

ABCC & the Building Code 2016

Presentation for Fair Work Lawyers
31 January 2016

Cathy Cato, National Manager Building Code

Building Codes

Building Code 2013

Building Code 2013 continues to apply to building work to which it applied on 1 December 2016.

Code for the Tendering and Performance of Building Work 2016

Building Code 2016 applies to contractors who submit an EOI or tender for any Commonwealth funded building work on or after 2 December 2016 (code covered entities)

Overview

- Role of the ABCC
- Key components of Building Code 2016
- Application of Code – key terms
- Contractor responsibilities under the Code
- Letters of compliance and preliminary advice
- Prohibited content provisions
- Notification requirements
- Consequences of breaching the Code

Building Code 2016: Key components

Requirements on all building work:

- Compliance with broad range of laws
- Conduct requirements specified in Code
- New notification requirements
- Take steps to prevent/end industrial action

Role of the ABCC

Two key areas of responsibility:

- Compliance with the *Fair Work Act 2009* & the new Act
- Compliance with the Building Codes

Building Code 2016: Key components

On Commonwealth funded building work

- Eligibility requirements (section 23)
- Australian standard products only
- Head contractor (HC) to provide extra information
- Require compliance and rectification by subcontractors
- Drug and alcohol testing by HC on threshold projects
- WRMP for HC on projects above threshold

Letters of compliance

What for?

- Enterprise agreements made on or after 2 December 2016 that meet Building Code 2016 requirements (an ABCC Determination);
- Enterprise agreements made before 2 December 2016 (this letter of compliance is only valid until 28 November 2018); and
- Modern Award arrangements or other lawful workplace arrangements.

Assessment of agreements for compliance with the Building Code 2013

There are no longer any circumstances under which you will need a letter of compliance with the Building Code 2013.

Further information on the interaction of the two Building Codes will be added to the website as soon as possible.

Preliminary advice

What for?

- The ABCC can also provide preliminary advice on whether proposed agreements meet the requirements of the Building Code 2016.
- The ABCC website contains a form through which you can apply for a letter of compliance or preliminary advice on a draft agreement.

New prohibited conduct provisions

- Compliance with laws (s. 9)
- Unregistered written agreements (s. 10)
- Sham contracting (s. 11B)
- Collusive tendering practices (s. 11C)

Self declaration form – interim measure to demonstrate eligibility to tender

- ONLY for use by contractors who ARE NOT covered by an enterprise agreement made on or after 2 December 2016.
- The self-declaration form cannot be used after 28 November 2018.

Security of payment & disputed payments

- Compliance with laws
- Timely payments
- Documented dispute settlement process
- Referral to adjudicator
- Compliance with determination
- Reporting of disputed/delayed payments to the ABCC
- No illegal or fraudulent phoenix activities for purpose of avoiding payments due
- No action with intent to coerce, unduly influence or unduly pressure a party to exercise or not exercise legal rights relating to security of payments

Consequences of breaching the Code (section 18)

- If satisfied of a code covered entity's failure to comply with the Building Code may refer the breach to the Minister for Employment, with a recommendation for sanction.
- Minister may issue a formal warning or impose an exclusion sanction.
- If the non-compliance is with WHS laws or the Fair Work Act re underpayment of wages or entitlements, the Minister must impose an exclusion sanction unless satisfied not appropriate.

For further information

Website: abcc.gov.au

Email: codeenquiries@abcc.gov.au

agreementquestions@abcc.gov.au

Hotline: 1800 003 338

Introduction to the Building Code 2016



9 February 2017

Cathy Cato, National Manager Building Code

Overview

- Key components of Building Code 2016
- Application of Building Codes & key terms
- Contractor responsibilities under the Code
- Enterprise Agreement content
- Prohibited conduct provisions
- Notification requirements
- Consequences of breaching the Code

Building Code 2016: Key components

On Commonwealth funded building work

- Eligibility requirements (section 23)
- Building material must comply with Australian standards
- Head contractor must provide requested information
- WRMP on certain projects
- Drug and alcohol testing on certain projects
- Require compliance and rectification by subcontractors

Building Code 2016: Key components

Further requirements on all building work:

- Compliance with broad range of laws
- New and varied conduct requirements
- New notification requirements
- Take steps to prevent/end industrial action

Application of the Building Codes

Building Code 2013

Continues to operate on building work tendered for prior 2 December 2016.

Building Code 2016

Applies to contractors who submit an EOI or tender for Commonwealth funded building work on or after 2 December 2016.

When 2016 Code applies to head contractor

- Head contractor tendered for the Cth project on/after 2 December 2016
- Head contractor becomes a code covered entity and must comply with the 2016 Code on that project and all future projects
- Head contractor must require subcontractor compliance and use new model clauses for contractors
- Your requirements on existing projects don't change once you bid for a Cth project and become a code covered entity

Australian Government
Australian Building and
Construction Commission

When 2013 Code applies to head contractor

2013 Code continues to apply on building work to which it applied as at 1/12/16 – ie – to all head contractors and subcontractors who tendered prior 2/12/16

2013 and 2016 Codes can apply on the same project

- Subcontractors tendering on/after 2/12/16 subject to 2016 Code on that project and future projects (code covered entities)
- Subcontractor compliance not required by head contractor
 - No model clauses post 2 December 2016 on 2013 projects
 - ABCC will publish an information statement for head contractors to provide to tender respondents
- ABCC monitors compliance of code covered entities on that project, including their enterprise agreement compliance (section 11)
- Head contractor requirements same as a private project with respect to subcontractor compliance ie/ the head contractor is not required to ensure subcontractor compliance

Australian Government
Australian Building and
Construction Commission

Application of Code – key terms

Code covered entity

Description for a contractor that is subject to the Building Code 2016

Obligations on code covered entities

Sections 7 to 17

Funding entity obligations in Part 5

Australian Government
Australian Building and
Construction Commission

Application of Code – key terms

WRMP A workplace relations management plan developed in accordance with this Code

- Only required on Commonwealth funded building work for which Cth contribution is:
 - at least \$5 million and represents at least 50% total construction project value; or
 - at least \$10 million.

Australian Government
Australian Building and
Construction Commission

Contractor responsibilities during tender process on 2016 project

On Commonwealth funded building work:

- require compliance with Code
- ensure section 23 eligibility requirements met:
 - not subject to exclusion sanction
 - meets requirements of section 11 re content of enterprise agreement made since 2 Dec 2016

Australian Government
Australian Building and
Construction Commission

Contractor responsibilities on site on 2016 projects

On Commonwealth funded building work:

- as far as reasonably practicable, ensure subcontractors take action to remedy non-compliant behaviour
- ensure subcontractors comply with the WRMP if it applies to the building work

Australian Government
Australian Building and
Construction Commission

Content of agreements and prohibited conduct and practices (section 11)

A code covered entity must not be covered by an enterprise agreement that includes clauses of the type not permitted in section 11.

