



Guide to developing a compliant Workplace Relations Management Plan (WRMP)

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Background

The Western Australian Building and Construction Industry Code of Conduct 2016 (the BCI Code) is effective from 1 January 2017. The BCI Code has been developed to ensure that, when spending public funds on Building Works, the State of Western Australia contracts with Building Contractors who conduct themselves in a reputable, fair, safe and responsible manner, both in dealing with the State of Western Australia, and within the building and construction industry more generally.

This guide is not a sample WRMP. It explains when a WRMP is required and provides useful information on how to create a compliant WRMP.

Terms used in this guide have the same meaning as in the BCI Code. In this guide, “You” refers to the head contractor.

Who must have a WRMP?

A Building Contractor who enters into a contract for State Building Work exceeding \$10 million in value must have a BCI Code compliant WRMP in place prior to commencing work.



This requirement applies only to the head contractor and not to Subcontractors. All Subcontractors are required to comply with the BCI Code and the head contractor’s WRMP by virtue of the provisions of the BCI Code.

There are two ways of achieving a BCI Code compliant WRMP:

1. by creating a WRMP – for example, by following this guide; or
2. by creating a WRMP that satisfies the requirements of a Commonwealth code if the Commonwealth code applies to your business.

The requirement to have a WRMP only applies to State Building Work and **does not** apply to Private Covered Building Work.



Requirements

To be compliant the WRMP must satisfy each of the requirements set out in Schedule 2 of the BCI Code.

When drafting your WRMP, you should remember to adopt a proactive approach to monitoring compliance. The WRMP should therefore set out the systems, processes and procedures you have, or will have in place.

In this guide, reference to complying with the BCI Code also includes the requirement that the processes and procedures set out in the WRMP are followed.

Template

The guide sets out a template structure for a WRMP (see Appendix 2), tips for developing a compliant WRMP and commentary setting out examples of matters that you should consider when developing your WRMP. You are not required to use the template, although use of the template is encouraged.

You are encouraged to develop policies and procedures to attach to the WRMP as this will assist you to deal with every issue raised by the BCI Code.

The diagram below shows what your WRMP would look like based on Appendix 2:

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| <p style="text-align: center;">ABC Constructions Pty Ltd Workplace Relations Management Plan for XYZ Project</p> <p style="text-align: center;">Date created: 1 January 2017 Contact: Bob Smith, Title</p> <p style="text-align: center;">Last revised: XX Mobile: XXXX XXX XXX</p> |
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| 1. General – complying with the BCI Code |
| ABC Constructions Pty Ltd will comply with the BCI Code and require Subcontractors to comply... |

[Click here](#) for the link to the Word template for developing a WRMP.

Further information and queries

If you have any questions, please contact the Building and Construction Code Monitoring Unit.

You are not required to submit your WRMP for assessment or approval. Your obligation is only to ensure that a compliant WRMP is created **before** you start performing any State Building Work.

If you would like the BCCMU to assess whether your WRMP complies with the BCI Code, you can forward the WRMP to bccmu@commerce.wa.gov.au. Please note that assessment times will vary so you are encouraged to lodge any request for an assessment as early as possible.

Tips for developing your WRMP

1. General – Complying with the BCI Code

- 1.1 This section needs to set out your approach to ensuring compliance with the BCI Code on the project.
- 1.2 You will need to show that you will be taking reasonable steps to ensure that Subcontractors and other Building Industry Participants comply with the BCI Code. This should take into account the requirement to “proactively ensure compliance”.
- 1.3 This means that you will need to identify systems, processes and procedures that you have or will put in place in order to:
 - (a) Promote compliance with the BCI Code – here you should consider:
 - (i) the various requirements of the BCI Code, including the matters set out in Appendix 1 to this guide;
 - (ii) identifying how you are able to bring the various requirements of the BCI Code to the attention of employees and Subcontractors on the project – training, project meetings, site or toolbox meetings (for example, at fortnightly project meetings, we will include on the agenda for the meeting, two topics randomly chosen from the BCI Code, and discuss compliance with Subcontractors on site);
 - (iii) developing checklists to remind employees and Subcontractors of the relevant requirements – for example a checklist of the requirements for exercising a right of entry;
 - (iv) allocating responsibility for the tasks you have identified; and
 - (v) establishing a reporting mechanism for that person to confirm completion of those tasks on a regular basis.
 - (b) Monitor compliance with the BCI Code – here you should:
 - (i) identify what steps you will take to ensure that there is proper compliance with each element

of the BCI Code – for example, random sampling audits of payslips, discussing BCI Code compliance at project or site meetings, keeping checklists recording all details of any exercise of a right of entry to premises;

