

WORKPLACE REFORM IN THE BUILDING AND CONSTRUCTION INDUSTRY

The Government's workplace relations changes for the building and construction industry will be implemented in three stages: the majority of the new requirements commenced on 1 July 2009, with the minimum safety net established by the National Employment Standards and modern awards commencing on 1 January 2010. The timing of changes to building and construction specific arrangements (the replacement body for the Australian Building and Construction Commission (ABCC) and industry specific laws) depends on the passage of legislation by Parliament. The following table provides an overview.

| Reform Measure | Effective Date |
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| ➤ <i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008.</i> | ➤ Commenced 28 March 2008. |
| ➤ <i>Fair Work Act 2009 (Cth)</i> ➤ <i>Fair Work Regulations</i> | ➤ Most aspects of the new workplace relations arrangements commenced on 1 July 2009. ➤ The National Employment Standards commenced on 1 January 2010. ➤ Modern awards commenced on 1 January 2010. |
| ➤ <i>Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009</i> | ➤ This Bill was introduced to Parliament on 17 June 2009. If passed by Parliament it will replace the ABCC with the Office of the Fair Work Building Industry Inspectorate. |
| ➤ National Code and Implementation Guidelines changes http://www.workplace.gov.au/workplace | ➤ The Implementation Guidelines were amended with effect from 1 August 2009. |
| ➤ <i>Independent Contractors Act 2006</i> | ➤ Commenced 1 March 2007. The <i>Fair Work Act 2009</i> also contains provisions regarding independent contractors, including anti-sham provisions. |

The *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* prevents the making of new Australian Workplace Agreements. The Act provides for a new form of temporary individual agreement - Individual Transitional Employment Agreements (ITEAs). All ITEAs must have a nominal expiry date of 31 December 2009 or earlier.

The *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009* will, if passed by Parliament, replace the ABCC with the Office of the Fair Work Building Industry Inspectorate. The Bill provides for the Inspectorate to investigate a suspected breach of a designated building law or a safety net contractual entitlement (eg a term of a modern award or enterprise agreement or a provision of the National Employment Standards). The Inspectorate will retain coercive powers to obtain evidence subject to a range of new safeguards. However, there is scope for an independent assessor to exempt a project or projects from this power. The Bill also provides that before exercising its coercive power, the specialist division must receive approval from the Australian Administrative Tribunal. It is not yet clear whether the Bill will be passed in its current form by the Senate.

The amended *Implementation Guidelines for the National Code of Practice for the Building and Construction Industry* only apply to expressions of interest or tenders called on or after 1 August 2009. Key changes are that the Guidelines apply solely to on site activities; the limit applicable to project agreements has been increased from \$25m to \$100m and right of entry provisions now require strict compliance with the Fair Work Act provisions.

The independent contractors' legislation established a single national scheme for the review of contractor arrangements (see Master Builders Fact Sheet 10). Most State and Territory laws dealing with independent contractors have been excluded, with a transitional period. The transitional period was due to end on 1 March 2010 but has recently been extended to 1 September 2011. Penalties apply under the *Fair Work Act 2009* for parties who enter into sham contracting arrangements.



FOR FURTHER INFORMATION

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Disclaimer: This information is provided as general advice on the workplace relations system. It does not constitute legal advice and it is always advisable to seek further information regarding specific workplace relations issues.