



Industrial Relations Victoria

**CODE OF PRACTICE**

**FOR THE**

**BUILDING & CONSTRUCTION**

**INDUSTRY – VICTORIA**

**INDUSTRIAL RELATIONS PRINCIPLES**

These revised principles should be read in conjunction with the *Victorian Code of Practice for the Building and Construction Industry*, and replace the reference to industrial relations elements in Section 2 of the Code.

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## **2.1 Overview**

It is agreed by the parties that the following industrial relations principles will apply to Victorian Government funded construction projects. The building and construction industry in Victoria supports a cooperative approach in the management of industrial relations.

Employer and industry associations, unions, contractors, sub-contractors, consultants and suppliers shall:

- Comply with standards of behaviour in the Code;
- Adopt and promote a cooperative approach to industrial relations;
- Communicate honestly and openly with other industry participants; and
- Have a commitment to a best practice working environment.

All parties shall provide employees and applicants for employment equality of opportunity regardless of sex, race, colour, national origin, age, religion or physical or mental disability.

## **2.2 Awards and Legal Obligations Relating to Employment**

All parties must comply with the provisions of:

- applicable federal awards and registered enterprise bargaining agreements;
- to the extent that the parties are legally bound by, and the work comes within the scope of, industrial agreements made between unions and employer organisations such as the Victorian Building Industry Agreement, and the procedures contained therein; and
- legislative requirements.

Arrangements or practices designed to avoid awards, registered agreements and/or legislative obligations are not permitted, including inappropriately treating a genuine employee as an independent contractor and inappropriate application of taxation arrangements.

### **2.3 Workplace Arrangements**

Workplace arrangements are important elements in achieving continuous improvement and best practice and should:

- reflect the needs of the enterprise;
- improve remuneration and conditions; and
- increase productivity

Subject to legislative obligations, workplace arrangements might encompass:

- improved occupational health, safety and rehabilitation practices;
- training and skill formation strategies, including Apprenticeships; and
- co-operative, flexible enterprise relationships and practices.

A party must not, directly or indirectly, pressure or coerce another party to enter into, or to vary or to terminate an enterprise agreement. Nor may they pressure or coerce them about the parties to and/or the contents or the form of their enterprise agreements. This does not prevent action sanctioned by relevant industrial relations legislation.

### **2.4 Project Agreements**

Project agreements incorporating site-wide payments, conditions or benefits may be negotiated where the strategy had first been authorised by the Principal. Payments, conditions and/or benefits in a project agreement must be related to improved productivity measures in time and or/cost saving performance. ‘Time and/or cost saving performance’ means achieving a reduction of either the period of construction and/or a reduction in the construction cost to the benefit of the Principal.

As a general principle project agreements will only be appropriate for major contracts, as defined by the Principal from time to time.

Typically, major contracts will have some or all of the following features: an extended construction period, high cost, identifiable contract packages within an overall program of works, rapidly changing technology, particular skill formation strategies,

special industrial requirements, and presence of both private and public sector projects/investments.

The integrity of individual enterprise agreements must be maintained. However, there may be a provision in the relevant enterprise agreement that enables the parties to the enterprise agreement to encompass provisions in a project agreement.

The parties to project agreement will not use any term in the project agreement for a precedent on any other project and/or for any other purpose. It is preferable that the project agreement is certified.

## **2.5 Membership of Industrial Associations**

Participation in industrial relations by employees and employers and responsible representation by industrial associations is encouraged.

## **2.6 Dispute Settlement**

All parties are required to make every effort to resolve grievances or disputes at the enterprise level, in accordance with the procedure outlined in the relevant award or workplace arrangements. The status quo that existed prior to the dispute shall prevail, and work is to continue normally without prejudice to any of the parties while relevant procedures are being followed.

Where an unsafe condition exists on a construction project, work is to continue in all areas not affected and the employer must act promptly to rectify the conditions. All parties must cooperate to ensure that safety rectification work commences immediately. Once safety rectification work is completed, and there is safe access, work will immediately resume in that area.

No payment shall be made to an employee in relation to a period during which the employee was engaged in industrial action, unless such payment is authorised as per the provisions of clause 2.2 of this Code.

## **2.7 Industrial Impacts**

The principal, client or head contractor, as applicable must be advised during the progress of the work, and at the earliest opportunity, of any industrial relations and/or

occupational health and safety matter, which may have an impact on the construction program and/or the contract, project costs, or other related contracts.

