



E-Alert to Funding Entities

On Monday 25 July 2022, Government registered a legislative instrument called the *Code for the Tendering and Performance of Building Work Amendment Instrument 2022 (Amended Code)*.

The Amended Code took effect on 26 July 2022.

Overview

The Amended Code removes most substantive requirements from the *Code for the Tendering and Performance of Building Work 2016 (Code)*. However, it leaves in place:

- The obligation on Code covered entities to undertake Labour Market Testing;
- The obligation on Funding Entities to ensure that certain information is provided by the preferred tenderer before a contract is entered into in respect of Commonwealth funded building work;
- The obligation on Funding Entities to only enter into a contract in respect of Commonwealth funded building work with a Code covered entity that only uses products in building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
- Code Exemptions.

All other substantive requirements are removed.

What are the Funding Entity Requirements?

The obligations imposed under sections 25A and 26(8) of the former Code remain. These obligations provide that Funding Entities must:

25A:

- ensure that before a contract is entered into in respect of Commonwealth funded building work, the preferred tenderer provides the following information:
 - a) the extent to which domestically sourced and manufactured building materials will be used to undertake the building work;
 - b) whether the building materials to be used to undertake the building work comply with relevant Australian standards published by, or on behalf of, Standards Australia;
 - c) the preferred tenderer's assessment of the whole-of-life costs of the project to which the building work relates;
 - d) the impact on jobs of the project to which the building work relates; and
 - e) whether the project to which the building work relates will contribute to skills growth.

26(8):

- only enter into a contract in respect of Commonwealth funded building work with a code covered entity that only uses products in building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.

Are Funding Entities still required to submit a WRMP?

No. The Amended Code does not contain any requirements in relation to Workplace Relations Management Plans (WRMPs). For this reason, the ABCC will no longer assess WRMPs. The ABCC will not be accepting new WRMPs submissions and any WRMPs previously submitted will not be assessed. Commonwealth WRMPs are no longer required on any building projects.

Removal of Contractor Eligibility Requirements

There is no longer a prohibition on contractors being covered by a non-compliant enterprise agreement, or contracting for Commonwealth funded building work while covered by a non-compliant enterprise agreement.

Funding entities should not require tenderers to provide a determination of compliance from the ABCC or a self-declaration of eligibility.

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What happens to the Model Clauses?

In light of the above amendments, Funding Entities should no longer use Model Clauses previously published by the ABCC. However, Funding Entities must still meet the requirements of sections 25A and 26(8) of the Code which continue to exist under the Amended Code.

What are the Notification requirements by Funding Entities?

The requirement for Funding Entities to notify the ABCC of requests for EOI or tender, and of award of a contract to a head contractor, have been removed.

Need more information?

For immediate advice or assistance call our Hotline on 1800 003 338. Our Hotline operates from 7am-7pm AEDT Monday to Friday, except on public holidays.

Hotline: 1800 003 338

Email: governmentcodeenquiries@abcc.gov.au

Website: www.abcc.gov.au

What else is removed?

In addition, among other things, Code covered entities are no longer required to:

- Comply with a WRMP (s7);
- Provide certain information in tenders and EOIs (s8);
- Require downstream code compliance from subcontractors (s8);
- Comply with the security of payment provisions of the Code, including reporting disputed or delayed progress payments under State security of payment laws to the ABCC (s11D);
- Maintain any policies with respect to freedom of association (s13);
- Restrict the rights of entry of an officer of a building association to rights provided under the FWA and relevant work health and safety laws (s14);
- Carry out any drug or alcohol testing under the Code or maintain a policy about drug and alcohol testing (s16(A) & 25);
- Report actual or threatened industrial action to the ABCC (s16);
- Report any code breaches to the ABCC (s17).

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Contact the Translating and
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