

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment.

Subject: *Fair Work (Building Industry) Act 2012*

Building Code 2013

Authority

Section 27 of the *Fair Work (Building Industry) Act 2012* (FWBI Act) provides that the Minister may issue one or more documents that together constitute a code of practice (the Building Code) that is to be complied with in respect of building work.

In accordance with subsection 27(4) of the FWBI Act, before exercising powers under section 27, the Minister must take into account any relevant recommendations of the Federal Safety Commissioner in relation to occupational health and safety matters.

Purpose

The purpose of this legislative instrument is to amend the *Building Code 2013* to reduce confusion around the interaction between the Code and concurrently applicable State guidelines as they relate to building contractors and building industry participants. This legislative instrument removes subsection 6(4) of the *Building Code 2013* to provide greater certainty to affected building contractors and building industry participants.

The amendment is of a technical nature.

Background

The *Building Code 2013* replaced existing obligations contained in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry- May 2012. The Explanatory Statement to the *Building Code 2013* explained that it reflected the Australian Government's commitment to ensuring that participants in the building and construction industry comply with Australia's workplace relations laws.

Section 6 of the *Building Code 2013* sets out when building contractors and building industry participants will become subject to the Code. In general, building contractors and building industry participants will first become subject to the *Building Code 2013* when that contractor or participant submits an expression of interest or tender for building work described in items 1 to 8 of Schedule 1 of the Code. Building contractors and building industry participants who were subject to any version of the Guidelines at the date of commencement of the *Building Code 2013* also became subject to the Code from its date of commencement.

Subsection 6(4) provides that the *Building Code 2013*, the FWBI Act and designated building laws are a comprehensive statement of:

- the matters that building contractors and building industry participants are required to include, or not to include, in an enterprise agreement; and
- the workplace practices that building contractors and building industry participants are required to carry out, or not to carry out, in relation to building work; and
- the arrangements that the building contractors and building industry participants are required to make, or not to make, in relation to building work.

Commencement

This legislative instrument commences the day after it is registered on the Federal Register of Legislative Instruments.

Consultation

Consultation on the amendments contained in this legislative instrument was undertaken with the Federal Safety Commissioner. The Federal Safety Commissioner did not have any comments on the amendments.

The removal of subsection 6(4) of the *Building Code 2013* was discussed during a confidential meeting with representatives of employer groups, unions and state governments on 9 December 2013.

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required (reference 16267).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Amendment No. 1 to the *Building Code 2013*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 6 of the *Building Code 2013* sets out when the Building Code applies to building contractors and building industry participants. Subsection 6(4) provides that the *Building Code 2013*, the *Fair Work (Building Industry) Act 2012* and designated building laws are a comprehensive statement of:

- the matters that building contractors and building industry participants are required to include, or not to include, in an enterprise agreement; and
- the workplace practices that building contractors and building industry participants are required to carry out, or not to carry out, in relation to building work; and
- the arrangements that the building contractors and building industry participants are required to make, or not to make, in relation to building work.

Amendment No. 1 to the *Building Code 2013* amends the Building Code to remove subsection 6(4) of the Building Code. This provision has created confusion around the interaction between the Building Code and concurrently applicable State guidelines. Its removal will provide greater certainty to affected building contractors and building industry participants.

Human rights implications

This instrument does not engage human rights.

Conclusion

The Legislative Instrument is compatible with human rights because it does not raise any human rights issues.

Senator The Hon. Eric Abetz

Minister for Employment