



**Australian Government**  
**Department of Education, Employment and Workplace Relations**

Education, Employment & Workplace Relations  
Committee  
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By: Senator Humphries

Your Ref  
Our Ref

Mr Dave Noonan  
National Secretary  
CFMEU Construction and General Division  
PO Box Q235  
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SYDNEY NSW 1230

Dear Mr Noonan

I am writing in relation to the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (Guidelines).

On 9 July 2009 the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, released an amended version of the Guidelines (2009 Guidelines) that apply to all projects that were the subject of an expression of interest or tender let for the first time on or after 1 August 2009. The relevant previous version of the Guidelines continues to apply to earlier projects for the life of the project.

It has become apparent that there are some concerns or uncertainty for parties in the construction industry about negotiating agreements under the *Fair Work Act 2009* (FW Act) because some proposed provisions may not be compliant with an earlier version of the Guidelines (most relevantly the 2006 Guidelines). In particular that these provisions cannot be negotiated because their inclusion would make the agreement non-compliant with the 2006 Guidelines and the company may be precluded from performing work on projects to which the 2006 Guidelines apply.

To ensure that parties are able to take full advantage of the benefits provided by bargaining in good faith under the FW Act, and to remove any doubt in this regard, the Minister has instructed the Department that in assessing registered FW Act agreements under the 2006 Guidelines primacy will be given to Section 8.1.1 of the Guidelines (or comparable clauses of earlier Guidelines) over all other administrative elements. Section 8.1.1 requires compliance with, amongst other things, relevant legislation and industrial instruments. This will mean that any registered FW Act agreement will be deemed compliant with all versions of the Guidelines.

On this basis, in relation to agreements made under the FW Act, to be considered compliant with the 2006 Guidelines parties will have to comply with their FW Act agreement and with those elements of the 2006 Guidelines that do not conflict with their agreement, including in relation to the practical on-site application of these.