

**Federal and State Government Construction Industry
Industrial Relations Codes and Guidelines**

Summary

- Two recent decisions of Justice Bromberg of the Federal Court of Australia have led to the Victorian Government amending its *Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry*.
- The changes to the Victorian Guidelines ensure that compliance with the Guidelines does not require parties to breach the *Fair Work Act 2009*.

The decisions

In Member Advice [NAT 009/13](#), members were advised of the requirements of Federal and State Government construction industry codes and guidelines and the major commercial risks associated with non-compliance.

On 17 May 2013, Justice Bromberg of the Federal Court of Australia handed down two decisions relating to Lend Lease and McCorkell Constructions which have significant implications for Government codes and guidelines.

In both cases, the Construction, Forestry, Mining and Energy Union (CFMEU) argued that the Victorian Government had breached the general protections in the *Fair Work Act 2009* (FW Act) by refusing to engage certain contractors that had enterprise agreements which did not comply with the *Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry* (the Victorian IR Guidelines). Justice Bromberg upheld the union's arguments in both cases.

The Victorian Government has announced its intention to appeal the two decisions.

Victorian Government Practice Direction

In response to the above decisions, the Victorian Government has issued a Practice Direction which deems all enterprise agreements approved under the FW Act to comply with the Victorian IR Guidelines. This also applies to conduct expressly permitted or required by an enterprise agreement.

The Practice Direction came into operation on 20 May 2013 but applies to conduct which occurred before and after this date, as well as to enterprise agreements approved before and after this date.

Importantly, contractors and their related entities will continue to be required to conduct themselves in a manner that complies with the Guidelines including the revised Practice Direction. The monitoring and

compliance scheme within the Guidelines will continue to apply to all aspects of the Guidelines as affected by the Practice Direction. The Victorian Government's Construction Code Compliance Unit (CCCU) will continue to monitor and investigate compliance with the Guidelines on projects to which the Guidelines apply. This will include a focus upon:

- compliance with industrial laws and instruments;
- compliance with commitments given in Workplace Relations Management Plans and Health and Safety Management Plans;
- banning sham contracts and other avoidance devices, unregistered agreements and coercive practices; and
- requiring contractors to take all reasonable steps to prevent unprotected industrial action.

Impact on Federal and NSW Codes and Guidelines

It would appear that Justice Bromberg's decisions impact upon the *Building Code 2013* (Cth) which came into operation on 1 February 2013 as well as the *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction* which are set to come into operation on 1 July 2013.

Further information or assistance

For further information or assistance please call Ai Group's **BIZassistInfoline** on **1300 78 38 44**. Should you require any detailed advice to assist your organisation to comply, Ai Group's team of workplace relations specialists and lawyers is well-qualified to assist.



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