax 02 6267 4979

FWBC MOU Manager Murray Furlong

Name **OFFICE OF THE COMMONWEALTH OMBUDSMAN ("CO")**

Address Level 5, 14 Childers Street, Canberra City ACT 2601

Telephone 1300 362 072

Fax [REDACTED]

CO MOU Manager Ms [REDACTED] Director, Inspections Team

- 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

General terms

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.

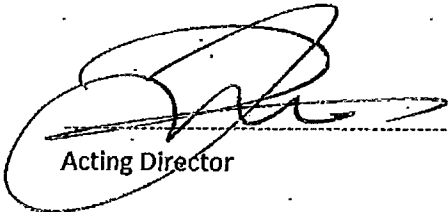
11.2 Headings

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 JONES

Name
(Print Name)
19/7/2012

Dated



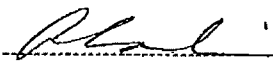
Witness



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



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.