



Government of **Western Australia**  
Department of **Commerce**

**Western Australian**  
**Building and Construction Industry**  
**Code of Conduct 2016**

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## Part 1. Introductory

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### 1. Name of Code

This Code is the Western Australian Building and Construction Industry Code of Conduct 2016.

### 2. Commencement

This Code commences on 1 January 2017.

### 3. Definitions

In this Code:

**Above-entitlements payment** means a payment or benefit above the amount or value of a payment or benefit required to be paid under an Industrial Instrument or industrial law (within the meaning of the *Fair Work Act 2009* (Cth)).

**Building Association** means a building association as defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Building Contractor** means a building contractor as defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Building Industry Participant** means a building industry participant as defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Building Work** means building work as defined in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), but does not include:

- (a) work that is described in paragraph 6(1)(e) of that section; or
- (b) the off-site prefabrication of made-to-order components to form part of any building, structure or works unless such prefabrication is performed on an auxiliary or holding site to the primary construction site or sites.

**BCCMU** means the Building and Construction Code Monitoring Unit established within the Department of Commerce.

**Code** means this *Western Australian Building and Construction Industry Code of Conduct 2016*.

**Code Compliance Report** has the meaning given in paragraph 30.

**Covered Contract** means a contract to perform State Building Work, or a contract to perform Private Covered Building Work.

**Covered Tender Process** means a Tender Process:

- (a) relating to State Building Work where the relevant tender documentation was released to market or selected respondents (as the case may be) after the date of commencement of this Code; or
- (b) relating to Private Covered Building Work where the relevant tender documentation was released to market or selected respondents (as the case may be) at a time when the Building Contractor was subject to the Code.

**Designated Building Law** means:

- (a) the *Competition and Consumer Act 2010* (Cth);
- (b) the *Building Act 2011* (WA);
- (c) the *Building Services (Registration) Act 2011* (WA); and
- (d) the *Construction Contracts Act 2004* (WA).

**Designated Industrial Law** means:

- (a) the *Independent Contractors Act 2006* (Cth);
- (b) the *Fair Work Act 2009* (Cth);
- (c) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
- (d) a Commonwealth Industrial Instrument;
- (e) the *Industrial Relations Act 1979* (WA); and
- (f) a State Industrial Instrument.

**Industrial Action** means industrial action as defined in the *Fair Work Act 2009* (Cth).

**Industrial Association** means an industrial association as defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Industrial Instrument** means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law (within the meaning of the *Fair Work Act 2009* (Cth)); and
- (b) relates to the relationship between an employer and the employer's employees.

**Minister** means the Minister for Commerce.

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**Private Covered Building Work** means any Building Work undertaken by the Building Contractor:

- (a) in the State of Western Australia;
- (b) which is not State Building Work; and
- (c) in respect of which:
  - (i) if the Building Work was procured by way of a Tender Process, the relevant tender documentation was released to market or selected respondents (as the case may be) at a time when the Building Contractor was subject to the Code; or
  - (ii) if the Building Work was not procured through a Tender Process, the contract for the Building Work was executed at a time when the Building Contractor was subject to the Code.

**Protected Industrial Action** means protected industrial action as defined in the *Fair Work Act 2009* (Cth).

**Relevant Order** means a decision, direction, determination or order made or given by a court, tribunal or statutory office holder, including a decision, direction, determination or order made under a Designated Industrial Law, a determination made under the *Construction Contracts Act 2004* (WA), and remedy orders made under the *Building Services (Complaint Resolution and Administration) Act 2011*.

**Small Business** means a small business as defined in the *Small Business Development Corporation Act 1983* (WA).

**Specified Schedule 1 Entity** means:

- (a) any port authority established under the *Port Authorities Act 1999* (WA);
- (b) a body established by or under the *Water Corporation Act 1995* (WA) section 4;
- (c) a body established by the *Electricity Corporations Act 2005* (WA) section 4(1); and
- (d) The Western Australian Land Authority established by the *Western Australian Land Authority Act 1992* (WA).

**State Building Work** means Building Work of a type described in Schedule 1.

**Subcontract** means any contract for the provision of goods or services related to Building Work the subject of a Covered Contract, irrespective of its hierarchical level, save for the Covered Contract itself, and 'Subcontractor' has a corresponding meaning.

