



Guide to developing a freedom of association policy

Disclaimer - The Department of Commerce has prepared this publication to provide information on the [Western Australian Building and Construction Industry Code of Conduct 2016](#). It is provided as a general guide only and is not designed to be comprehensive or to provide legal advice. The Department of Commerce does not accept liability for any claim which may arise from any person acting on, or refraining from acting on, this information.

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 freedom of association policy. It explains when a freedom of association policy is required and provides useful information on how to prepare a freedom of association policy.

Terms used in this guide have the same meaning as in the BCI Code.

In this guide, references to:

- “You” refers to the Building Contractor who is preparing a freedom of association policy – for example, the head contractor or Subcontractor;
- a “union” includes any Building Association;
- “union status” refers to the membership or non-membership of a Building Association.

Who must have a freedom of association policy?

Every Building Contractor who is covered by the BCI Code must have a freedom of association policy in place for the time they remain covered by the BCI Code. Building Contractors are required to ensure that Subcontractors they engage also comply with the BCI Code. This means that all head contractors and Subcontractors engaged

to perform work on a Covered Contract must have a freedom of association policy in place. This requirement applies to both State Building Work and Private Covered Building Work.

Requirements

To be compliant your freedom of association policy must satisfy each of the requirements set out in paragraph 16.2 of the BCI Code and the policy must be implemented.

When drafting your freedom of association policy it is important to remember that if you engage Subcontractors you are responsible for ensuring that they comply with the BCI Code. Consequently, you should remember to ensure that your policy applies to Subcontractors and to adopt a proactive approach to monitoring compliance.

Template

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

Additionally, you do not have to create a standalone policy. You may have policies and procedures in place that adequately deal with these issues or be able to incorporate these requirements into existing policies.

The diagram below shows what your freedom of association policy would look like based on Appendix 2.



**ABC Constructions Pty Ltd
Freedom of Association Policy**

1. Purpose
2. Scope
3. Policy
4. Breaches
5. Further information

Date created: 1 January 2017

Last revised: XX

[Click here](#) for the link to the Word template for developing a freedom of association policy.

Further information and queries

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

Tips for developing your freedom of association policy

1. Purpose

- 1.1 Under the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1979* (WA), all parties have the right to freedom of association. This means that parties are free to join or not join an industrial association of their choice and that they are not to be discriminated against or victimised on the grounds of membership or non-membership of an industrial association.
- 1.2 This section of the policy should define what freedom of association is and set out what the purpose of the policy is. Basically, it is an introduction to the policy.
- 1.3 It should be clear from this section that there is a strong commitment from your company to protect freedom of association.

2. Scope

- 2.1 This section should clearly explain where and when the policy applies and who the policy applies to. For example, consider whether the policy:
 - (a) applies across your entire business or only on the particular project; and
 - (b) applies only to direct employees, or whether it also covers contractors, Subcontractors and their personnel.
- 2.2 Remember if you are a head contractor you should ensure that the policy applies to all Subcontractors as you are required to proactively monitor compliance of your Subcontractors under the BCI Code.

3. Policy

- 3.1 This section is where you set out your approach to complying with the requirements of paragraph 16 of the BCI Code. This means you will need to explain what policies or procedures you have to ensure that persons are:
 - (a) free to become, or not become, members of unions;
 - (b) free to be represented, or not represented, by unions;
 - (c) free to participate or not participate in lawful industrial action.
- 3.2 This part of the policy sets out your organisation's expectations and requirements in relation to freedom of association.
- 3.3 You may find it useful to group the expectations and requirements based on who is responsible for complying with those expectations and requirements. For example:
 - (a) your company – set out what your company must and/or must not do;
 - (b) employees – set out what you expect of employees; and
 - (c) others such as contractors, Subcontractors, labour hire workers – set out what is expected of these other parties.
- 3.4 Paragraph 16.2 of the BCI Code contains some examples of conduct that you should address to protect freedom of association. You must take these into consideration when deciding what your expectations and requirements are. Some useful considerations relating to freedom of association are set out in Appendix 1.
- 3.5 Remember it is expected that your policy will be vigorously applied on site so be careful to ensure that the expectations and requirements you develop are achievable.
- 3.6 Once the policy is created you are required to implement the policy. How will you make sure that all of the people covered by the policy are aware of the policy and understand what is expected of them? For example:
 - (a) How will you inform your employees of these requirements – will this be covered during induction training when the employee first commences work, are copies of the policy available on the intranet?
 - (b) How will you advise your Subcontractors of your policy and its requirements? Will you display a copy of this policy on site, will you provide training to management or those on site who are responsible for enforcing the policy, will you include contractual obligations for contractors/ Subcontractors to comply with your policy?

- (c) How will you ensure that people working on site understand their rights to freedom of association? Will these rights be covered during the site based induction or at toolbox or other site based meetings?
 - (d) What records will you keep?
- 3.7 How will you monitor compliance on site by your personnel and contractors? For example, will you conduct site inspections to check that there are not any “no ticket, no start” signs on display, will you conduct random audits of contractor’s employees records to confirm that they do not require workers to identify their union status, will you review personnel records to ensure training was conducted or perhaps conduct worker surveys?
- 3.8 Allocate responsibility for the monitoring and application of the policy and establish a reporting mechanism for that person to confirm the strict application of the policy. Establish a reporting mechanism for that person to confirm completion of those tasks.

