

# Prohibited Clauses in Agreements

Enterprise Agreement Fact Sheet

February 2017

## What is the benchmark for applicable clauses in Enterprise Agreements?

All industry participants involved or wanting to be involved in Commonwealth-funded building work must comply with the Code for the Tendering and Performance of Building Work 2016 (Building Code 2016), which replaces the Building Code 2013. Section 11 prohibits Code-covered entities from engaging in certain conduct or adopting an enterprise agreement containing prohibited clauses.

## What is prohibited?

Enterprise agreements cannot include clauses that:

- Impose (or purport to impose) limits on the ability to manage a business or improve productivity;
- Discriminate against employees or subcontractors; or
- Are inconsistent with freedom of association under section 13 of the Building Code 2016.

## Examples of prohibited content

Section 11 prohibits clauses that:

- Prescribe the number of employees or subcontractors that may be engaged on a site;
- Restrict the engagement of persons by the type of contractual engagement (e.g. casual);
- Require consultation with, or approval of, a building association or union regarding the engagement of subcontractors, the number of employees engaged, or the type of employment offered;
- Prescribe the terms and conditions on which subcontractors are engaged;
- Limit (or have the effect of limiting) the right of an employer to make decisions about redundancy;
- Prohibit the payment of a loaded rate of pay;
- Provide for agreements to be monitored by persons other than the employer or employees;
- Require association logos, mottos or indicia on company-supplied property or equipment;
- Limit an employer's ability to determine with its employees when and where work can be performed to meet operational requirements; or
- Provide rights for a building association or union official to enter premises other than in compliance with Right of Entry provisions under the *Fair Work Act 2009*.



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