

CATO,Cathy

From: HADGKISS,Nigel
Sent: Saturday, 28 November 2015 10:45 AM
To: KIBBLE,Steve
Cc: CATO,Cathy
Subject: Re: [REDACTED] [SEC=UNCLASSIFIED]

Hi Steve

Many thanks for your prompt attention.

Much appreciated,

Nigel

From: KIBBLE,Steve <Steve.Kibble@employment.gov.au>
Date: 27 November 2015 at 5:05:44 PM AEDT
To: [REDACTED]
Cc: HADGKISS,Nigel <Nigel.Hadgkiss@fwbc.gov.au>
Subject: FW: [REDACTED] [SEC=UNCLASSIFIED]

UNCLASSIFIED

[REDACTED]

Thank you for your email of today to Mr Nigel Hadgkiss, Director, Fair Work Building and Construction concerning the application of the proposed Fair and Lawful Building Sites Code 2014 (the 2014 Code) to companies with multiple enterprise agreements and related entities. Your email was forward to the Department of Employment as we provide information on the 2014 Code. This is not legal advice.

When it comes into operation, sub-section 6(1) of the 2014 Code provides that a building contractor or building industry participant becomes subject to the 2014 Code from the first time they submit an expression of interest or request for tender (howsoever described) for Commonwealth-funded building work on or after the 2014 Code commences.

Sub-section 6(2) of the 2014 Code will provide that related entities to an entity (the first entity) that becomes subject to the 2014 Code becomes a code covered entity subject to the 2014 Code at the same time as the first entity and sub-section 23(1)(a) of the 2014 Code will provide that a code covered entity and its related entities must meet the requirements of section 11 of the 2014 Code.

Section 11 of the 2014 Code will provide that a code covered entity (including its related entities) must not be covered by an enterprise agreement in respect of building work, that is made after 24 April 2014, which includes clauses that are inconsistent with section 11 of the 2014 Code. Where the code covered entity is covered by multiple enterprise agreements in respect of building work, including enterprise agreements operating in different jurisdictions, all such enterprise agreements must meet these requirements. Similarly, if a related entity of a code covered entity (the first entity) is covered by an enterprise agreement (that was made after 24 April 2014) that does not meet the requirements of section 11, then the first entity and any of its related entities would be ineligible to tender for or be contracted to perform Commonwealth-funded building work.

These requirements apply only in relation to related entities that carry out building work.

Thanks

Steve Kibble
Group Manager

Work Health and Safety Policy Group
Australian Government Department of Employment
Phone (02) 6240 9013 | Mobile [REDACTED]
Steve.Kibble@employment.gov.au

www.employment.gov.au

From: [REDACTED]
Date: 27 November 2015 at 9:20:56 AM AEDT
To: HADGKISS,Nigel <Nigel.Hadgkiss@fwbc.gov.au>
Subject: [REDACTED]

Nigel,

[REDACTED]

In our industry and all sectors I would think, each company has a separate EBA in each state with the respective CFMEU state entity. There is not much happening with regard to EBA's at present as we are all in holding pattern waiting for, hopefully, the 2014 code legislation passing the through the senate in Feb 2016. Not true for QLD.

Some of our companies are contemplating negotiating the CFMEU draft (non 2014 code compliant), particularly in QLD, and these same companies have 2014 code compliant agreements in NSW. We are advising them against agreeing to the QLD CFMEU draft , firstly because it is a particularly onerous document and also because it will not comply with the new legislation.

Assuming the 2014 code legislation is successfully passed through the senate in February 2016. **My question is, if one of these companies is tendering work in NSW where they have a 2014 code compliant agreement, does their QLD agreement which is not 2014 code compliant, exclude them from working on projects with federal funding? A number of our members have offices in four or five states, in short if they have three code compliant agreements and say one or two noncode compliant agreements in other states, will the noncompliant agreements rule them out of federally funded work in all states?**

Your earliest advice would be appreciated.

[REDACTED]
[REDACTED]
[REDACTED]



CATO, Cathy

From: CATO, Cathy
Sent: Friday, 27 November 2015 12:59 PM
To: KIBBLE, Steve
Subject: RE: [REDACTED] [SEC=UNCLASSIFIED]

UNCLASSIFIED

Thanks Steve

From: KIBBLE, Steve
Sent: Friday, 27 November 2015 12:45 PM
To: CATO, Cathy; [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED] [SEC=UNCLASSIFIED]

UNCLASSIFIED

Thanks Cathy

[REDACTED] for your urgent advice. Thanks

Steve Kibble
Group Manager

Work Health and Safety Policy Group
Australian Government Department of Employment
Phone (02) 6240 9013 | Mobile [REDACTED]
Steve.Kibble@employment.gov.au

www.employment.gov.au

From: CATO, Cathy
Sent: Friday, 27 November 2015 12:25 PM
To: KIBBLE, Steve
Cc: [REDACTED] HADGKISS, Nigel
Subject: FW: [REDACTED] [DLM=For-Official-Use-Only]

For Official Use Only

Dear Steve,

The [REDACTED] has emailed Nigel, as you'll see below, requesting urgent advice. As it relates to the Building Code 2014, we forward this question to you for the Department's advice. Given they are considering whether to appeal a FWC decision, we would be grateful if you could advise them urgently.

FWC considers that in the scenario described below, a company tendering for federal work in NSW, which has a compliant agreement to cover NSW, would be excluded from tendering due to their QLD agreement which is not 2014 code compliant.

We have formed this conclusion based on section 23 which states that to be eligible to tender for Commonwealth funded building work a code covered entity must meet the requirements of section 11 of the Code. Section 11 then states that a code covered entity must not be covered by an enterprise agreement which includes clauses x, y, z. As the company tendering in NSW is covered by an enterprise agreement in Queensland that contains such clauses, it rules out the company from tendering.

Kind regards
Cathy

Cathy Cato General Manager Building Code
Fair Work Building & Construction

Tel (03) 8509 3035 Mob [REDACTED]
PO Box 9927, Melbourne, VIC 3134

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From: [REDACTED]
Date: 27 November 2015 at 9:20:56 AM AEDT
To: HADGKISS,Nigel <Nigel.Hadgkiss@fwbc.gov.au>
Subject: [REDACTED]

Nigel,

[REDACTED]

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Your earliest advice would be appreciated.

[REDACTED]