Exception: enterprise agreements made before 2 December 2016 are not covered by section 11(1) & (3) until 29 November 2018.

Determination of compliance with section 11 (section 22)

The ABCC may issue a determination that an enterprise agreement meets the requirements of section 11.

The ABCC may issue preliminary advice on whether a proposed agreement would meet the requirements of section 11.

Letters of compliance and preliminary advice on draft agreements

In what circumstances will the ABCC issue letters of compliance and provide preliminary advice?

- The ABCC will issue Letters of Compliance for:
 - Enterprise agreements made on or after 2 December 2016 that meet Building Code 2016 requirements (an ABCC Determination);
 - Enterprise agreements made before 2 December 2016 (this letter of compliance is only valid until 28 November 2018); and
 - Modern Award arrangements or other lawful workplace arrangements.
- The ABCC can also provide preliminary advice on whether proposed agreements meet the requirements of the Building Code 2016.
- The ABCC website contains a form through which you can apply for a letter of compliance or preliminary advice on a draft agreement.

Self declaration form – interim measure to demonstrate eligibility to tender

[Self-declaration form](#) available on the website for use while waiting for a letter of compliance.

- ONLY for use by contractors who ARE NOT covered by an enterprise agreement made on or after 2 December 2016.
- Contractors with agreements made on or after 2 December 2016 may seek advice from the ABCC on whether their agreement meets the requirements of the Building Code 2016.

Note – the self-declaration form is for use on Commonwealth funded building work for which an expression of interest or tender was submitted by a contractor on or after 2 December 2016. The self-declaration form cannot be used after 28 November 2018.

Assessment of agreements for compliance with the Building Code 2013

Building Code 2013

There are no longer any circumstances under which you will need a letter of compliance with the Building Code 2013. Further information on the interaction of the two Building Codes will be added to the website as soon as possible.

Conduct requirements that remain similar to 2013 Code

- Compliance with laws
- Freedom of association
- Above-entitlements payments
- Freedom of association – detailed provisions
- Dispute settlement – required terms

New prohibited conduct provisions

- Right of entry – strict right of entry only
- Sham contracting – new requirements
- Collusive tendering practices
- Security of payment
- Disputed payments
- Engagement of non-citizens/non-residents

Security of payment & disputed payments

- Compliance with laws
- Timely payments
- Documented dispute settlement process
- Referral to adjudicator
- Compliance with determination
- Reporting of disputed/delayed payments to the ABCC
- No illegal or fraudulent phoenix activities for purpose of avoiding payments due
- No action with intent to coerce, undue influence or undue pressure a party to exercise or not exercise legal rights relating to security of payments

Industrial action (section 16)

Reporting obligations – no later than 24 hours

Must report actual or threatened industrial action:

- Cth funded building work – protected and unprotected
- Other building work – unprotected action

Take steps to prevent or bring an end to unprotected action taken by the code covered entity's employees (to the extent practicable)

Secondary boycott (section 16(4))

Reporting obligations – no later than 24 hours

Must report any request or demand by a union (direct or indirect) that the code covered entity engage in conduct that appears to be for the purposes of a **secondary boycott** within the meaning of the *Competition and Consumer Act*.

Breach of Building Code (section 17)

Reporting obligations – no later than 2 working days

Must notify ABCC of a breach or a suspected breach of the Building Code and advise the steps proposed to be taken to rectify the breach.

Rectification – notify of steps within 14 days

After initial notification, must notify the ABCC of the steps taken to rectify the breach.

Fitness for work – alcohol or other drugs (section 16A)

- Obligations essentially as per the Building Code 2013.
- All code covered entities, including subcontractors, must ensure there is an **approach to managing drugs and alcohol issues in the workplace** to help ensure that no person attending the site does so under the influence of alcohol or drugs listed in Schedule 4.
- A WRMP of a head contractor on a Cth funded building project must include a fitness for work policy that includes testing.
- Head contractor must not pass the cost of testing to subcontractors.

Consequences of breaching the Code (section 18)

- If satisfied of a code covered entity's failure to comply with the Building Code may refer the breach to the Minister for Employment, with a recommendation for sanction.
- Minister may issue a formal warning or impose an exclusion sanction.
- If the non-compliance is with WHS laws or the Fair Work Act re underpayment of wages or entitlements, the Minister must impose an exclusion sanction unless satisfied not appropriate.

Questions?

www.abcc.gov.au

Hotline: 1800 003 338

Email: enquiry@abcc.gov.au

ABCC and the Building Code 2016

Perth, 17 February 2017

Cathy Cato, National Manager Building Code

Overview

- Role of the ABCC – expanded jurisdiction
- Key components of Building Code 2016
- Application of Building Codes & key terms
- Tender requirements
- Enterprise Agreement content
- Prohibited conduct provisions
- Notification requirements
- Consequences of breaching the Code

Role of the ABCC

- **Purpose:** "...to ensure that building work is carried out **fairly, efficiently and productively**..."
- Two key areas of responsibility
 - Compliance with *Fair Work Act 2009* & new Act
 - Compliance with the Building Codes

Expanded Jurisdiction

The BCIP Act extends to or in relation to:

- (a) any resources platform in the exclusive economic zone or in the waters above the continental shelf; and
- (b) any ship, in the exclusive economic zone or in the waters above the continental shelf, that is travelling to or from (or both to and from) an Australian port.

Expanded definition Building Work

For civil penalties under the Act (but not the Code) the definition of building work includes: **s.6(1)(e) transporting or supplying goods, to be used in [building] work ... directly to building sites (including any resources platform) where that work is being or may be performed.**

Civil penalties

Compliance with the *Fair Work Act 2009*

- Industrial action, Right of entry, Coercion,
- Freedom of association, Adverse action
- Wages and entitlements, Sham contracting

Compliance with the new Act 2016

- Unlawful pickets
- Strike pay
- Coercion and discrimination
- Increased penalties under this Act

Building Code 2016: Key components

Requirements on all building work:

- Compliance with broad range of laws
- New and varied conduct requirements
- New notification requirements
- Take steps to prevent/end industrial action

Building Code 2016: Key components

Further requirements - Cth funded building work

- Eligibility requirements (section 23)
- Building material must comply with Australian standards
- Head contractor must provide requested information
- WRMP on certain projects
- Drug and alcohol testing on certain projects
- Require compliance and rectification by subcontractors

Who does the 2016 Code apply to?

- Builders who express interest in or tender for Commonwealth funded building work on or after 2 December 2016
- Covered by 2016 Code and required to apply it on all future projects (Commonwealth funded and private).
- Building Code 2013 continues to apply on building work tendered for prior 2 December 2016.

