



National Code Q & A

The National Code sets minimum standards that businesses must meet to be eligible for certain Australian Government building and construction work.

The National Code Implementation Guidelines provide supporting detail on compliance requirements.

THE 2009 NATIONAL CODE IMPLEMENTATION GUIDELINES

The August 2009 version of the Implementation Guidelines for the National Code of Practice for the Construction Industry (Guidelines) apply to all projects that were the subject of an expression of interest or tender let for the first time on or after 1 August 2009. The relevant previous version of the Guidelines continues to apply to earlier projects for the life of those projects.

On 6 October 2009, the Hon. Julia Gillard MP issued a policy decision regarding the assessment of *Fair Work Act 2009* (FW Act) agreements. Concerns have been raised within the construction industry that, when negotiating agreements under the FW Act, some proposed provisions may not be compliant with earlier versions of the Guidelines (most relevantly the 2006 Guidelines).

The questions and answers set out below will help to inform those with a code compliance obligation of these arrangements.

QUESTIONS AND ANSWERS

What projects do the August 2009 Guidelines apply to?

The Guidelines apply to all projects where an expression of interest or tender was called for the first time on or after 1 August 2009.

Do the 2009 Guidelines revoke previous versions of the Guidelines?

No.

When will a specific version of the Guidelines cease to apply?

The Guidelines that apply at the commencement of the project will continue to apply for the life of the project. For example, if the 2006 Guidelines apply to a project they will apply for the life of the project.

Will the ABCC continue to monitor against the 2006 Guidelines?

Yes.

Will the ABCC be assessing agreements or provisions in agreements?

No. DEEWR, however, will continue to assess agreements for National Code compliance.

Who does the Minister's policy decision issued on 6 October 2009 regarding the assessment of FW Act agreements apply to?

Only parties who make new agreements under the FW Act will be affected. Any approved FW Act agreement will be deemed compliant with all versions of the Guidelines. In addition, your on-site practices must be consistent with the relevant Guidelines. Further details can be obtained from the DEEWR website:

- www.deewr.gov.au/building

What is the position of the ABCC where a head contractor has an obligation to enforce the 2006 Guidelines on a project but has a subcontractor working on the project with an agreement approved by Fair Work Australia that contains provisions that are inconsistent with the 2006 Guidelines?

The ABCC will expect the head contractor to comply with the 2006 Guidelines including on-site behaviour. Where the ABCC identifies non-compliance with the 2006 Guidelines, the obligation is on the party with the FW Act agreement to establish that the agreement has been approved by Fair Work Australia. In other words, the subcontractor will be required to provide evidence that they have an agreement that has been approved under the FW Act or a copy of a DEEWR letter confirming compliance.

What happens when there is an inconsistency between the 2006 Guidelines and a FW Act agreement?

The Minister's policy decision determined that when there is an inconsistency between the 2006 Guidelines and a FW Act agreement, the FW Act agreement will prevail.

Will modern awards made under the FW Act be deemed to be National Code compliant?

Yes. All instruments including modern awards and agreements made under the FW Act will be considered compliant with all versions of the Guidelines.

FURTHER INFORMATION

To make an enquiry or obtain copies of the National Code and Guidelines, fact sheets and other reference material, contact:

The Office of the Australian Building and Construction Commissioner

- Hotline: 1800 003 338
- Website: www.abcc.gov.au
- Email: enquiry@abcc.gov.au

The Department of Education, Employment and Workplace Relations

- National Code Mailbox: building@deewr.gov.au
- National Code Hotline: 1300 731 293

For an assessment of workplace arrangements for National Code compliance, visit

- Code Assessments Online:
www.deewr.gov.au/building



Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50