4. Breaches

- 4.1 How can someone report a breach of the policy? Explain what someone should do if they have been subject to behaviour in breach of the policy or witnessed behaviour that breaches the policy.
- 4.2 What are the consequences if someone who is covered by the policy breaches the policy? Clearly explain the consequences that might be imposed.

5. Further information

- 5.1 This section should contain links to any references or associated policies or documents (if applicable) as well as a person to contact for further information.

Appendix 1: Useful examples to consider when developing your policy

Issues	Considerations	Paragraph in BCI Code
Union representation	<p>What steps will you put in place to ensure that a worker's reasonable request to be represented by a union is not refused?</p> <p>How will you ensure that elected employee representatives are not discriminated against or disadvantaged? For example, by providing training to management and supervisors?</p> <p>Ensure that employees are free to choose whether they want to be represented by a union during any grievance or disciplinary process.</p>	16.2(d), (h)
Union status generally	<p>Consider how you will ensure that workers are not required to identify their union status.</p> <p>For example:</p> <ul style="list-style-type: none"> • provide training to management and supervisors to ensure job applicants are not refused employment because of their union status; • ensure that employment application forms, job interviews, contracts of employment and other employment related documentation do not refer to union membership or union status; • do not ask Subcontractors to identify the union status of their workers; • do not comply with any requests from third parties to identify the union status of your workers; or • educate workers on their rights during inductions conducted on commencement of employment. 	16.2(e), (f)
Union status on site	<p>Consider how you will ensure that workers are not required to identify their union status whilst they are on site.</p> <p>For example:</p> <ul style="list-style-type: none"> • do not allow "no ticket, no start" signs or any other signs which seek to harass or vilify workers on the basis of union membership to be displayed; • prevent "show card" days; • do not allow union logos, mottos or other indicia to be applied to your company's equipment or to clothing supplied by your company; • ensure management on site do not ask workers about their union status; • ensure that officials, delegates or other representatives of a union do not undertake or administer induction processes; • display or make a copy of your policy available on site; or • educate workers on their rights and the obligations under this policy during site based inductions. <p>What steps will you take to monitor that your policy is being complied with on site?</p> <p>For example:</p> <ul style="list-style-type: none"> • site inspections to look for and immediately remove any inappropriate signage on site; • audits to ensure that Subcontractors do not require their workers to identify their union status; or • surveys of workers. 	16.2(b), (c), (k)

Issues	Considerations	Paragraph in BCI Code
Discrimination on the basis of union status	<p>Consider how you will ensure that individuals are not refused employment, discriminated against or terminated, because of their union status.</p> <p>For example:</p> <ul style="list-style-type: none"> • ensure that job applicants are not required to identify union status; • ensure that decisions on who to employ are based solely on lawful merit based criteria; • ensure that decisions as to promotion and other job opportunities are based solely on lawful performance and merit based considerations; • providing training to management and supervisors on the right to freedom of association; or • do not choose to engage or refuse to engage subcontractors based on their workers' union status. 	16.2(d), (f), (g)
Privacy	<p>How will you ensure that personal information is not dealt with in breach of the <i>Fair Work Act 2009</i> (Cth) or the <i>Privacy Act 1998</i> (Cth)?</p> <p>For example, by refusing to provide personal information of your workers to any third parties except as required by law.</p>	16.2(a)
Enterprise bargaining	<p>How will you ensure that workers are free to choose whether they are represented by a union during enterprise bargaining?</p> <p>How will you ensure that workers are not required to pay a "bargaining fee" to a union of which they are not a member regarding negotiations for an enterprise agreement which will cover the worker?</p> <p>Ensure that workers are free to choose whether they wish to participate in lawful Protected Industrial Action.</p>	16.2(h), (j)
Requests to hire	<p>State that your company will not comply with any requirements by third parties to:</p> <ul style="list-style-type: none"> • employ a non-working shop steward or job delegate; or • hire an individual nominated by a union. <p>How will you ensure that these requirements are not imposed on your Subcontractors?</p>	16.2(i)
Compliance and monitoring generally	<p>How will you ensure that your policy is being implemented and complied with?</p> <p>For example:</p> <ul style="list-style-type: none"> • how will you distribute your policy and educate all persons covered by the policy on their rights and obligations; • where will you display your policy; • consider providing training to all parties who will be covered by your policy; • consider whether you should include the requirement to comply with your policy as a contractual obligation on Subcontractors or other parties; • establish a complaints or other reporting mechanism to enable workers to report breaches or concerns; • encourage workers and Subcontractors to report unlawful or unacceptable conduct; • conduct site inspections, audits or surveys to confirm compliance; or • ensure prompt remedial action is taken where required to stamp out prohibited practices. 	16.1

Appendix 2: Freedom of Association Policy Template

[COMPANY NAME]
FREEDOM OF ASSOCIATION POLICY

1. Purpose
2. Scope
3. Policy
4. Breaches
5. Further information

Date created: XX
Last revised: XX