**Tender Process** means a competitive procurement process whether described as a tender, expression of interest, request for proposal, or otherwise.

**Tender Conditions** mean the conditions governing a Covered Tender Process.

**Tender Response** means a proposal submitted in response to a Tender Process.

**Tenderer** means a party which submits a Tender Response, and unless context otherwise demands, includes prospective Tenderers.

**Work Health and Safety Law** means any Act, regulation or code primarily concerned with health and safety in the workplace, including without limitation the legislation specified below and approved codes of practice made under such legislation:

- (a) the *Occupational Safety and Health Act 1984* (WA);
- (b) the *Occupational Safety and Health Regulations 1996* (WA);
- (c) the *Work Health and Safety Act 2011* (Cth); and
- (d) the *Work Health and Safety Regulations 2011* (Cth).

**WRMP** means a Workplace Relations Management Plan.

## 4. Interpretation

4.1 In this Code, an entity is a **Related Entity** of a Building Contractor if the entity is:

- (a) connected to the Building Contractor by:
  - (i) being able to control, or materially influence, the Building Contractor's activities or internal affairs; or
  - (ii) being able to determine, or materially influence, the outcome of the Building Contractor's financial and operating policies; or

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- (iii) being financially interested in the Building Contractor's success or failure or apparent success or failure; or
  - (b) a body corporate (within the meaning of the *Corporations Act 2001* (Cth)) that is related to the Building Contractor by:
    - (i) being a holding company of the Building Contractor; or
    - (ii) being a subsidiary of the Building Contractor; or
    - (iii) being a subsidiary of a holding company of the Building Contractor; or
    - (iv) having one or more directors who are also directors of the Building Contractor; or
    - (v) controlling the Building Contractor.

- 4.2 In this Code, each of the following is a **Funding Entity**:
- (a) a Department of the State of Western Australia;
  - (b) a Statutory Authority under the *Financial Management Act 2006* (WA); and
  - (c) a Specified Schedule 1 Entity.

- 4.3 In this Code, a reference to a written law shall be deemed to include a reference to such written law as it may from time to time be amended.

## 5. Purposes of this Code

- 5.1 This Code has been developed to:
- (a) ensure the State of Western Australia, in expending public funds on State Building Work, contracts with Building Contractors which conduct themselves in a reputable, fair, safe and responsible manner, both in dealings with the State of Western Australia, and within the building and construction industry more generally;
  - (b) promote fair, efficient and productive workplace relations in the building and construction industry;
  - (c) improve the workplace relations framework under which building and construction activities are performed;

- (d) promote safe practices in the building and construction industry;
- (e) assist industry stakeholders to understand the State of Western Australia's expectations and requirements in relation to Building Contractors seeking to undertake State Building Work;
- (f) promote fair subcontracting practices and timely payment of Subcontractors within the building and construction industry, and
- (g) establish a compliance framework under which Building Contractors' Code compliance may be recorded for the purposes of future consideration when awarding future State Building Work.

## 6. Becoming subject to this Code

- 6.1 A Building Contractor may become subject to this Code:
- (a) pursuant to the Tender Conditions of a Covered Tender Process relating to State Building Work; or
  - (b) pursuant to the terms of a Covered Contract for the performance of State Building Work.
- 6.2 A Building Contractor who becomes subject to this Code:
- (a) Pursuant to the Tender Conditions of a Covered Tender Process relating to State Building Work will, unless the Tender Conditions otherwise provide, become subject to this Code on submitting a Tender Response, and remain subject to this Code for:
    - (i) the duration of the relevant Tender Process (if unsuccessful in that Tender Process); or
    - (ii) the duration of the relevant Tender Process plus the term of the relevant Covered Contract (if successful in that Tender Process).
  - (b) Pursuant to the terms of a Covered Contract for the performance of State Building Work will, unless the terms of

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such contract otherwise provide, remain subject to this Code for the term of the relevant Covered Contract.