2016 Code projects

- Head contractor tendered for the Cth project on/after 2 December 2016
- Head contractor becomes a code covered entity and must comply with the 2016 Code on that project and all future projects
- Head contractor must require subcontractor compliance and use new model clauses for contractors
- 2013 requirements continue on current projects

Head contractor's "current 2013 Code projects"

- 2013 Code continues to apply on building work to which it applied as at 1 December 2016
- Both Codes can apply on the same project
- Subcontractors tendering from 2/12/16 must comply with 2016 Code
- Only ABCC monitors subcontractor compliance on these projects

Tender requirements on head contractor's 2013 Cth projects

- Subcontractor compliance is not required to be monitored by head contractor.
- Head contractor runs project like a private project with regard to subcontractor compliance.
- There are no longer any circumstances under which you will need a letter of compliance with the Building Code 2013.

Application of Code – key terms

Code covered entity

Description for a contractor that is subject to the Building Code 2016

Obligations on code covered entities

Sections 7 to 17

Funding entity obligations in Part 5

Application of Code – key terms

WRMP A workplace relations management plan developed in accordance with this Code

- Only required on Commonwealth funded building work for which Cth contribution is:
 - at least \$5 million and represents at least 50% total construction project value; or
 - at least \$10 million.

Tender requirements on head contractor's "2016 projects"

On Commonwealth funded building work:

- require compliance with Code
- ensure section 23 eligibility requirements met:
 - not subject to exclusion sanction
 - meets requirements of section 11 re content of enterprise agreement made since 2 Dec 2016

On-site Conduct requirements

- Above-entitlements payments
- Freedom of association – detailed provisions
- Right of entry – strict right of entry only

New prohibited conduct provisions

- Sham contracting
- Collusive tendering practices
- Security of payment & disputed payments
- Engagement of non-citizens/non-residents

Security of payment & disputed payments

- Compliance with laws
- Timely payment where due and payable
- Documented dispute settlement process
- Referral to adjudicator
- Compliance with determination
- Reporting of disputed/delayed payments to the ABCC
- No illegal or fraudulent phoenix activities for purpose of avoiding payments due
- No action with intent to coerce, unduly influence or unduly pressure a party to exercise or not exercise legal rights relating to security of payments

Engagement of non-citizens and non-residents

- Advertise in Australia first
- Target advertisement to:
 - inform suitably qualified citizens/permanent residents
 - require appropriate skills/experience
- Demonstrate no citizens/permanent residents suitable

Notify - Industrial action

Reporting obligations – no later than 24 hours
Must report actual or threatened industrial action:
-Cth funded building work – protected and unprotected
-Other building work – unprotected action
Take steps to prevent or bring an end to unprotected action taken by the code covered entity's employees (to the extent practicable)

Notify - Secondary boycott

Reporting obligations – no later than 24 hours
Must report any request or demand by a union (direct or indirect) that the code covered entity engage in conduct that appears to be for the purposes of a **secondary boycott** within the meaning of the *Competition and Consumer Act*.

Notify - Breach of Building Code

Reporting obligations – no later than 2 working days
Must notify ABCC of a breach or a suspected breach of the Building Code and advise the steps proposed to be taken to rectify the breach.
Rectification – notify of steps within 14 days
After initial notification, must notify the ABCC of the steps taken to rectify the breach.

Fitness for work – alcohol or other drugs (section 16A)

- Obligations essentially as per the Building Code 2013.
- All code covered entities, including subcontractors, must ensure there is an **approach to managing drugs and alcohol issues in the workplace** to help ensure that no person attending the site does so under the influence of alcohol or drugs listed in Schedule 4.
- A WRMP of a head contractor on a Cth funded building project must include a fitness for work policy that includes testing.
- Head contractor must not pass the cost of testing to subcontractors.

Consequences of breaching the Code (section 18)

- If satisfied of a code covered entity's failure to comply with the Building Code may refer the breach to the Minister for Employment, with a recommendation for sanction.
- Minister may issue a formal warning or impose an exclusion sanction.
- If the non-compliance is with WHS laws or the Fair Work Act re underpayment of wages or entitlements, the Minister must impose an exclusion sanction unless satisfied not appropriate.

Questions?

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Building Code 2016 Information for Funding Entities

Cathy Cato
National Manager Building Code

What is the Building Code 2016?

- Australian Building and Construction Commission (ABCC) re-established on 2 December 2016 by the *Building and Construction Industry (Improving Productivity) Act 2016*.
- The *Code for the Tendering and Performance of Building Work 2016* was also issued as a legislative instrument.
- Broader requirements than the Building Code 2013.

Purpose of the Act and Code

- The Act – to ensure building work is carried out in a fair, harmonious and productive manner.
- The Code – sets the Australian Governments expected workplace relations standards for Commonwealth funded building work.
- Covers matters such as:
 - Coercion
 - Right of entry
 - Sham contracting
 - Security of payment
 - Freedom of Association
 - Dispute settlement
 - Collusive tendering practices
 - Engagement of non citizens/residents

How the Code applies

- Applies to funding entities (non-corp Cth entities and corp Cth entities only when directed by Minister of Finance)
- Cth funded building work seeking expressions of interest/tender on or after 2 December 2016
- Contractors become code covered entities if tendering after 2/12/16 - transition rules apply between 2013 and 2016 Codes

Key funding entity responsibilities

- Must ensure EOIs/tenders consistent with the Code
- Must ensure eligibility requirements met
- Must require respondents to provide certain information
- Must ensure a Workplace Relations Management Plan (WRMP) is provided and approved by ABCC on certain projects
- Must notify the ABCC about issues such as tenders, contract awards and Code breaches

How?

Model clauses for tenders and contracts:

- Designed to request all information a funding entity must require from a contractor
- Ensures the contractor declares compliance to contractual requirements imposed on a funding entity
- Available for directly Commonwealth funded building work, being developed for indirectly funded.

How?

Eligibility requirements:

- Use Declaration of Compliance including Attachment A Mandatory Information:
 - Prompts for Letter of Compliance to be submitted
- Check ABCC website for exclusion sanctions:
 - precluded from contracting with sanctioned builder

How?

Workplace Relations Management Plans (WRMPs):

- Use Model Clauses
- Provide ABCC with WRMP of each shortlisted tenderer
 - (use WRMPassessments@abcc.gov.au)
- Not award the contract to a respondent unless/until that respondent's WRMP has been approved by the ABCC.

How?

