

# Memorandum of Understanding

*between*

*Fair Work Building & Construction*

*and*

*the Department of Justice and Attorney General -  
Workplace Health and Safety, Building Construction  
Compliance Branch Queensland and the Electrical  
Safety Office in the Office of Fair and Safe Work  
Queensland*

## 1. Purpose

This Memorandum of Understanding (**MOU**) is an administrative document that clarifies specific working arrangements between the parties<sup>1</sup> in relation to reporting and investigation of, and attendance at, workplace incidents and industrial disputation and provides specific information on the respective roles, responsibilities and obligations of Workplace Health and Safety officers, Electrical Safety officers, officers of the Building Construction Compliance Branch (BCCB) and Fair Work Building Industry Inspectors.<sup>2</sup>

Workplace Health and Safety officers, Electrical Safety officers, BCCB officers and Fair Work Building Industry Inspectors regularly attend workplace incidents that result in workplace disputation.

While operating under separate legislative framework, the parties have common goals and objectives to ensure safe, harmonious and productive workplaces. That is, to conduct a thorough investigation of workplace incidents to establish the facts of the matter, and if warranted, initiate appropriate responses, which may include commencing legal proceedings.

## 2. Definitions

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) (**FWBI Act**).

**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.

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<sup>1</sup> As defined in clause 6 of this MOU.

<sup>2</sup> As defined by section 4 of the *Fair Work (Building Industry) Act 2012*.

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

### 3. Interpretation

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.

### 4. *Legislative scope*

The relevant legislation that applies to this Memorandum of Understanding is the:

- *Fair Work (Building Industry) Act 2012 (Cth) (FWBI Act)*
- *Work Health and Safety Act 2011*; and
- *Electrical Safety Act 2002*.

### 5. Commencement and Operation

This MOU will take effect from January 2015.

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 12 of this MOU.

### 6. Parties

This MOU is made between the Office of the Fair Work Building Industry Inspectorate (**FWBC**) and the State of Queensland through Workplace Health and Safety Queensland (**WHSQ**), the Building Construction Compliance Branch (BCCB) and The Electrical Safety Office (**ESO**) of the Department of Justice and Attorney-General (**DJAG**).

At the commencement of this Memorandum of Understanding, the agencies responsible for its administration are:

- The Fair Work Building and Construction (FWBC), Australian Government and
- The Department of Justice and Attorney-General, through the agencies of the Building Construction Compliance Branch (BCCB), Workplace Health and Safety Queensland (WHSQ), and the Electrical Safety Office (ESO) within the Office of Fair and Safe Work Queensland (OFSWQ).

A reference to an agency in this Memorandum of Understanding may be extended to include the responsible department.

This Memorandum of Understanding has been developed at the agency level. If there is a change to the department responsible for an agency due to portfolio reassignment or redistribution, or there is a change to the name of a department or agency, there should be negligible effect on the operation of the Memorandum of Understanding. That is, Machinery of Government changes or changes to the name of agencies will not void the Memorandum of Understanding or automatically necessitate renegotiation.

An amendment or replacement of legislation administered by the agencies, to the extent that the new legislation has consistent objects to that which it amends or replaces, will not limit the application of this Memorandum of Understanding.

Any such Machinery of Government or legislative changes will be incorporated at the time of the scheduled review.

## 7. Context

FWBC was established under the FWBI Act. FWBC's primary responsibility is to enforce Commonwealth Workplace Laws in the building and construction industry through education, advice and compliance activities.

DJAG is a department in the State Government of Queensland and WHSQ in DJAG fosters safe and healthy work environments for all workers in Queensland. The key outcome is a reduction in work-related death, injury and disease in Queensland.

ESO in DJAG improves electrical safety in both workplaces and homes. The ESO is responsible for the development of legislation and standards, and the management of registration, licensing and implements education and awareness activities to better inform the industry and undertakes state-wide compliance and enforcement activities.

The Building Construction Compliance Branch (BCCB) in DJAG is responsible for implementing and enforcing the Guidelines to the Queensland Code of Practice for the Building and Construction Industry established to assist effective workforce management at all levels of the building and construction industry.

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.

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.

## 8. Areas of Collaboration

The Parties agree to share information in relation to alleged contraventions of Commonwealth Workplace Laws.

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.

Any request for the FWBC to disclose information will be subject to sections 64 and 65 of the FWBI Act.

Any request for WHSQ to disclose information is subject to section 271 of the *Work Health and Safety Act 2011* and any other applicable law.

Any request for ESO to disclose information is subject to section 193 of the *Electrical Safety Act 2002* and any other applicable law.

Where appropriate, the Parties will collaborate on the development of consistent education materials.

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.

## 9. Shared obligations of the Parties

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.

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.

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.

The Parties agree to exercise reasonable care to ensure that all Official Information is protected against loss and unauthorised access, use, modification or disclosure.

The Parties will cooperate to ensure that they do not cause the other to breach any privacy obligations that Party has at Law.

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.

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.

## 10. Administrative and Governance Arrangements

The contract officers are the incumbents of the following positions:

- (a) FWBC – Executive Director of Operations (Eastern)
- (b) DJAG – WHSQ Senior Director Operations and Compliance and BCCB Manager

The contact officers will confer on an as-needed basis. However, they will meet annually at a minimum. Contact details are in Schedule 1 to this MOU. The first meeting will be held on XXX.

#### **11. Information Sharing Process**

All requests for information should be made to the contact officers and all provision of information should be carried out via the contact officers.

The contact officers must each keep a register of Official Information both provided and received under this MOU.

#### **12. Dispute Resolution**

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.

In the unlikely event that a dispute arises, the Parties agree that the respective contact officers are the first point of contact for the other party in relation to any disputes arising under this MOU.

Matters that remain unresolved between the contact officers for 20 Business Days will be referred to the FWBC Director<sup>3</sup> and the Deputy Director-General of the Office of Fair and Safe Work Queensland in DJAG for mutual review and determination.

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.

#### **13. Termination & Variation**

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

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.

#### **14. Not Legally Binding**

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

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<sup>3</sup> As defined by section 4 of the FWBI Act.