- (ii) consider how employees, Subcontractors and other Building Industry Participants (e.g. union officials) can raise grievances concerning matters covered by the BCI Code and how any grievances should be reported to you – for example, do you have established grievance procedures for this or can you amend those policies to address this;
 - (iii) allocate responsibility for the tasks you have identified; and
 - (iv) establish a reporting mechanism for that person to confirm completion of those tasks on a regular basis.
- (c) Communicate with Subcontractors and Building Industry Participants your expectations of how they will discharge their obligations under the BCI Code (for example, providing copies of the WRMP to all Building Industry Participants or making a copy of the WRMP available on site).
- (d) Promote a fair, lawful and productive workplace.
- 1.4 You may not have to separately address each of the matters set out in paragraph 1.3 as there will be overlap between these matters. For example, it is likely that the systems, processes and procedures developed in 1.3(a) and (b) will include how you communicate with Building Industry Participants as required under 1.3(c) and that this forms part of how you promote a fair and lawful workplace under 1.3(d).
- 1.5 Appendix 1 summarises the major requirements under the BCI Code which you should consider addressing in your WRMP.

2. Workplace arrangements and compliance

- 2.1 For the purposes of the BCI Code, a “workplace arrangement” refers to an award or agreement that provides for the terms, conditions or benefits of employment that is certified, registered, lodged or approved under a Designated Industrial Law.
- 2.2 Explain how you will identify and catalogue the various workplace arrangements applicable on site (particularly Commonwealth and State Industrial Instruments) showing which arrangements cover which Building Industry Participants. For example, you may ask Subcontractors during the tender process to identify all awards and Industrial Instruments that apply to their business.
- 2.3 How will you monitor compliance with these arrangements (for example, random pay audits)

and how do you contractually provide for those arrangements to bind Subcontractors (for example, contract provisions and tender specifications).

- 2.4 Explain how you will comply with statutory workplace rights (see 2(b) in Schedule 2 of the BCI Code). If you have already established and implemented policies or procedures you could refer to these or attach them to the WRMP. For example, attach copies of freedom of association, freedom from unlawful coercion and undue influence, workplace discrimination, harassment and equal opportunity policies. Alternatively, do you address some of these rights during induction training or another time? If so, explain how.
- 2.5 How will you monitor compliance with these statutory workplace rights? For example, site inspections, random audits, reviewing personnel records to ensure training was conducted, worker surveys.
- 2.6 Allocate responsibility for the tasks you have identified.
- 2.7 Establish a reporting mechanism for that person to confirm completion of those tasks on a regular basis.
- 2.8 Establish a complaints / grievance procedure for employees, Subcontractors and other Building Industry Participants (e.g. union officials) to report issues.

3. Other parties and lines of communication

- 3.1 Set out the organisational structure and reporting lines for the project, specifically allocating responsibility for:
- (a) Subcontractor management;
 - (b) compliance with the BCI Code; and
 - (c) grievance management.
- 3.2 You need to set out your general approach to controlling or managing third party access to the site, in other words who is and is not allowed on site. Will there be security at the site entrance to restrict access to the site? Perhaps a checklist setting out who can and cannot access the site would be useful.
- 3.3 You must specify how you will ensure that rights of entry by union officials will be complied with. In practice, this will require you to identify all of the relevant legislation which provides a right of access for union officials to enter the site.
- 3.4 You also need to set out how you will remind/inform Building Industry Participants of these requirements – for example, a flow chart displayed at the entrance, training for site management, providing contact persons for questions, notification procedures should one of the Subcontractors be issued with a notice of intention to enter site.

- 3.5 How will you ensure that all the requirements for a lawful entry are met on site – for example, by developing a checklist to be completed on each occasion to remind Building Industry Participants of the requirements for the exercise of a right of entry.
- 3.6 How will you monitor compliance on site by your employees and Subcontractors? If you will conduct some form of review or audit, what records will you keep of every request for entry by union officials.
- 3.7 How will you monitor and deal with unauthorised entry? You should develop a procedure for dealing with unauthorised access. This procedure should address the following matters:
 - (a) recording all conduct in detail;
 - (b) recording or filming the event if lawful and safe to do so;
 - (c) reporting the event;
 - (d) identifying non-legal and legal steps that can be taken and identifying who should be contacted; and
 - (e) allocating responsibility for responding to unauthorised access.