Funding Entities Notification Requirements:

- Notify ABCC when request for EOI/tender is released
- Notify ABCC when a tender process is completed and contract awarded to undertake Commonwealth-funded building work
- Notify ABCC of allegations of Code breaches no later than 7 days after the funding entity is aware of the alleged breach
- WHY? The more information provided to ABCC, the more we can assist in ensuring Code obligations of all parties are fulfilled

Indirectly funded building work

- Working through implementation requirements for indirectly Commonwealth funded building work
- Model Clauses will be available
- General indication in funding agreements/grants of Code application – more information to follow

Impact on contractors

- Funding entities seek further information at tender on a range of matters
- Contractors to apply expanded requirements through contracts with subcontractors
- Contractors with enterprise agreements (EA) made after 24 April 2014 may not be eligible to undertake building work if EA is not compliant with the Code
- Strengthens provisions to assist contractors to ensure lawful workplace relations onsite

Contractor Compliance

- ABCC responsible for monitoring compliance of contractors
- Sanctions: ABC Commissioner makes recommendation directly to Minister for Employment – no Code Monitoring Group

Funding entity compliance

- ABCC provides tools, education and support to assist agencies.
- Where funding entity or an official is not complying with, or has not complied with the Code, ABC Commissioner may refer the matter or make a complaint to the Secretary, Department of Finance for investigation or further action.

Recent amendments to BCIIP Act & Code

- Shorter transition period for companies to have a Code compliant enterprise agreement
- Ensure a level playing field for Commonwealth funded building work
- Funding Entities continue to use Model Clauses but check letters of compliance with ABCC for validity

Questions

Manager Government Code Compliance:

Phone:

[REDACTED]

Email:

[REDACTED]

Website:

www.abcc.gov.au

Australian Government
Australian Building and
Construction Commission

Introduction to the Building Code 2016

Cathy Cato
National Manager Building Code

7 March 2017

Australian Government
Australian Building and
Construction Commission

Overview

- Key components
- Key terms
- Application of Building Codes
- Model Clauses
- Prohibited enterprise agreement content
- Conduct requirements
- Reporting requirements
- Consequences of breaching the Code

Australian Government
Australian Building and
Construction Commission

Building Code 2016: Key components

Requirements on all building work:

- Compliance with broad range of laws
- New and varied conduct requirements
- New notification requirements
- Take steps to prevent/end industrial action

Australian Government
Australian Building and
Construction Commission

Building Code 2016: Key components

Further requirements on Cth funded building work

- Eligibility requirements (section 23):
- Must only use products that comply with Australian standards
- Head contractor must provide requested information
- WRMP on certain projects
- Drug and alcohol testing on certain projects
- Require compliance and rectification by subcontractors

Australian Government
Australian Building and
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Application of Code – key terms

Code covered entity
Description for a contractor that is subject to the Building Code 2016

Obligations on code covered entities
Sections 7 to 17

Funding entity obligations in Part 5

Australian Government
Australian Building and
Construction Commission

Application of Code – key terms

WRMP A workplace relations management plan developed in accordance with this Code

- Only required on Commonwealth funded building work for which Cth contribution is:
 - at least \$5 million and represents at least 50% total construction project value; or
 - at least \$10 million.

Dates of Application of Building Codes

Building Code 2013

Building Code 2013 continues to operate on building work tendered for prior 2 December 2016.

Building Code 2016

Building Code 2016 applies to contractors who submit an EOI or tender for Commonwealth funded building work on or after 2 December 2016.

Application of Building Code 2016

When 2016 Code applies to Head Contractor on Cth project:

- Head contractor tendered for the project post 2 December 2016
- Head contractor becomes a code covered entity and must comply with the 2016 Code on that project and all future projects
- Head contractor must require subcontractor compliance and use new model clauses for contractors

When does the 2013 Code continue to apply?

- On head contractors' building work to which the 2013 Code applied as at 1 December 2016
- That is - requirements on existing projects don't change once you bid for a Cth project post 2/12/16 and become a code covered entity

Application of Building Code 2013/2016

On Cth projects where 2013 Code applies to Head Contractor:

- Subcontractors tendering post 2 December 2016 become subject to 2016 Code on that project and future projects (code covered entities)
- Subcontractor compliance no longer required by head contractor.
- ABCC monitors compliance of code covered entities on that project, including their enterprise agreement compliance (section 11)
- Head contractor requirements same as a private project with respect to subcontractor compliance.

Model clauses

For 2013 Head Contractor Project:

- Head Contractor (HC) engaging subcontractor (SC) - provide info statement and do not request a Letter of Compliance
- SC covered by 2013 Building Code on the project - same process as HC
- Code Covered SC engaging sub-SC – use Model Clauses Type C and request Letter of Compliance

For 2016 Head Contractor Project

- HC engaging SC - use Model Clauses Type B, request Letter of Compliance
- SC engaging sub-SC – use Model Clauses Type B, request Letter of Compliance

Contractor responsibilities during tender process for 2016 Code project

On Commonwealth funded building work:

- require compliance with Code
- ensure section 23 eligibility requirements met:
 - not subject to exclusion sanction
 - meets requirements of section 11 re content of enterprise agreement

Prohibited agreement content

To tender for or be awarded Commonwealth funded building work, enterprise agreement must not contain prohibited content – see section 11.

Exceptions include:

- Agreements made pre 24 April 2014
- Transition arrangements until 1 September 2017 for agreements made pre 2 December:
 - can tender with non-compliant agreement
 - can be awarded contract only if agreement not for work

Agreements made since 2 December 2016 must be compliant

In coming days, the ABCC will introduce a two-step process and detailed guidance material to enable building industry participants to undertake a preliminary review of their enterprise agreement before submitting it to the ABCC for consideration.

The ABCC website contains a form through which you can apply for a letter of compliance or preliminary advice on a draft agreement.

Determination of compliance

The ABCC may issue a determination that an enterprise agreement meets the requirements of section 11.

The ABCC may issue preliminary advice on whether a proposed agreement would meet the requirements of section 11.

Assessment of agreements for compliance with the Building Code 2013?

There are no longer any circumstances under which you will need a letter of compliance with the Building Code 2013.

New contractor responsibilities on site

On all building work:

As far as reasonably practicable, ensure subcontractors take action to remedy non-compliant behaviour.

On Cth funded building work:

Ensure subcontractors comply with the WRMP if it applies to the building work.

Conduct requirements similar to 2013 Code

On all building work:

- Compliance with laws
- Freedom of association
- Above-entitlements payments
- Freedom of association – detailed provisions
- Dispute settlement – required terms

Fitness for work – alcohol or other drugs

Obligations essentially as per the Building Code 2013

- An approach to managing drugs and alcohol issues in the workplace
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On all building work:

- Right of entry – strict right of entry only
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- Collusive tendering practices
- Security of payment & disputed payments
- Engagement of non-citizens/non-residents

Security of payment

- Compliance with laws
- Timely payments
- Documented dispute settlement process
 - Referral to adjudicator
 - Compliance with determination
- Reporting of disputed/delayed payments to the ABCC
- No illegal or fraudulent phoenix activities
- No action with intent to coerce, unduly influence or unduly pressure a party to exercise or not exercise legal rights relating to security of payments

Must report: Industrial action

Reporting obligations – no later than 24 hours

Must report actual or threatened industrial action:

- Cth funded building work – protected and unprotected
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Take steps to prevent or bring an end to unprotected action taken by the code covered entity's employees (to the extent practicable)

Must report: Secondary boycott

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On all building work, must report any request or demand by a union (direct or indirect) that the code covered entity engage in conduct that appears to be for the purposes of a **secondary boycott** within the meaning of the *Competition and Consumer Act*.

