

National Building Code 2014

- The Building Code 2014 is still a matter of government policy.
- FWBC has published information on its website consistent with the Department of Employment.
- FWBC is referring any questions re the Building Code 2014 and assessment of agreements to the Department of Employment.
- Since 1 March 2014, FWBC has conducted 16 voluntary Building Code Advisory Audits.

The Advisory Audits are designed to assist industry comply with obligations under the current 2013 Building Code, and help prepare industry for changes forecast in the proposed 2014 Code.

State Guidelines and the Building Code

- State or Territory Guidelines cannot override the requirements of the Building Code.
- FWBC has not sought advice on the interaction of the Building Code and codes administered by state jurisdictions at this time.
- FWBC has appointed a Liaison Officer with each State in an endeavour to have a co-ordinated approach to compliance activities.

TAKEN FROM [HTTP://WWW.FWBC.GOV.AU/BUILDING-CODE-2014](http://www.fwbc.gov.au/building-code-2014)

BUILDING CODE 2014

Fair and Lawful Building Sites Code 2014

On 17 April 2014, the Government published an advance release of the *Building and Construction Industry (Fair and Lawful Building Sites) Code 2014*.

The new code will come into effect when the Building and Construction Industry (Improving Productivity) Bill 2014 commences as an Act.

The new Fair and Lawful Building Sites Code sets out the standard of workplace relations conduct expected from contractors that want to perform work funded by the Commonwealth Government. Contractors will be required to meet the requirements of the code, to be eligible to work on Commonwealth-funded projects.

Contractors will be covered by the code, prospectively, from the first time they tender for Commonwealth-funded building work after the new code commences.

Once a contractor is covered by the Fair and Lawful Building Sites Code, it will be required to act consistently with it, including on future privately funded work.

Under the new code, enterprise agreements and other “procedures” will not be able to contain restrictive work practices or discriminatory provisions.

For example, clauses and practices that will not be permitted by the new code include:

- requiring contractors to employ a non-working shop steward or job delegate
- ‘one in, all in’ clauses where, if one person is offered overtime, all the other workers must be offered overtime whether or not there is enough work
- ‘jump up’ provisions that prevent engaging subcontractors unless they provide certain terms and conditions to workers despite their existing lawful industrial arrangements
- Requiring contractors to obtain the approval of a building association or representatives of a building association, over the number and types of employees that a contractor may engage on a project.

The new code will also require strict compliance with the right of entry laws by all industry participants.

When it commences, the provisions of the code will apply in respect of enterprise agreements made on or after **24 April 2014**. This means that from commencement of the code, contractors covered by agreements that were made on or after 24 April 2014 that do not meet the code’s content requirements for enterprise agreements, will not be eligible to tender for or be awarded Commonwealth-funded building work.

When the Code is formally released, a re-established Australian Building and Construction Commission may issue a determination that an enterprise agreement meets the requirements of section 11 of the Code. However, until the Code is formally released, the department will undertake interim assessments of draft agreements for compliance with the advance release of the Code. Entities that would like an interim assessment should email the draft agreement to building@employment.gov.au.

Further information regarding the new Fair and Lawful Building Sites Code 2014 can be obtained from the website of the Department of Employment at www.employment.gov.au/building or the FWBC Hotline on **1800 003 338**.

Article from Workforce - 27th May 2014

Unlegislated building code already taking effect

A principal contractor at the \$767m Maules Creek coal mine project in NSW has sought to remove union and contractor clauses from its construction greenfields agreement out of concern they will not be compliant with the Federal Government's proposed national building code.

The Govt's building code, attached to its Bill to re-establish the Australian Building and Construction Commission (ABCC), has not yet passed the Senate. However, the code's retrospective application to all agreements made after April 24 has created concerns among employers ([*WF19125*](#)).

At the Maules Creek site, one of the principal contractors Downer EDI reached agreement earlier this year with the Construction Forestry Mining Energy Union (CFMEU) , the Australian Workers Union, the Australian Manufacturing Workers Union and the Electrical Trades Union after four months of negotiations.

Downer EDI is understood to have about 20% of the work on the site, with its construction work due to start on June 5.

However, the parties have withheld from signing the agreement or submitting it to the Fair Work Commission until they know what will happen to the Govt's proposed code in the Senate or can ensure the agreement is compliant with it.

This morning, lawyers for Downer EDI held a meeting with the relevant unions where they singled out five 'non-compliant' issues in the agreement. They were clauses:

- allowing unions to conduct monthly communications with workers at the employer's invitation. The code prohibits such arrangements unless done through right of entry requests;
- allowing union delegates to have training;
- allowing unions to post on workplace noticeboards and have access to electronic communication;
- containing a dispute resolution clause that allows an alternative dispute mechanism via the NSW Industrial Relations Commission (IRC); and
- requiring contractors to be hired at the same rates and conditions as those of the greenfields agreement.

CFMEU will be code compliant for greenfields

CFMEU construction division Newcastle organiser Peter Harris told *WorkforceDaily* the lawyers had requested a response to these issues within the next few days. Harris said the unions had agreed to make the code compliant but would propose to rephrase some of the clauses.

In response to questions pointing to CFMEU secretary Dave Noonan's comments that the union would ignore the Govt's proposed code in enterprise negotiations ([*WF19125*](#)), Harris said that approach applied to the standard CFMEU enterprise agreements. However, he said the CFMEU had agreed that multi-union greenfields agreements would be code-compliant as long as the majority of unions involved did not object.

Harris warned that if the new Senate from July 1 rejected the gov't's proposed code, the CFMEU would seek to reinstate the clauses.

"We'll be saying to Downer EDI you jumped the gun and we want to reopen the agreement and have it as it was previously," he said.

Hunter Valley model 'uncertain' under code

On the non-compliant clauses, Harris said the main loss was the contractor clause, which had been agreed by both parties.

He noted Downer EDI's workforce tended to be 80% direct employment because the company did not want to risk being responsible for contractors that went insolvent. He said the clause would have ensured contractors would not pay inferior rates and would allow Downer EDI to hold them accountable.

Harris said the union would instead seek to negotiate with subcontractors individually.

Harris said the code also appeared to threaten the project's use of the successful 'Hunter Valley' model of arbitration led by NSW IRC Commissioner Rod Harrison.

Harris said it was "uncertain" whether the Govt's building code allowed for such alternative dispute mechanisms, despite the parties' preference for the Hunter model.

Parties had already sought NSW IRC involvement: Cmr Harrison

Last week at the NSW IR Society Conference, Cmr Harrison noted Unions NSW had sought the IRC's involvement in the project in March this year.

He said the relevant parties had held their first orientation conference on April 14, where they scheduled monthly communications, an agreement strategy, key milestones and a quick response mechanism for disputes.

He had noted the parties were holding off signing the agreement because of concerns about the proposed code.

"They will make the agreement compliant with the code but it's ironic that it's a piece of federal legislation with some retrospectivity in it that is one of the roadblocks in taking this project forward," he said.

The Maules Creek project is not funded by federal government money. However, Harris said that the Govt's proposed code operated so that it took into account all agreements made by a company tendering for govt work, whether or not those agreements related to govt-funded work.

Harris said that major engineering companies in northern NSW at other projects were also seeking to make their greenfields agreements compliant with the unlegislated code. He cited the upcoming agreement with Lend Lease for the federal govt-funded Oxley Highway upgrade.