4. Workplace relations risks

- 4.1 You must identify the possible workplace relations risks that might arise over the expected life of the project. These should include the various matters set out in the BCI Code. Some examples are the expiry of an enterprise agreement during the project, parties seeking an enterprise agreement where no agreement exists, the potential for protected industrial action.
- 4.2 What steps will you take to manage those risks to avoid the interruption of work.
- 4.3 How will you manage Subcontractors that you engage – who will be responsible and what steps will they take. How does that tie in with monitoring for BCI Code compliance.
- 4.4 Explain how you will deal with:
 - (a) Industrial Action, including threatened Industrial Action (see the notes to paragraph 20 in Appendix 1); and
 - (b) employee and workforce grievances – include steps to monitor how Subcontractors manage grievances made to them. If you have grievance procedures attach copies.

5. Drug and alcohol management

- 5.1 If you already have a drug and alcohol policy or fitness for work policy:
 - (a) confirm that it meets all of the requirements in paragraph 5 of Schedule 2 of the BCI Code; and
 - (b) attach or insert the policy into the WRMP.
- 5.2 If you do not have existing policies, develop one that meets the requirements and insert it or attach it to the WRMP.
- 5.3 Please be aware that the policy only needs to meet the requirements set out in paragraph 5 of Schedule 2 of the BCI Code. The Implementation Guidelines do provide additional recommendations regarding drug and alcohol testing but these are not mandatory.
- 5.4 How will you ensure that all Subcontractors and their workers comply with the policy? Will this be a contractual requirement, will it form part of site induction training?
- 5.5 How will you monitor the application of the policy on site – reporting tests undertaken, results, remedial steps taken (if any required).
- 5.6 Allocate responsibility for monitoring the application of the policy and establish a reporting mechanism for that person to confirm the strict application of the policy.

Appendix 1: What to consider in developing your WRMP

| Paragraph in BCI Code | Subject | Examples of matters to be covered by WRMP |
|-----------------------|--|--|
| 8.2 and 8.3 | Requirements relating to Subcontractors and Building Industry Participants | <p>Set out the clauses you will insert into tender documents and Subcontracts drawing attention to and requiring Subcontractors to comply with the BCI Code. Deal specifically with the clauses requiring the Subcontractor to allow the BCCMU to access its business premises, reports, documents, etc. as required (8.3(a) and (c)).</p> <p>What steps will you take to ensure that Subcontractors and Building Industry Participants (e.g. building employees, building employers, Building Contractors and unions) will comply with the BCI Code. These steps must demonstrate a “proactive” approach and should incorporate steps to confirm compliance at meetings such as project meetings, site meetings and toolbox meetings.</p> <p>How will you ensure that Subcontractors remedy any BCI Code non-compliance that may be identified.</p> |
| 9 | Compliance with laws, decisions, directions, determinations and orders | <p>List any Commonwealth or State Industrial Instruments that apply to work on the project.</p> <p>What steps will you take to ascertain whether Subcontractors have any Commonwealth or State Industrial Instruments that apply to work on the project.</p> <p>How will you communicate the importance of compliance with the Designated Building Laws and Designated Industrial Laws.</p> <p>How will you monitor compliance with the Designated Building Laws and Designated Industrial Laws.</p> <p>How will you monitor compliance with decisions, directions, determinations and orders</p> |
| 10 | Unregistered written agreements and other agreements | <p>For the purposes of the WRMP, an unregistered agreement means any agreement that provides for terms, conditions or benefits of employment of employees which will not be certified, registered, lodged or otherwise approved under a Designated Industrial Law and includes any such agreement that a Building Contractor reasonably believes will not be certified, registered, lodged or otherwise approved under a Designated Industrial Law.</p> <p>NOTE: a common law agreement between an employer and any individual employee or an individual flexibility agreement is permitted.</p> <p>The WRMP should state that unregistered agreements relating to employees working on site are prohibited.</p> <p>How will you establish that a Subcontractor is not a party to any unregistered agreements prior to signing the Subcontract.</p> <p>What steps you will take to monitor Subcontractors to ensure that no unregistered agreements are negotiated or concluded during the project.</p> |
| 11 | Sham contracting | <p>Explain what steps you take to ensure that persons engaged as independent contractors are genuine contractors and not employees.</p> <p>How will you ensure that your Subcontractors do not engage persons as independent contractors unless they are genuinely contractors and not employees?</p> |