Must report - Breach of Building Code

Reporting obligations – no later than 2 working days

Must notify ABCC of a breach or a suspected breach of the Building Code and advise the steps proposed to be taken to rectify the breach.

Rectification – notify of steps within 14 days

After initial notification, must notify the ABCC of the steps taken to rectify the breach.

Consequences of breaching the Code

- ABC Commissioner may refer a breach to the Minister for Employment, with a recommendation for sanction.
- Minister may issue a formal warning or impose an exclusion sanction.
- If the non-compliance is with WHS laws or the Fair Work Act re underpayment of wages or entitlements, the Minister must impose an exclusion sanction unless satisfied not appropriate.



Questions?

Introduction to the Building Code 2016

Cathy Cato
National Manager Building Code

7 March 2017

Overview

- Key components
- Key terms
- Application of Building Codes
- Model Clauses
- Prohibited enterprise agreement content
- Conduct requirements
- Reporting requirements
- Consequences of breaching the Code

Building Code 2016: Key components

Requirements on all building work:

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- New and varied conduct requirements
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Building Code 2016: Key components

Further requirements on Cth funded building work

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Application of Code – key terms

Code covered entity

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When does the 2013 Code continue to apply?

- On head contractors' building work to which the 2013 Code applied as at 1 December 2016
- That is - requirements on existing projects don't change once you bid for a Cth project post 2/12/16 and become a code covered entity

Application of Building Code 2013/2016

On Cth projects where 2013 Code applies to Head Contractor:

- Subcontractors tendering post 2 December 2016 become subject to 2016 Code on that project and future projects (code covered entities)
- Subcontractor compliance no longer required by head contractor.
- ABCC monitors compliance of code covered entities on that project, including their enterprise agreement compliance (section 11)
- Head contractor requirements same as a private project with respect to subcontractor compliance.

Model clauses

For 2013 Head Contractor Project:

- Head Contractor (HC) engaging subcontractor (SC) - provide info statement and do not request a Letter of Compliance
- SC covered by 2013 Building Code on the project - same process as HC
- Code Covered SC engaging sub-SC – use Model Clauses Type C and request Letter of Compliance

For 2016 Head Contractor Project

- HC engaging SC - use Model Clauses Type B, request Letter of Compliance
- SC engaging sub-SC – use Model Clauses Type B, request Letter of Compliance

Contractor responsibilities during tender process for 2016 Code project

On Commonwealth funded building work:

- require compliance with Code
- ensure section 23 eligibility requirements met:
 - not subject to exclusion sanction
 - meets requirements of section 11 re content of enterprise agreement

Prohibited agreement content

To tender for or be awarded Commonwealth funded building work, enterprise agreement must not contain prohibited content – see section 11.

Exceptions include:

- Agreements made pre 24 April 2014
- Transition arrangements until 1 September 2017 for agreements made pre 2 December:
 - can tender with non-compliant agreement
 - can be awarded contract only if agreement not for work

Agreements made since 2 December 2016 must be compliant

In coming days, the ABCC will introduce a two-step process and detailed guidance material to enable building industry participants to undertake a preliminary review of their enterprise agreement before submitting it to the ABCC for consideration.

The ABCC website contains a form through which you can apply for a letter of compliance or preliminary advice on a draft agreement.

Determination of compliance

The ABCC may issue a determination that an enterprise agreement meets the requirements of section 11.

The ABCC may issue preliminary advice on whether a proposed agreement would meet the requirements of section 11.

Assessment of agreements for compliance with the Building Code 2013?

There are no longer any circumstances under which you will need a letter of compliance with the Building Code 2013.

New contractor responsibilities on site

On all building work:

As far as reasonably practicable, ensure subcontractors take action to remedy non-compliant behaviour.

On Cth funded building work:

Ensure subcontractors comply with the WRMP if it applies to the building work.

Conduct requirements similar to 2013 Code

On all building work:

- Compliance with laws
- Freedom of association
- Above-entitlements payments
- Freedom of association – detailed provisions
- Dispute settlement – required terms

Fitness for work – alcohol or other drugs

Obligations essentially as per the Building Code 2013

- An approach to managing drugs and alcohol issues in the workplace
- A WRMP of a head contractor on a Cth funded building project must include a fitness for work policy that includes testing.
- Head contractor must not pass the cost of testing to subcontractors.

New prohibited conduct provisions

On all building work:

- Right of entry – strict right of entry only
- Sham contracting – new requirements
- Collusive tendering practices
- Security of payment & disputed payments
- Engagement of non-citizens/non-residents

Security of payment

- Compliance with laws
- Timely payments
- Documented dispute settlement process
 - Referral to adjudicator
 - Compliance with determination
- Reporting of disputed/delayed payments to the ABCC
- No illegal or fraudulent phoenix activities
- No action with intent to coerce, unduly influence or unduly pressure a party to exercise or not exercise legal rights relating to security of payments

Must report: Industrial action

Reporting obligations – no later than 24 hours

Must report actual or threatened industrial action:

- Cth funded building work – protected and unprotected
- Other building work – unprotected action

Take steps to prevent or bring an end to unprotected action taken by the code covered entity's employees (to the extent practicable)

Must report: Secondary boycott

Reporting obligations – no later than 24 hours

On all building work, must report any request or demand by a union (direct or indirect) that the code covered entity engage in conduct that appears to be for the purposes of a **secondary boycott** within the meaning of the *Competition and Consumer Act*.

Must report - Breach of Building Code

Reporting obligations – no later than 2 working days

Must notify ABCC of a breach or a suspected breach of the Building Code and advise the steps proposed to be taken to rectify the breach.

Rectification – notify of steps within 14 days

After initial notification, must notify the ABCC of the steps taken to rectify the breach.

Consequences of breaching the Code

- ABC Commissioner may refer a breach to the Minister for Employment, with a recommendation for sanction.
- Minister may issue a formal warning or impose an exclusion sanction.
- If the non-compliance is with WHS laws or the Fair Work Act re underpayment of wages or entitlements, the Minister must impose an exclusion sanction unless satisfied not appropriate.

Questions?

