

Today, the Senate passed the *Building and Construction Industry (Improving Productivity) Bill 2013* (the BCI Bill), with substantial amendments.

The BCI Bill, along with the [Fair Work \(Registered Organisations\) Amendment Bill 2014](#) (the RO Bill), were triggers for the double dissolution election this year. The RO Bill was [passed](#) by the Senate with amendments last week and given Royal Assent on 24 November 2016.

Before becoming law, Bill will need to be approved by the House of Representatives and given Royal Assent. It is not clear when this will occur but is expected to be promptly given the political significance of the legislation.

Overview of the BCI Bill

The BCI Bill is intended to do the following:

- Re-establish the Australian Building and Construction Commission (ABCC)
- Create a framework for a new Building Code (see below)
- Regulate the Federal Safety Commission (FSC), which is already in place
- Introduce stronger prohibitions on unlawful industrial action, coercion and discrimination
- Enable the ABCC to exercise compulsory powers to obtain information.

The Senate Amendments to the BCI Bill

The Senate passed the following [amendments](#) to the BCI Bill:

- Businesses who have [non-compliant](#) agreement that were made before the introduction of the Code will be able to tender for work up to 29 November 2018
- Additional obligations on the ABCC to act [impartially](#) and in a 'reasonable and proportionate' manner to complaints received
- Restrictions on engaging [overseas workers](#) on Code projects
- [Scrutiny](#) of the ABCC by the Administrative Appeals Tribunal
- The establishment of a security of payments [working group](#)
- The capacity on Code projects to require the preferred tenderer to [supply information](#) such as the source of products, compliance with Australian standards and jobs impact
- Extending the ABCC's role to cover issues such as [wages and entitlements](#)
- An obligation on the FSC to audit compliance with the [National Construction Code](#)
- A [12 month review](#) of the operation of the Act

These amendments make substantial changes to the legislation and the role of the ABCC and the Code, with a much broader focus outside of traditional Industrial Relations matters. This extends to security of payment and significant potential changes to procurement. Importantly, many of the changes merely create a framework with the details to be 'filled in' by supporting regulations and the Code (and able to be similarly changed). On its face, there is the prospect of significant additional imposts on tenderers in terms of market testing, product testing, reporting and associated requirements.

One amendment of particular interest is restrictions on the use of overseas workers. This was a Labor-sponsored amendment and it is not clear whether this will be rejected by the lower house.

Overview of the proposed Building Code

In 2014, the government issued an advanced release of the [Fair and Lawful Building Sites Code 2014](#). Since that time, the government has sought to introduce this Code but has been unable to do so without legislative change, which has now occurred. It is expected that the proposed Building Code will closely follow the 2014 version. The key elements of the 2014 version include:

- Compliance being a prerequisite to even tender for Commonwealth funded work
- The prohibition on certain enterprise agreement provisions (or on-site practices) such as clauses that limit or restrict the use of contractors of labour hire, limit the employer's ability to make operational decisions or prohibit agreement between the employer and an individual employee, limit freedom of association or create right of entry
- The prohibition of unregistered written agreements or 'side deals'
- Strict on-site requirements in terms of freedom of association and union paraphernalia
- Obligations to report industrial issues, Code breaches and legal proceedings to the ABCC
- The requirement to apply the Code to all work, including non-Code projects
- A requirement on main contractors to establish a Workplace Relations Management Plan

Breaches of the Code can lead to considerable sanctions. Importantly, unlike previous codes, the sanction is issued by the ABC Commissioner (with a right of appeal) rather than politically, meaning that sanctions can be expected to be far more prevalent than under previous versions of the Code.

However, the effect of one of the amendments to the legislation is that the Code will not apply to enterprise agreements made before the publication of the Code.

Overview of the RO Bill

The [Fair Work \(Registered Organisations\) Act 2009](#) regulates the activities of employee and employer associations. The main purpose of the RO Bill is to amend the legislation to provide for greater accountability for officers of registered organisations, including:

- Establishing an independent watchdog, the Registered Organisations Commission
- Introducing internal regulatory compliance akin to those under the [Corporations Act 2001](#)
- Increasing civil penalties and, importantly, introducing criminal penalties for breaches

The legislation was passed [with amendments](#) by the Senate that includes additional protections for whistleblowers (and a promise for this to apply more broadly to corporations) and strengthened obligations on auditors.

Need more information

If you would like further information about any of the above issues, or require advice in relation to workplace matters, please contact the team at Fair Work Lawyers.

The information contained in this publication is general in nature and does not constitute legal advice. The BCI Bill has not yet been passed by parliament and may not be passed, or change, prior to being enacted. Employers should seek legal advice in relation to their circumstances.

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