



# National Code and Guidelines Compliance for Head Contractors

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 HEAD CONTRACTOR

The head contractor must:

- be National Code of Practice for the Construction Industry (National Code) compliant in order to tender for Australian Government funded work
- monitor on-site conduct to ensure subcontractors maintain National Code compliance
- apply practices consistent with the National Code and the Australian Government Implementation Guidelines for the National Code (Guidelines) on all new projects once they have submitted their first expression of interest or tender for a project that is subject to the National Code and Guidelines.

### 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.*

#### Tender documents and advertisements calling for expressions of interest

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 either contain copies of the National Code and Guidelines as an attachment, be made available on request or advise that the National Code and Guidelines can be viewed online at [www.abcc.gov.au/abcc/NationalCode](http://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. Head contractors should use these clauses 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 National 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 they not comply with the National Code and Guidelines
- agree to comply with the National Code and Guidelines on new privately funded construction projects.

The booklet Model Tender and Contract Documentation is available through the ABCC and DEEWR websites (see further information).

### WORKPLACE ARRANGEMENTS

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

DEEWR can assess your workplace arrangements for compliance with the National Code and Guidelines. This normally involves an assessment of industrial instruments that cover a 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' can be found in the Model Tender and Contract Clauses 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.

## ESTABLISHING NATIONAL CODE COMPLIANCE ON SITE

In order for on-site practices to be National Code Compliant, head contractors 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, that is, whether or not to belong to a union or employer association is a matter of choice
- ensuring right of entry to worksites is in accordance with the relevant state and federal laws
- complying with occupational health and safety obligations under the law
- reporting threatened or 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
- prohibiting the negotiation of arrangements that restrict the efficient performance of work on the project
- application of the National Code and Guidelines is a standing item for site or project meetings
- 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 head contractor should have reporting mechanisms in place that demonstrate these processes are in place and have been practised.

## RELATED ENTITIES

The National Code applies to a head contractor and all its construction related entities for all Government funded projects.

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.

## MATERIAL SUPPLY CONTRACTS UNDER THE NATIONAL CODE AND GUIDELINES

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.

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

## SANCTIONS

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

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 are in accordance with decisions advised by the CMG.

For information, see the 'A Guide to Code Monitoring and Sanctions' fact sheet (available at [www.deewr.gov.au/building](http://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, go to:

The Office of the Australian Building and Construction Commissioner

- Hotline: 1800 003 338
- Website: [www.abcc.gov.au](http://www.abcc.gov.au)
- Email: [enquiry@abcc.gov.au](mailto:enquiry@abcc.gov.au)

The Department of Education, Employment and Workplace Relations

- National Code Mailbox: [building@deewr.gov.au](mailto: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](http://www.deewr.gov.au/building)