



National Code and Guidelines Compliance for Project Managers

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 THE PROJECT MANAGER

The role of the project manager can vary depending on the contractual arrangement they have with the client agency. This will also influence the project manager's responsibilities in relation to the National Code of Practice for the Construction Industry (National Code) compliance of the project.

These responsibilities may include:

- ensuring all tender and contract documents and workplace arrangements comply with the National Code
- ensuring all related entities and material suppliers comply with the National Code
- applying National Code compliant practices to the project
- monitoring on-site behaviours and implementing remedies to ensure National Code compliance is in place and maintained.

CONTRACTUAL ARRANGEMENTS

The contractual arrangements between the client agency, project manager and contractors on site will vary.

One approach is for the project manager to act on behalf of the client agency to ensure compliance with the National Code and the Australian Government Implementation Guidelines for the National Code (Guidelines) throughout the life of the project.

This includes the responsibility for ensuring that all parties involved in the construction project comply with the National Code and Guidelines.

The project manager must also ensure that the workplace arrangements of the head contractor, subcontractors, consultants and material suppliers comply with the National Code and Guidelines before engaging them on the project.

Other arrangements may involve the project manager being contracted to provide advice on various management issues relating to the project. In these circumstances, while the project manager needs to be compliant, responsibility for ensuring contractors are National Code compliant and for the application of the National Code remains with the client agency.

For more information see the 2006 Guidelines:

- Section 5.2: Australian Government directly funded construction, and
- Section 6.3: Australian Government indirectly funded construction.

ENSURING ALL TENDER AND CONTRACT DOCUMENTS COMPLY WITH THE NATIONAL CODE

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

Expressions of Interest and tendering

Public tender material such as advertisements, expressions of interest and requests for tender must contain advice that the National Code and Guidelines apply to the project.

Tender documents must contain copies of the National Code and Guidelines as an attachment, or confirm that copies can be made available on request, or advise that the National Code and Guidelines can be viewed at www.abcc.gov.au/abcc/NationalCode

Tender schedules must contain an undertaking to apply the National Code and Guidelines on the project and any new private construction work.

Contractual documents

Contracts must include clauses that bind subcontractors, material suppliers and consultants to the National Code and Guidelines. This includes contracts for major and minor works and purchase orders.

Model tender and contract documentation

Model clauses have been prepared by the Department of Education, Employment and Workplace Relations (DEEWR) for use within tender and contract documents. These clauses should be used when preparing tenders and contracts for building and construction projects covered by the National Code.

The model contract clauses require the head contractor to:

- undertake to comply with the National Code and Guidelines and ensure all related construction entities comply with the Code and Guidelines
- ensure that subcontractors, consultants and material suppliers' workplace arrangements comply with the National Code and Guidelines before engaging them on the project
- continue to ensure that all contracts on the project include the requirement to comply with the National Code and Guidelines
- agree to allow the Office of the Australian Building and Construction Commissioner (ABCC) to monitor National Code compliance on the site and to investigate any breaches of the National Code and Guidelines

- acknowledge that the Commonwealth may impose a sanction should parties to the project not comply with the National Code and Guidelines
- agree to comply with the National Code and Guidelines on new privately funded construction projects.

ENSURING WORKPLACE ARRANGEMENTS COMPLY WITH THE NATIONAL CODE AND GUIDELINES

Workplace arrangements

Workplace arrangements must be National Code and Guidelines compliant before an expression of interest or tender for Australian Government funded building and construction work can be made.

DEEWR can assess workplace arrangements for compliance with the National Code and Guidelines. This normally involves an assessment of industrial instruments that apply to the contractor. 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.

Declaration of Compliance

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

The head contractor, as part of its monitoring obligation, may also ask subcontractors to complete a 'Declaration of Compliance' statement for their records.

ENSURING ALL RELATED ENTITIES AND MATERIAL SUPPLIERS COMPLY WITH THE NATIONAL CODE

Related entities

The National Code and Guidelines apply to a tenderer and all its construction related entities once they submit an expression of interest or tender for a Government funded project.

Related entities refers to a range of corporate structures including subsidiaries and joint ventures where there are common directorships or influence over other companies through shareholdings.

Also see the ABCC fact sheet 'National Code and Guidelines Compliance for Related Entities'.

Material suppliers

The National Code covers 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.

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

APPLYING AND MONITORING NATIONAL CODE COMPLIANCE ON SITE

In order for on site practices to be National Code compliant, the contractor must have satisfactory processes in place to ensure subcontractors, consultants and material suppliers comply with the National Code and Guidelines. These include:

- ensuring freedom of association
- ensuring right of entry to work sites is in accordance with the relevant federal and state laws
- complying with occupational health and safety obligations
- reporting threatened and actual industrial action to the client agency
- prohibiting any attempt to unduly influence subcontractors to have particular workplace arrangements or to make over-award payments
- ensuring application of the National Code and Guidelines is a standing item for site or project meetings
- ensuring the on-site arrangements do not restrict the efficient performance of work on the project
- providing a response to requests for information concerning National Code-related matters made by the funding agency, Code Monitoring Group (CMG) and the ABCC
- notifying the CMG of any alleged breaches, remedial action taken or other National Code-related matters within 21 days of becoming aware of the alleged breach.
- notifying the ABCC 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 the alleged breach.

The contractor should have recording and reporting mechanisms that demonstrate these features are an integral part of its National Code monitoring processes.

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