Australian Government
Australian Building and Construction Commission

ABCC & the Building Code 2016

14 March 2017

Cathy Cato – National Manager Building Code

Australian Government
Australian Building and Construction Commission


Overview

- Role of the ABCC – what’s new under BCIP Act?
- Building Code 2016: What’s new?
- Fitness for Work Policy
- Enterprise Agreements
- How to best assist the ABCC
- General responsibilities.

Australian Government
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- Purpose: “To provide an improved workplace relations framework for building work to ensure that building work is carried out fairly, efficiently and productively...”
- Two key areas of responsibility
 - Compliance with the *Fair Work Act 2009* & the *Building and Construction Industry (Improving Productivity) Act*
 - Compliance with the Building Codes



Australian Government
Australian Building and Construction Commission

Regulator of workplace issues for all building industry participants



Australian Government
Australian Building and Construction Commission

Building Code 2013 & 2016

Compliance with the Building Code 2013

- Building Code 2013 continues to operate on building work tendered for prior 2 December 2016

Compliance with the Building Code 2016

- Building Code 2016 applies to contractors’ future projects once they submit an EOI or tender for Commonwealth funded building work on or after 2 December 2016.

Australian Government
Australian Building and Construction Commission

Building Code 2016: What’s new during the tender process?

On Commonwealth funded building work

- Eligibility requirements – no sanctions/prohibited clauses in agreements
- Must only use products that comply with Australian standards
- Tender process requests further information
- Workplace relations management plan (WRMP) on most projects
- Drug and alcohol testing on most projects
- Require compliance and rectification by subcontractors

Building Code 2016: What's new on site?

Changes to some conduct provisions

- Above-entitlements payments
- Freedom of association – detailed provisions
- Right of entry – strict right of entry only
- Compliance with broader range of laws

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New requirements on all building work:

- No sham contracting or collusive tendering practices
- Specific security of payment requirements
- Labour market testing requirements
- New notification requirements
- Take steps to end industrial action

Content of agreements and prohibited conduct and practices

Section 11 prohibits certain clauses in enterprise agreements & equivalent practices.

Types of clauses include those that:

- impose limits on right to manage business
- discriminate against certain persons, classes of employees or subcontractors
- inconsistent with freedom of association

Enterprise Agreements

The ABCC may issue:

- a determination that an enterprise agreement meets section 11 requirements (letter of compliance).
- preliminary advice on whether a proposed agreement would meet section 11 requirements

The ABCC has published:

- guidance material containing advice on the compliance of over 500 clauses

Ongoing Exemptions from section 11

Enterprise agreements made prior 15/4/14 (and not varied)*

- EAs made before 2/12/16 that only apply to building work relating to an EOI/tender lodged before 2/12/16

Main transition exemption from section 11

Transition period until 31 August 2017

- Enterprise agreements made prior 2/12/16
 - Tender? YES
 - Contract award? NO
- Further exemption may apply

Further transition exemptions from section 11

Enterprise agreements made prior 2/12/16

- If enterprise agreement does not apply to the building work subject of the tender:
 - Yes - can tender and be awarded contract

Further transition exemptions from section 11

Enterprise agreements made prior 2/12/16

- Tendered between 2/12/16 & 17/2/16:
 - Yes - can tender and be awarded contract until 29 November 2018 even if EA not compliant

How can we best assist the ABCC?

- Understand your reporting obligations – no later than 24 hours for:
 - actual or threatened industrial action on:
 - Cth funded building work – protected and unprotected
 - Other building work – unprotected action
- Take steps to bring an end to unprotected action taken by the code covered entity's employees (to the extent practicable)



How can we best assist the ABCC?

Secondary boycott

- Reporting obligations – no later than 24 hours
- Must report any request or demand by a union (direct or indirect) that the code covered entity engage in conduct that appears to be for the purposes of a secondary boycott within the meaning of the *Competition and Consumer Act*.

What if we identify a Breach of Building Code?

Reporting obligations – no later than 2 working days
Must notify ABCC of a breach or a suspected breach of the Building Code and advise the steps proposed to be taken to rectify the breach.

Rectification – notify of steps within 14 days
After initial notification, must notify the ABCC of the steps taken to rectify the breach.

Consequences of breaching the Code

Refer the breach to the Minister for Employment, with a recommendation for sanction.

Minister may issue a formal warning or impose an exclusion sanction.

Consequences more serious for breach of WHS laws or Fair Work Act re wages or entitlements.

General responsibilities: What do we need to do?

Comply with the Building Code relevant to your project

Comply with any WRMP that applies on Commonwealth funded building work

Respond to requests for Information from the ABCC relating to the Code

Understand reporting obligations

For further information

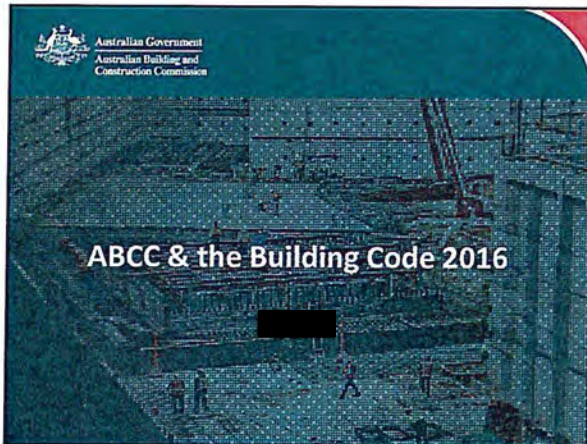
Website: www.abcc.gov.au

Email: codeenquiries@abcc.gov.au

agreementquestions@abcc.gov.au

Hotline: 1800 003 338

Utilise the scenario tables to understand how the Building Code 2016 applies to each of your projects



Australian Government
Australian Building and Construction Commission


Overview

- Role of the ABCC
- BCIIIP Act: What's new?
- Building Codes: What's new?
- Enterprise Agreements
- How to best assist the ABCC
- General responsibilities

Australian Government
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- Established under the *Building and Construction Industry (Improving Productivity) Act*
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Australian Government
Australian Building and Construction Commission

Regulator of workplace issues for all building industry participants

Australian Government
Australian Building and Construction Commission

BCIIIP Act

- Building Work
- Settled Matters - No restriction
- Unlawful Action
- Coercion and Discrimination
- Wages & Entitlements and Sham Contracting
- Coercive powers
- Hindering or obstructing ABC Inspectors
- Compliance notice
- Increased penalties

Australian Government
Australian Building and Construction Commission

Building Code 2013 & 2016

Compliance with the Building Code 2013

- Building Code 2013 continues to operate on building work tendered for prior 2 December 2016

Compliance with the Building Code 2016

- Building Code 2016 applies to contractors' future projects once they submit an EOI or tender for Commonwealth funded building work on or after 2 December 2016.

Building Code 2016: What's new during the tender process?

