



National Code and Guidelines Compliance for Subcontractors

The National Code sets minimum standards that businesses must meet to be eligible for certain Australian Government building and construction work.

The National Code Implementation Guidelines provide supporting detail on compliance requirements.

See other ABCC fact sheets to determine when the National Code applies and which set of Guidelines to use.

This fact sheet is relevant to projects complying with the June 2006 Guidelines.

RESPONSIBILITIES OF A SUBCONTRACTOR

Subcontractors must comply with the National Code of Practice for the Construction Industry (National Code) and the Australian Government Implementation Guidelines for the National Code (Guidelines):

- to work on any Australian Government funded building and construction projects
- when working on any new private project following their commitment to the National Code and Guidelines.

The subcontractor is also obliged to advise any subcontractors and material suppliers that they engage on such projects that the National Code and Guidelines apply. This obligation does not apply on privately funded projects.

ACHIEVING NATIONAL CODE COMPLIANCE PRIOR TO COMMENCEMENT OF THE PROJECT

Note: This fact sheet only applies to projects that commenced prior to 1 August 2009.

The head contractor will have practices in place to ensure subcontractors comply with the principles of the National Code and Guidelines. Prior to commencement on site, subcontractors may be asked to:

- undertake a formal workplace arrangement assessment
- complete a 'Declaration of Compliance'
- complete a 'National Code Compliance Checklist'.

Workplace arrangements

The subcontractor must ensure its workplace arrangements are National Code compliant before making an expression of interest, tendering or undertaking work for a head contractor on an Australian Government funded building and construction project.

The Department of Education, Employment and Workplace Relations (DEEWR) can assess your workplace arrangements for compliance with the National Code and Guidelines. If not compliant, DEEWR will issue a letter identifying which clauses of the industrial instrument are inconsistent with specific provisions of the National Code and Guidelines.

If workplace arrangements are not National Code compliant, it may be possible to vary the arrangements in order to seek Australian Government work.

Model tender and contract documentation

Model clauses have been prepared by DEEWR for use within tender and contract documents. Subcontractors should use these clauses when preparing tenders and contracts for building and construction projects covered by the National Code and Guidelines.

The booklet Model Tender and Contract Documentation is available through the Office of the Australian Building and Construction Commissioner (ABCC) and DEEWR websites (see further information).

Declaration of Compliance

A 'Declaration of Compliance' can be found in the Model Tender and Contract Documentation booklet. The head contractor may ask the subcontractor to submit a 'Declaration of Compliance' as a means of confirming their commitment to comply with the National Code and Guidelines.

The subcontractor may also ask any subcontractor they intend to engage for the project to complete this document.

ESTABLISHING NATIONAL CODE COMPLIANCE ON SITE

In order for on site conduct to be National Code compliant, subcontractors must ensure:

- freedom of association – that is, whether or not to belong to a union or employer association – is a matter of choice of the employee or employer
- compliance with occupational health and safety obligations in accordance with relevant state and federal laws
- threatened or actual industrial action on a project is reported to the ABCC
- no attempt is made to unduly influence any subcontractors to have particular workplace arrangements or to make over-award payments

- the Code Monitoring Group (CMG) is notified of any alleged breaches, remedial action taken or other National Code-related matters within 21 days of becoming aware of them.
- the ABCC is notified of any alleged breaches of the freedom of association provisions of the National Code or *Fair Work Act 2009* within 21 days of becoming aware of them.

MATERIAL SUPPLY CONTRACTS UNDER THE NATIONAL CODE AND GUIDELINES

The National Code and Guidelines cover material supply contracts where the supplied material is integral to the construction of the project or relates to prefabrication of made-to-order components to form part of any building, structure or works.

For information, see the 'Am I a Material Supplier?' fact sheet (available at www.deewr.gov.au/building).

SANCTIONS

Sanctions can be applied where a party has failed to meet their obligations under the National Code and Guidelines.

Sanctions can include a formal warning and, in more serious cases, a preclusion from tendering for Australian Government funded construction projects.

Sanctions applied under the National Code and Guidelines are in accordance with decisions advised by the Code Monitoring Group.

For information, see the 'A Guide to Code Monitoring and Sanctions' fact sheet (available www.deewr.gov.au/building).

FURTHER INFORMATION

To make an enquiry or obtain copies of the National Code and Guidelines, fact sheets and other reference material, contact:

The Office of the Australian Building and Construction Commissioner

- Hotline: 1800 003 338
- Website: www.abcc.gov.au
- Email: enquiry@abcc.gov.au

The Department of Education, Employment and Workplace Relations

- National Code Mailbox: building@deewr.gov.au
- National Code Hotline: 1300 731 293

For an assessment of workplace arrangements for National Code compliance, visit

- Code Assessments Online:
www.deewr.gov.au/building



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