

ALERT

20 JUNE 2014

New Building Industry Code 2014

The federal government is seeking to effectively replace the *Building Code 2013*, publishing an advanced release of the *Building and Construction Industry (Fair and Lawful Building Sites) Code 2014 (Code)*. The proposed Code will come into effect once the *Building and Construction Industry (Improving Productivity) Bill 2014* is passed into law. This is of course subject to it passing the Senate.

The *Building Code 2013*, which took effect on 1 February 2013, codified the then current 'Implementation Guidelines for the National Code of Practice for the Construction Industry' (**Guidelines**). This code applies to builders tendering for federal government work and to their privately funded work once they are covered, as well as builders who were subject to any version of the Guidelines. Under this code, builders are required to comply with all 'designated building laws', meaning all federal industrial laws including awards and enterprise agreements. A failure to comply with the *Building Code 2013* can result in builders being barred from tendering for Commonwealth funded building and construction work.

The new Code sets out the expected standards of conduct for all building contractors and building industry participants (**Code covered entities**) that seek to be, or are, involved in Commonwealth funded building work. Code covered entities will be required to meet the requirements of the Code to be eligible to work on Commonwealth funded projects.

The Code will apply retrospectively to enterprise agreements made by Code covered entities from 24 April 2014. This means that Code covered entities covered by enterprise agreements, entered into on or after 24 April 2014 that do not comply with the Code, will not be eligible to tender for or be awarded Commonwealth funded work when the Code commences. It is important for Code covered entities that currently participate or wish to participate in Commonwealth funded building work to ensure compliance with the requirements of the Code, even though it has not yet commenced.



Key requirements of the Code

If the Code commences, there will be a blanket prohibition on clauses in enterprise agreements that:

- impose or purport to impose limits on the right of the Code covered entity to manage its business or to improve productivity; or
- discriminate, or have the effect of discriminating against certain persons, classes of employees or subcontractors; or
- are inconsistent with the freedom of association requirements set out in the Code.

In other words, the Code retains the freedom of association requirements found in the *Building Code 2013* but has added a further obligation requiring a Code covered entity to adopt policies and practices that ensure people are not discriminated against in respect of benefits in the workplace because they are, or are not, members of a building association.

Code covered entities must strictly comply with applicable right of entry laws under the new Code. Entry by an officer of a building association to premises where building work is performed must be for a purpose for which a right of entry could be exercised under Part 3-4 of the *Fair Work Act 2009* (Cth) or a relevant work health and safety law.

Among other things, it will be a requirement to provide a Workplace Relations Management Plan (**WRMP**) for Commonwealth funded building work, in certain circumstances, which demonstrates how a Code covered entity proposes to comply with the Code. This is necessary if:

- the value of the Commonwealth's contribution to the project that includes the building work is at least \$5 million and represents at least 50% of the total construction project value; or
- the Commonwealth's contribution to the project that includes the building work is at least \$10 million (irrespective of its proportion of the total construction project value).

The proposed Code removes the sections of the *Building Code 2013* dealing with work health, safety and rehabilitation requirements and the provisions on sham contracting. The new Code requires that a Code covered entity must comply with work health and safety laws to the extent that they apply to the entity in relation to building work.

If a building contractor or building industry participant fails to comply with the Code, they may be excluded from performing Commonwealth funded building work for up to one year or be issued with a formal warning noting that a further failure may result in an exclusion sanction.

Want to republish any of this article?

If you would like to republish any part of this article in your staff newsletter or elsewhere please contact our Marketing team on **+61 3 9608 2168**

Disclaimer

This article is intended to provide general information on legal issues and should not be relied upon as a substitute for specific legal or other professional advice.

Images

All images are used courtesy of www.freedigitalphotos.net

For further information please contact:

Louise Houlihan, Partner
Phone (direct) **+61 3 9608 2273**
Mobile **+61 409 835 809**
Email l.houlihan@cornwalls.com.au

