



## Australian Government

### Fair Work Building & Construction

#### DIRECTION TO FAIR WORK BUILDING INDUSTRY INSPECTORS

I, Leigh Andrew Hyland JOHNS, Acting Director of the Fair Work Building Industry Inspectorate make the following direction under subsection 59F(1) of the *Fair Work Building Industry Act 2012* (**FWBI Act**):

#### Commencement

- (1) This Direction is of general application and commences to operate on the day after it is registered on the Federal Registrar of Legislative Instruments, in accordance with the *Legislative Instruments Act 2003*.

#### Definitions

- (2) In this Direction:

**building matter** has the meaning given in subsection 59C(3) of the FWBI Act;

**civil proceedings** means civil proceedings in relation to a building matter and includes an appeal;

**commencing civil proceedings** means the commencement of civil proceedings in a court by a Fair Work Building Industry Inspector under any Act or any Regulations which, by reason of paragraph 59C(4)(a) of the FWBI Act, confers on the Fair Work Building Industry Inspector the function or power of commencing those civil proceedings;

**Director** means the Director of the Fair Work Building Industry Inspectorate and includes a reference to an acting Director;

**Fair Work Building Industry Inspector** means a person appointed as a Fair Work Building Industry Inspector under section 59 of the FWBI Act.

**FWBI Act** means the *Fair Work (Building Industry) Act 2012*;

**intervening in civil proceedings** means intervening in civil proceedings under subsection 71(1) of the FWBI Act in circumstances where the powers and functions in subsection 71(3) have been delegated to a Fair Work Building Industry Inspector under subsection 13(1) of the FWBI Act;

**Office** means the Office of the Fair Work Building Industry Inspectorate established by section 26J of the FWBI Act.

#### Direction

- (3) When exercising powers or performing functions as a Fair Work Building Industry Inspector, a Fair Work Building Industry Inspector must:
- a) describe himself or herself as a “Fair Work Building Industry Inspector”; and
  - b) make sure that those who have dealings with the Office are aware that the Office operates under the name “Fair Work Building & Construction” or “FWBC”.
- (4) Before commencing civil proceedings, or intervening in civil proceedings, a Fair Work Building Industry Inspector must:
- a) comply with any Guidance Note concerning the litigation policy of the Director of the Fair Work Building Industry Inspectorate;
  - b) be satisfied that:
    - i. there is sufficient evidence (or in the case of an appeal, sufficient merit) to commence the civil proceedings or intervene in the civil proceedings; and
    - ii. the facts in the matter and all the surrounding circumstances demonstrate that civil proceedings are in the public interest (including that the alleged contraventions the subject of the civil proceedings (or proposed civil proceedings) are not trivial or minor); and
  - c) obtain my consent or the consent of a member of staff authorised by me to give such consent to commence or intervene in those civil proceedings.
- (5) I revoke the Direction to Inspectors made under subsection 57(4) of the *Building and Construction Industry Improvement Act 2005* dated 28 February 2011.

Dated: 13 June 2012

Leigh Andrew Hyland Johns

Acting Director of the Fair Work Building Industry Inspectorate