## **7. Significance of being subject to this Code**

- 7.1 In order to comply with this Code, a Building Contractor which is subject to this Code must, at all times while the Building Contractor remains subject to this Code, comply with the obligations described in Part 2 of this Code whenever and to the extent those obligations are connected with, capable of relating to, or of potential application to any:
- (a) Covered Tender Processes in which the Building Contractor participates;
  - (b) State Building Work undertaken by the Building Contractor; and
  - (c) Private Covered Building Work undertaken by the Building Contractor.
- 7.2 To the extent requirements of this Code apply in relation to State Building Work or Private Covered Building Work undertaken by the Building Contractor, the requirements of this Code will apply to:
- (a) participation in on-site activities; and
  - (b) conduct that relates to on-site activities but does not occur on the site,
- including Building Work performed on an auxiliary or holding site separate from the primary construction site or sites.
- 7.3 A Building Contractor which fails to comply with this Code while subject to this Code may be the subject of a final Code Compliance Report that makes a finding of material Code non-compliance. Such finding may have the effects described in paragraph 30.6.
- 7.4 Building Contractors performing State Building Work may (depending upon the terms of Covered Contracts) owe contractual obligations to Funding Entities to comply with this Code, and failure to comply with this Code may comprise a breach of contract and give rise to remedies in contract.

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## Part 2. Requirements in order to be compliant with this Code

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### 8. Requirements relating to Subcontractors and Building Industry Participants

- 8.1 A Building Contractor must take all reasonable steps to ensure Subcontractors and Building Industry Participants performing Building Work the subject of a Covered Contract comply with each obligation of this Code.
- 8.2 A provision of this Code which provides that a Building Contractor must do something, or must not do something, shall be interpreted as also requiring the Building Contractor take all reasonable steps to ensure Subcontractors and Building Industry Participants do, or do not do, that thing.
- 8.3 Without limiting paragraph 8.1 or 8.2, a Building Contractor must take all reasonable steps to:
- (a) ensure that compliance with this Code is a condition of all Subcontracts;
  - (b) proactively ensure compliance with this Code by Subcontractors and Building Industry Participants including by confirming compliance at site or project meetings;
  - (c) ensure that Subcontractors:
    - (i) provide the BCCMU with access to the Subcontractor's business premises and any other places where records, documents or information is kept by the Subcontractor;
    - (ii) assist the BCCMU in locating and accessing any record, document or information, whether in hard copy or electronic format;
    - (iii) allow the BCCMU to speak with or interview the Subcontractor's employees or contractors;
    - (iv) allow the BCCMU to take copies of any record, document, information or other evidence whether in hard copy or electronic format;
    - (v) respond to requests for information made by the BCCMU; and
    - (vi) do not obstruct the BCCMU.
  - (d) ensure that Subcontractors initiate voluntary remedial action aimed at rectifying Code non-compliance when it is drawn to their attention;
  - (e) Acts or omissions of a Subcontractor which would, but for this paragraph 8.3(e), lead to the Building Contractor breaching paragraph 8.3(c) will not result in the Building Contractor breaching that paragraph where such acts or omissions occur in the context of Private Covered Building Work, and are necessary in order to prevent the Subcontractor from breaching a contractual obligation (such as a contractual obligation of confidence) owed to a third party (not being the Building Contractor) in circumstances where:
    - (i) the Subcontractor became subject to the contractual obligation prior to becoming involved with the Private Covered Building Work; or
    - (ii) the Subcontractor became subject to the contractual obligation after becoming involved in the Private Covered Building Work, but could not reasonably have avoided becoming subject to the contractual obligation without suffering material adverse commercial or operational consequences.

### 9. Compliance with laws, decisions, directions, determinations and orders

- 9.1 A Building Contractor must comply with all Designated Industrial Laws that apply to the Building Contractor.
- 9.2 A Building Contractor must comply with all Designated Building Laws that apply to the Building Contractor.
- 9.3 A Building Contractor:
  - (a) must comply with each Relevant Order that applies to the Building Contractor; and

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- (b) must not enter into, participate in or facilitate an arrangement or conduct which conflicts with a Relevant Order that applies to the Building Contractor.

9.4 Paragraph 9.3 does not apply if:

- (a) the period for payment, or for other compliance with the Relevant Order has not expired;
- (b) the Relevant Order is the subject of an appeal; or
- (c) the Relevant Order has been revoked.

