

PRACTICAL IMPLICATIONS OF THE BUILDING CODE 2013 (Code) AMENDMENTS EXPLAINED

The Start Date: 16 October 2015. Do not panic: The FWBC has announced that in the first instance it will be educating building industry participants on the requirements and seeking rectification measures where non-compliance is found. More information, visit www.fwbc.gov.au.

Type A Building Work¹

Type B Building Work

Building Work with Requisite Commonwealth Funding²

1. The content of the WHS&R management system (**System**) required for building contractors (**BC**) and building industry participants (**BIP**) (including principal contractors) has changed and must now include a mechanism/s that they will use to help ensure that no person enters the site under the influence of alcohol or other drugs (**AOD**).
2. The content of the WHS&R management plan (**Plan**) that principal contractors³ must have in place for **Type A Building Work** has not changed. However, if the Plan includes AOD testing, the principal contractor must not pass the implementation and cost of AOD testing to its subcontractors.
2. The content of the WHS&R management plan (**Plan**) that principal contractors must have for **Type B Building Work** has changed.
3. The plan must include a Fitness for Work policy to manage AOD which applies to all project workers (**Policy**) and the implementation and cost of AOD testing cannot be passed to its subcontractors.
4. The Policy must include
 - a. the mechanism/s for enforcing the Policy;
 - b. the use of AOD testing and the mechanisms for testing 7 substances;⁴
 - c. provisions that state that a person with a positive result is unfit for work – zero tolerance is the standard;
 - d. the mechanism/s to stop a person returning to work until they prove that they are fit to return to work;
 - e. minimum monthly testing of specified numbers of workers (the Code sets a mandatory formula based on workforce numbers);
 - f. selection procedures for AOD testing (random if the entire workforce is not tested in a round);
 - g. procedures for testing high-risk activities, voluntary and for-cause testing; and
 - h. the mechanism/s to assist workers who attend for work under the influence (counselling etc).

¹ Type A Building Work is set out in Schedule 1 to the Code (including both publicly and privately funded building work).

² Type B Building Work is the same as Type A except that it does not include privately funded building work **and** the Commonwealth contributes funding that is at least:

(a) \$5,000,000 and where that sum is at least 50% of the total construction project value; **or**

(b) \$10,000,000 (irrespective of its proportion of the total construction project value).

³ The term 'principal contractor' is not defined in the Code or *Fair Work (Building Industry) Act 2012* (Cth) however, as the term is defined under work health and safety legislation in all jurisdictions, including the Commonwealth but excluding WA, it is assumed that the term's meaning under that legislation is applicable. The position in WA however is unclear.

⁴ Alcohol, opiates, THC, cocaine, benzodiazepines, amphetamine and methamphetamine.