On Commonwealth funded building work

- Eligibility requirements – no sanctions/prohibited clauses in agreements
- Must only use products that comply with Australian standards
- Tender process requests further information
- Workplace relations management plan (WRMP) on most projects
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- Require compliance and rectification by subcontractors

Building Code 2016: What's new on site?

New requirements on all building work:

- No sham contracting or collusive tendering practices
- Specific security of payment requirements
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- Take steps to end industrial action

Building Code 2016: What's new on site?

Changes to some conduct provisions

- Above-entitlements payments
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- Right of entry – strict right of entry only
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Section 11 prohibits certain clauses in enterprise agreements & equivalent practices.

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Enterprise agreements made prior 25/4/14 (and not varied)*

- Plus EAs made before 2/12/16 that only apply to building work relating to an EOI/tender lodged before 2/12/16

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- Enterprise agreements made prior 2/12/16
 - Tender? YES
 - Contract award? NO
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Further transition exemptions from section 11

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 - Yes - can tender and be awarded contract

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How can we best assist the ABCC?

- Understand your reporting obligations – no later than 24 hours for:
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 - Cth funded building work – protected and unprotected
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- Take steps to bring an end to unprotected action taken by the code covered entity's employees (to the extent practicable)



How can we best assist the ABCC?

Secondary boycott

- Reporting obligations – no later than 24 hours
- Must report any request or demand by a union (direct or indirect) that the code covered entity engage in conduct that appears to be for the purposes of a secondary boycott within the meaning of the *Competition and Consumer Act*.

What if we identify a Breach of Building Code?

Reporting obligations – no later than 2 working days
Must notify ABCC of a breach or a suspected breach of the Building Code and advise the steps proposed to be taken to rectify the breach.

Rectification – notify of steps within 14 days

After initial notification, must notify the ABCC of the steps taken to rectify the breach.



Fitness for work – alcohol or other drugs

- Obligations essentially as per the Building Code 2013.
- All code covered entities, including subcontractors, must ensure there is an **approach to managing drugs and alcohol issues in the workplace** to help ensure that no person attending the site does so under the influence of alcohol or drugs listed in Schedule 4.
- A WRMP of a head contractor on a Cth funded building project must include a fitness for work policy that includes testing.
- Head contractor must not pass the cost of testing to subcontractors.

Consequences of breaching the Code

Refer the breach to the Minister for Employment,
with a recommendation for sanction.

Minister may issue a formal warning or impose an
exclusion sanction.

Consequences more serious for breach of WHS laws
or Fair Work Act re wages or entitlements.

For further information

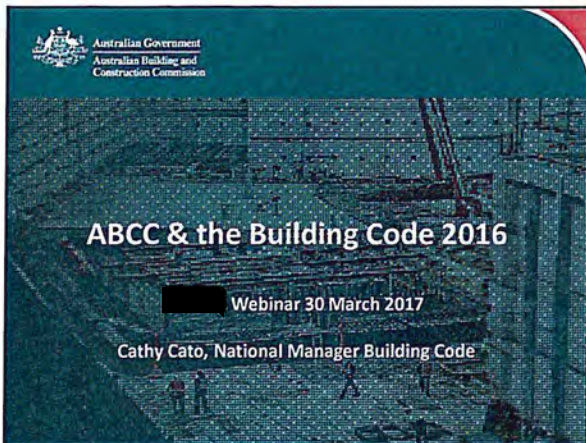
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Australian Government
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Overview

- Role of the ABCC
- Key components of Building Code 2016
- Application of Building Code 2013 and 2016
- What's new during the Cth tender process?
- What's new on site?
- Notification requirements
- Consequences of breaching the Code

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- Established under the *Building and Construction Industry (Improving Productivity) Act*
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Regulator of workplace issues for all building industry participants

Australian Government
Australian Building and Construction Commission

Civil penalties pursued by ABCC

Compliance with the *Fair Work Act 2009*

- Industrial action, Right of entry, Coercion,
- Freedom of association, Adverse action
- Wages and entitlements, Sham contracting

Compliance with the new Act 2016

- Unlawful pickets
- Strike pay
- Coercion and discrimination
- Increased penalties under this Act

Australian Government
Australian Building and Construction Commission

Expanded Jurisdiction

The BCIP Act extends to or in relation to:

- (a) any resources platform in the exclusive economic zone or in the waters above the continental shelf; and
- (b) any ship, in the exclusive economic zone or in the waters above the continental shelf, that is travelling to or from (or both to and from) an Australian port.

Expanded definition Building Work

For civil penalties under the Act (but not the Code) the definition of building work includes:
s.6(1)(e) transporting or supplying goods, to be used in [building] work ... directly to building sites (including any resources platform) where that work is being or may be performed.

Code for the Tendering and Performance of Building Work 2016

Building Code 2016: Key components

Requirements on all building work:

- Compliance with broad range of laws
- New and varied conduct requirements
- New notification requirements
- Take steps to end industrial action

Building Code 2016: Key components

Further requirements - Cth funded building work

- Eligibility requirements
- Building material must comply with Australian standards
- Head contractor must provide requested information
- WRMP on certain projects
- Drug and alcohol testing on certain projects
- Require compliance and rectification by subcontractors

Application of Code – key terms

Code covered entity

A contractor that is subject to the Building Code 2016

Obligations on code covered entities

Sections 7 to 17

Funding entity obligations in Part 5

Application of Code – key terms

WRMP A workplace relations management plan developed in accordance with this Code

- Only required on Commonwealth funded building work for which Cth contribution is:
 - at least \$5 million and represents at least 50% total construction project value; or
 - at least \$10 million.

Who does the 2016 Code apply to?

- Builders who express interest in or tender for Commonwealth funded building work on or after 2 December 2016
- Covered by 2016 Code and required to apply it on all future projects (Commonwealth funded and private).
- Building Code 2013 continues to apply on building work tendered for prior 2 December 2016.

“2013/16 Code” projects

- Both Codes can apply on the same project
- 2013 Code continues to apply on work to which it applied as at 1/12/16
- Subcontractors tendering from 2/12/16 must comply with 2016 Code
- Only ABCC monitors subcontractor compliance on these projects

“2013/2016 Code” projects: no tender requirements

- Head contractor does not seek code compliance from subcontractors.
- Head contractor runs project like a private project with regard to subcontractor compliance.
- There are no longer any circumstances under which you will need a letter of compliance with the Building Code 2013.

“2016 Code only” projects

- Head contractor tendered for the Cth project on/after 2 December 2016
- Must require subcontractor compliance and use new model clauses for contractors
- See table on website for applicable clauses

Building Code 2016: What’s new during the tender process?