## 10. Unregistered written agreements and other agreements

- 10.1 A Building Contractor must not bargain in relation to an agreement, or make an agreement, that provides for terms, conditions or benefits of employment of employees of the employer that either:
- (a) will not be certified, registered, lodged or otherwise approved under a Designated Industrial Law; or
  - (b) the Building Contractor reasonably believes will not be certified, registered, lodged or otherwise approved under a Designated Industrial Law.
- 10.2 Paragraph 10.1 does not apply to an agreement that is a common law agreement made between an employer and an individual employee or to an individual flexibility arrangement.

## 11. Sham contracting

- 11.1 A Building Contractor must not engage in activity that is prohibited under a provision of Division 6 of Part 3-1 of the *Fair Work Act 2009* (Cth).

## 12. Harsh or unfair contracts

- 12.1 A Building Contractor must not enter into a services contract (as defined in section 5 of the *Independent Contractors Act 2006* (Cth)) which is unfair or harsh within the meaning of the *Independent Contractors Act 2006* (Cth).

- 12.2 A Building Contractor must not enter into a small business contract (as defined in Part 2-3 of the *Australian Consumer Law*) which contains a term which is unfair (as defined in Part 2-3 of the *Australian Consumer Law*).

## 13. Engagement of non-citizens or non-residents

- 13.1 A Building Contractor must take all reasonable steps to ensure that a person engaged to undertake Building Work for the Building Contractor (as an employee or as an independent contractor) is lawfully entitled to be so engaged under Australian law.
- 13.2 A Building Contractor must take all reasonable steps to ensure that it complies with its responsibilities under Australian law in relation to the sponsorship, engagement and employment of a person who is not an Australian citizen.

## 14. Workplace arrangements

- 14.1 A Building Contractor must not engage in activity that:
- (a) requires a Subcontractor (through the tendering process or otherwise) to have particular workplace arrangements in place; or
  - (b) attempts to unduly influence a Subcontractor (through the tendering process or otherwise) to have particular workplace arrangements in place.

## 15. Above-entitlements payments and related matters

- 15.1 A Building Contractor must ensure that:
- (a) a Subcontractor is not coerced into making an Above-entitlements payment; and
  - (b) undue influence or undue pressure is not exerted, directly or indirectly, on a Subcontractor to make an Above-entitlements payment.
- 15.2 A Building Contractor must ensure that:
- (a) a Subcontractor is not coerced into contributing to a particular redundancy or superannuation fund; and

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- (b) undue influence or undue pressure is not exerted, directly or indirectly, on a person to contribute to a particular redundancy or superannuation fund.

## 16. Freedom of association

16.1 A Building Contractor must protect freedom of association by adopting and implementing policies that:

- (a) are consistent with applicable industrial law (within the meaning of the *Fair Work Act 2009* (Cth));
- (b) ensure that persons are:
  - (i) free to become, or not become, members of Industrial Associations; and
  - (ii) free to be represented, or not represented, by Industrial Associations; and
  - (iii) free to participate, or not participate, in lawful industrial activities.

16.2 Without limiting paragraph 16.1, the Building Contractor must ensure that:

- (a) personal information is not dealt with in breach of the *Privacy Act 1988* (Cth) or the *Fair Work Act 2009* (Cth);
- (b) 'no ticket, no start' signs are not displayed;
- (c) 'show card' days do not occur;
- (d) there is:
  - (i) no discrimination against elected employee representatives; and
  - (ii) no disadvantage to elected employee representatives;
- (e) forms are not used to require:
  - (i) an employee to identify his or her union status;
  - (ii) an employer to identify the union status of employees; or
  - (iii) a contractor to identify the union status of Subcontractors;
- (f) individuals are not refused employment because of their union status;

- (g) employees are not terminated because of their union status;
- (h) reasonable requests from workplace delegates to represent an employee of the Building Contractor in relation to a grievance, a dispute or a discussion with a member of an Industrial Association are not refused;
- (i) requirements are not imposed, or attempted to be imposed, on a Subcontractor or employer to:
  - (i) employ a non-working shop steward or job delegate; or
  - (ii) hire an individual nominated by a union;
- (j) individuals are not required to pay a 'bargaining fee' (however described) to an Industrial Association of which the individual is not a member, in respect of services provided by the Industrial Association; and
- (k) officials, delegates, or other representatives of a Building Association do not undertake or administer induction processes.

