

ALERT

1 MAY 2012

Updated Implementation Guidelines for the National Code of Practice for the Construction Industry

The federal government has released updated Implementation Guidelines (**Guidelines**) for the National Code of Practice for the Construction Industry (**Code**). The updated Guidelines reflect the ongoing implementation of the Code as agreed between the commonwealth and state governments since 1997.

Together the updated Guidelines and the Code will impose obligations on parties applying for Australian government funded construction work to comply with the *Fair Work Act 2009* (Cth) (**FWA**), *Independent Contractors Act 2006* (Cth) and occupational health and safety legislation for the relevant state or territory.

The updated Guidelines will apply to almost all building and construction work undertaken for projects funded directly or indirectly by the Australian government, with some exceptions including mining operations.

The updated Guidelines will commence on 1 May 2012. All tenders for work and expressions of interest submitted after this date must comply with the updated Guidelines and the Code.

The updated Guidelines change few items from its predecessor; however the additions include:

- 'sham contracting' – any employer found to have engaged in a 'sham contracting' arrangement to avoid paying employee entitlements will be considered to have committed a fundamental breach of the Guidelines. That party may suffer sanctions and be ineligible to enter into construction contracts with the government; and
- engagement of non-citizens/non-residents – penalties will apply to any employer found to have engaged a person to perform construction work that is not entitled to be engaged according to Australian law. This will include compliance with the *Migration Act 1958*.

The updated Guidelines should be reviewed by those in the construction industry that anticipate tendering for or expressing interest in government construction work on or after 1 May 2012.

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