On Commonwealth funded building work

- Eligibility requirements – no sanctions/prohibited clauses in agreements
- Must only use products that comply with Australian standards
- Tender process requests further information
- Workplace relations management plan (WRMP) on most projects
- Drug and alcohol testing on most projects
- Require compliance and rectification by subcontractors

Content of agreements and prohibited conduct and practices

Section 11 prohibits certain clauses in enterprise agreements & equivalent practices.

Types of clauses include those that:

- impose limits on right to manage business
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Enterprise Agreement advice

The ABCC may issue:

- a determination that an enterprise agreement meets section 11 requirements (letter of compliance).
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Building Code 2016: What's new on site?

Changes to some conduct provisions

- Above-entitlements payments
- Freedom of association – detailed provisions
- Right of entry – strict right of entry only
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New requirements on all building work:

- No sham contracting or collusive tendering practices
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Security of payment & disputed payments

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- Documented dispute settlement process
- Referral to adjudicator
- Compliance with determination
- Reporting of disputed/delayed payments to the ABCC
- No illegal or fraudulent phoenix activities for purpose of avoiding payments due
- No action with intent to coerce, unduly influence or unduly pressure a party to exercise or not exercise legal rights relating to security of payments

Engagement of non-citizens and non-residents

- Advertise in Australia first
- Target advertisement to:
 - inform suitably qualified citizens/permanent residents
 - require appropriate skills/experience
- Demonstrate no citizens/permanent residents suitable

Notification requirements under the Code

Notify - Industrial action

Reporting obligations – no later than 24 hours

Must report actual or threatened industrial action:

- Cth funded building work – protected and unprotected
- Other building work – unprotected action

Take steps to bring an end to unprotected action taken by the code covered entity's employees (to the extent practicable)

Notify - Secondary boycott

Reporting obligations – no later than 24 hours

Must report any request or demand by a union (direct or indirect) that the code covered entity engage in conduct that appears to be for the purposes of a **secondary boycott** within the meaning of the *Competition and Consumer Act*.

Notify - Breach of Building Code

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- If satisfied of a code covered entity's failure to comply with the Building Code may refer the breach to the Minister for Employment, with a recommendation for sanction.
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10 April 2017

Cathy Cato – National Manager Building Code

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BUILDING & CONSTRUCTION

- \$782.5 billion in current and planned construction projects



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Regulator of workplace issues for all building industry participants



Australian Government
Australian Building and Construction Commission

THE NEW REGIME

Building and Construction Industry (Improving Productivity) Act 2016

- Wages and entitlements / sham contracting
- Security of Payments Working Group
- Increased penalties
 - from \$10,800 to \$36,000 for individuals
 - from \$54,000 to \$180,000 for bodies corporate
- Laws to combat unlawful picketing
- Covers transport and offshore oil and gas projects
- Restored ability to start/continue legal action when parties settle
- Building Code 2016

ABCC STATE OF PLAY

58 proceedings currently before
the courts

- CFMEU in 54 cases
- 22 coercion matters



90% success rate in cases finalised since Oct 2013

107 CFMEU reps - 1,058 alleged breaches of law

5 x employers currently before the courts

Building Code 2013 & 2016

Compliance with the Building Code 2013

- Building Code 2013 continues to operate on building work tendered for prior 2 December 2016

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Recap of general responsibilities: What do we need to do?

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27 April 2017

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- Consequences of breaching the Code

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ABCC - Regulator of workplace issues for all building industry participants

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Building Code 2016: Key components

Requirements on all building work:

- Compliance with broad range of laws
- New and varied conduct requirements
- New notification requirements
- Take steps to prevent/end industrial action

Further new requirements on Cth building work

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Who does the 2016 Code apply to?

Builders who express interest in or tender for Commonwealth funded building work on or after 2 December 2016:

- Covered by 2016 Code and required to apply it on all future projects (Commonwealth funded and private).

Building Code 2013 continues to apply on building work tendered for prior 2 December 2016.

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“2013/2016 Code” projects: no tender requirements

- Head contractor does not seek code compliance from subcontractors.
- Head contractor runs project like a private project with regard to subcontractor compliance.
- There are no longer any circumstances under which you will need a letter of compliance with the Building Code 2013.

“2016 Code only” projects

- Head contractor tendered for the Cth project on/after 2 December 2016
- Must require subcontractor compliance and use new model clauses for contractors
- See table on website for applicable clauses

Building Code 2016: What’s new during the tender process?

On Commonwealth funded building work

- Eligibility requirements – no sanctions/prohibited clauses in agreements
- Must only use products that comply with Australian standards
- Tender process requests further information
- Workplace relations management plan (WRMP) on most projects
- Drug and alcohol testing on most projects
- Require compliance and rectification by subcontractors

Prohibited clauses

Section 11 prohibits certain clauses in enterprise agreements & equivalent practices.

Types of clauses include those that:

- impose limits on right to manage business
- discriminate against certain persons, classes of employees or subcontractors
- inconsistent with freedom of association

Enterprise Agreement advice

The ABCC may issue:

- a determination that an enterprise agreement meets section 11 requirements (letter of compliance).
- preliminary advice on whether a proposed agreement would meet section 11 requirements

The ABCC has published:

- guidance material containing advice on the compliance of over 500 clauses

Building Code 2016: What’s new on site?

Changes to some conduct provisions

- Above-entitlements payments
- Freedom of association – detailed provisions
- Right of entry – strict right of entry only
- Compliance with broader range of laws

Building Code 2016: What's new on site?

New requirements on all building work:

- No sham contracting or collusive tendering practices
- Specific security of payment requirements
- Labour market testing requirements
- New notification requirements
- Take steps to end industrial action

Notification requirements under the Code

Notify - Industrial action

Reporting obligations – no later than 24 hours

Must report actual or threatened industrial action:

- Cth funded building work – protected and unprotected
- Other building work – unprotected action

Take steps to prevent or bring an end to unprotected action taken by the code covered entity's employees (to the extent practicable)

Notify - Secondary boycott

Reporting obligations – no later than 24 hours

Must report any request or demand by a union (direct or indirect) that the code covered entity engage in conduct that appears to be for the purposes of a **secondary boycott** within the meaning of the *Competition and Consumer Act*.

Notify - Breach of Building Code

Reporting obligations – no later than 2 working days

Must notify ABCC of a breach or a suspected breach of the Building Code and advise the steps proposed to be taken to rectify the breach.

Rectification – notify of steps within 14 days

After initial notification, must notify the ABCC of the steps taken to rectify the breach.

Consequences of breaching the Code

- If satisfied of a code covered entity's failure to comply with the Building Code may refer the breach to the Minister for Employment, with a recommendation for sanction.
- Minister may issue a formal warning or impose an exclusion sanction.
- If the non-compliance is with WHS laws, and the ABC Commissioner has recommended a sanction, the Minister must impose an exclusion sanction unless satisfied not appropriate.

Questions?

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