To ensure this, the parties involved in the construction project, including the relevant government agencies, should establish an effective and clear reporting process. Agencies should ensure effective communication arrangements are in place.

## 2.8 Compliance

Section 7.1 and 7.2 of this Code of Practice provides for compliance and breaches of this Code of Practice. With respect to the industrial relations elements of this Code of Practice, the “Minister” referred to in s7.1 and s7.2 is the Minister for Industrial Relations, and the “Secretary or an approved nominee” referred to in s7.1 and s7.2 is, effectively, the Executive Director, Industrial Relations Victoria.

In terms of occupational health and safety and security of payment legislation, Industrial Relations Victoria will report to the relevant parties on any industrial relations consequences.

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For ease of reference, the provisions of clauses 7.1, 7.2, and 7.3 of *the Victorian Code of Practice for the Building and Construction Industry* are incorporated:

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#### 7.1 Compliance

The Minister has overall responsibility for the implementation of the Code.

The Secretary (or an approved nominee) is the central monitoring and review authority for the Code.

The Secretary (or an approved nominee) shall determine any matter relating to the interpretation or clarification as between the National Code and this Code.

Monitoring compliance with specific statutory requirements remains the responsibility of the government agency which administers those requirements.

#### 7.2 Breaches

##### 7.2.1 General principles

Any party wishing to report an alleged breach of the Code must do so in writing to the Secretary (or an approved nominee). Such report must include:

- details of the circumstances and extent of the alleged breach or breaches; and
- a copy of any written information or advice exchanged in relation to the matter.

The party reporting the alleged breach must notify the party alleged to have breached the Code of the report. The Secretary (or an approved nominee) must provide a copy of the report to the party alleged to have breached the Code. The Secretary (or an approved nominee) must give the party alleged to have breached the Code an opportunity to make submissions to the Secretary (or an approved nominee). Parties reporting alleged breaches must be informed of the investigations made and any action taken.

The Secretary’s approved nominee may, or will, if requested by a party, liaise with the relevant industry association representing the party alleged to have breached the Code.

The Secretary will report all proven breaches to the Minister.

In connection with an investigation or a review, the Secretary (or an approved nominee) has

absolute discretion as to which, if any, information or documents should be provided to any person.

*7.2.2 Review of investigation outcome*

Any person aggrieved by the outcome of an investigation into alleged non compliance with this Code may request a review of that investigation outcome by writing to the Secretary within 21 days of the date of the letter advising of the investigation outcome.

The review is to be conducted in an informal manner, usually without a hearing and taking into account those matters considered during the investigation in the light of the matters raised in the letter requesting the review. It is intended that there will be no delay to a project as a result of the review.

The review will be conducted by a person appointed by the Secretary, who, in the Secretary's opinion, has relevant experience.

The person conducting the review shall provide a written report to the Secretary, who, in turn, will respond to the person requesting the review.

*7.2.3 Breaches by agencies and agency employees*

Proven breaches by a government agency will also be reported by the Secretary to the responsible Minister.

The Government has made adherence to the Code a key measure of agencies' performance.

Chief Executive Officers are responsible for ensuring their agencies' performance.

The avenues already available to individuals in the private sector who wish to raise issues associated with the performance of government agencies, including representations to government Ministers, Members of Parliament and the Ombudsman are unaffected by the Code.

*7.2.4 Breaches by others*

The Secretary will report proven breaches by other parties to the Minister.

### 7.3 Sanctions

The scope of sanctions imposed for proven breaches of the Code will depend on the nature of the breach.

*7.3.1 Sanctions on agencies and agency employees*

On the advice of the Secretary, the Minister and the responsible Minister will consider appropriate actions to ensure future compliance with the Code.

Where it is demonstrated that employees have breached the Code, disciplinary action may be taken.

Further breaches will lead to more severe sanctions.

*7.3.2 Sanctions on others*

In the case of a proven breach by other parties, sanctions may include, but are not be limited to:

- a formal warning that a further breach will lead to severe sanctions;
- referral of a complaint to the relevant industry organisation for assessment against its own professional code of conduct and appropriate action;
- reduction in tendering opportunities at either agency - or government-wide level, for example, by exclusion of the breaching party from tendering for government work above a certain value or for a specified period;
- reporting of the breach to an appropriate statutory body; and
- publicising the breach and identification of the party.

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