| Paragraph in BCI Code | Subject | Examples of matters to be covered by WRMP |
|-----------------------|---|---|
| 12 | Harsh or unfair contracts | <p>Explain what steps you take to ensure that your services contracts (as defined in section 5 of the <i>Independent Contractors Act 2006</i> (Cth)) are not unfair or harsh within the meaning of that Act.</p> <p>How will you ensure that Subcontractors do not enter into agreements which are unfair or harsh within the meaning of the <i>Independent Contractors Act 2006</i> (Cth).</p> <p>How do you ensure that the terms of your Small Business contracts are not unfair as defined in part 2–3 of the Australian Consumer Law.</p> <p>How will you ensure that Subcontractors do not include terms in Small Business contracts which are unfair.</p> |
| 13 | Engagement of non-citizens or non-residents | <p>How do you ensure that persons you engage (whether as an employee or an independent contractor) are lawfully entitled to be so engaged under Australian Law.</p> <p>How will you ensure that Subcontractors engage only persons who are lawfully entitled to be so engaged under Australian Law.</p> <p>What steps do you take to ensure that you comply with Australian Law in relation to sponsoring, engaging and employing a person who is not an Australian citizen.</p> <p>What steps will you take to ensure that a Subcontractor complies with its responsibilities under Australian Law in relation to the sponsoring, engaging and employing a person who is not an Australian citizen.</p> |
| 14 | Workplace arrangements | <p>For the purposes of the BCI Code, a “workplace arrangement” refers to either an award or an agreement that provides for the terms, conditions or benefits of employment that is certified, registered, lodged or approved under a Designated Industrial Law.</p> <p>What steps do you take to ensure that there is no requirement on your Subcontractors to have particular workplace arrangements in place and that no undue influence is brought to bear upon them to have particular workplace arrangements in place.</p> <p>How will you ensure that Subcontractors do not require, or exercise undue influence upon, their Subcontractors to have particular workplace arrangements in place.</p> |
| 15 | Above-entitlements payments and related matters | <p>What steps will you take to ensure a Subcontractor is not coerced into, or subject to undue influence or undue pressure, to make an above-entitlements payment or to contribute to a particular redundancy or superannuation fund.</p> <p>What steps will you take to ensure that Subcontractors do not coerce or unduly influence or pressure their Subcontractors to make above-entitlements payments or to contribute to a particular redundancy or superannuation fund.</p> |
| 16 | Freedom of association | <p>What policies do you have in place or will you introduce to ensure that freedom of association is protected.</p> |

| Paragraph in BCI Code | Subject | Examples of matters to be covered by WRMP |
|-----------------------|--|---|
| 17 | Entry to premises where building work is performed | <p>How will you regulate access to and egress from the site to ensure that all persons entering the site have a legitimate authority to be on site.</p> <p>Identify the relevant legislation providing a right of access for union officials to enter the site.</p> <p>What steps will you take to ensure that any union official seeking access to the site:</p> <ul style="list-style-type: none"> • has a valid entry permit; • has given any notice as required; and • is exercising the right of entry for a purpose for which right of entry can be exercised. |
| 18 | Dispute settlement procedure in Industrial Instruments | <p>Set out dispute resolution procedures in any Commonwealth or State Industrial instruments that apply to work on site.</p> <p>What steps will you take to rectify any non-compliance with the requirements of paragraph 18.2 of the BCI Code.</p> |
| 19 | Workplace reform | <p>List the relevant sections of the <i>Fair Work Act 2009</i> (Cth) and the <i>Industrial Relations Act 1979</i> (WA) relating to making agreements and bargaining in good faith.</p> <p>Identify the steps you will take to ensure that Subcontractors comply with those requirements.</p> |
| 20 | Industrial Action | <p>Define Industrial Action to ensure that site management and Subcontractor management understand what behaviours are involved, distinguishing between unlawful and Protected Industrial Action.</p> <p>Set out the steps available to address Industrial Action on site prior to resorting to legal action. Also identify the range of legal remedies available to prevent or bring an end to Industrial Action that is not Protected Industrial Action.</p> <p>Explain the steps that will be in place to ensure:</p> <ul style="list-style-type: none"> • Any actual or threatened Industrial Action will be recorded in a form that will facilitate the ability to bring legal action to end the industrial action. • Outline how rallies, protests and other activities that result in lost time which do not constitute Industrial Action will be managed. • What steps will be taken to ensure that all actual or threatened Industrial Action will be reported to the BCCMU as soon as practicable but no later than 24 hours after becoming aware of the threat or action. <p>Identify persons who can be contacted to ensure that legal responses are prompt and effective.</p> |
| 22 | Workplace health and safety | <p>Identify the relevant safety legislation that applies to the project.</p> <p>How you will comply with the obligations imposed under that legislation. For example, establishing and implementing occupational safety and health management systems, policies and procedures that will apply to the project. Do you have a compliant fitness for work policy which addresses the drug and alcohol testing requirements under Schedule 2 of the BCI Code?</p> <p>How will you ensure that Building Industry Participants comply with the legislation, safety management systems, procedures and policies that apply on site? For example, consider imposing contractual obligations on Subcontractors that require them to comply with the procedures and to educate workers through induction or other training. You could also consider conducting site inspections and random audits to ensure compliance and require safety be addressed during project and toolbox meetings.</p> |