## 17. Entry to premises where Building Work is performed

17.1 A Building Contractor must, in relation to premises where Building Work is performed, strictly comply with all laws of the Commonwealth and the State of Western Australia to which the Building Contractor is subject that give a right of entry permit holder a right to enter premises where work is performed.

17.1 A Building Contractor must, so far as is reasonably practicable, ensure that:

- (a) entry by an officer of a Building Association to premises where Building Work is performed must be for a purpose for which a right of entry could be exercised under a Designated Industrial Law or a relevant Work Health and Safety Law; and

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- (b) when an officer of a Building Association seeks to enter premises, the officer strictly complies with all applicable Designated Industrial Laws and Work Health and Safety Laws, including permit and notice requirements.

## 18. Dispute settlement procedure in Industrial Instruments

18.1 A Building Contractor must:

- (a) include a genuine dispute settlement procedure in each Industrial Instrument that it enters into while subject to this Code; and
- (b) comply with other requirements of the *Fair Work Act 2009* (Cth) and *Industrial Relations Act 1979* (WA) relating to dispute settlement that apply to the Building Contractor.

18.2 The minimum requirements for a genuine dispute settlement procedure are:

- (a) the ability for employees to appoint a representative in relation to the dispute;
- (b) procedures to settle the dispute at the workplace level in the first instance;
- (c) if a dispute is not settled at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
- (d) if the dispute is still not settled, the capacity for an independent third party to settle the dispute by a decision binding on the parties.

## 19. Workplace reform

19.1 A Building Contractor must comply with any applicable requirements of the *Fair Work Act 2009* (Cth) or the *Industrial Relations Act 1979* (WA) in relation to:

- (a) making agreements; and
- (b) showing good faith when bargaining.

## 20. Industrial Action

20.1 A Building Contractor must, in relation to State Building Work, report actual or threatened Industrial Action (whether Protected Industrial Action or Industrial Action that is not Protected Industrial Action) to the BCCMU as soon as practicable but no later than 24 hours after becoming aware of the threat or action.

20.2 A Building Contractor must, in relation to Private Covered Building Work, report actual or threatened Industrial Action that is not Protected Industrial Action by employees of the Building Contractor to the BCCMU as soon as practicable but no later than 24 hours after becoming aware of the threat or action.

20.3 A Building Contractor must, to the extent reasonably practicable, take steps to prevent or bring an end to Industrial Action that is not Protected Industrial Action taken in connection with State Building Work or Private Covered Building Work.

## 21. Workplace Relations Management Plan

21.1 A Building Contractor must have a Code compliant WRMP in place prior to commencing State Building Work the subject of a Covered Contract exceeding \$10 million in value.

21.2 A WRMP, in order to be Code compliant, must either:

- (a) satisfy each of the requirements of Schedule 2 of this Code; or
- (b) be required under the provisions of a construction code issued by the Commonwealth of Australia, and satisfy each of the requirements for a WRMP under that code.

21.3 A Building Contractor must comply with, and must take all reasonable steps to ensure that all Subcontractors and Building Industry Participants comply with, each obligation or process documented in the WRMP.

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## 22. Workplace health and safety

22.1 A Building Contractor must comply with all Work Health and Safety Laws to the extent such Work Health and Safety Laws are of application to the Building Contractor.

## 23. Security of payment

23.1 A Building Contractor must:

- (a) comply with all applicable laws (including the *Construction Contracts Act 2004* (WA)) relating to the security of payments that are due to persons;
- (b) not include in any construction contract (as defined in the *Construction Contracts Act 2004* (WA)) any provision which is a prohibited provision for the purposes of Division 1 of Part 2 of the *Construction Contracts Act 2004* (WA);
- (c) ensure that payments made by the Building Contractor are made in a reasonable and timely manner; and
- (d) as far as practicable, ensure that disputes about payments are resolved in a reasonable, timely and consultative way.

## 24. Matters involving Small Businesses

24.1 Where a dispute arises between a Building Contractor and a Small Business, and such dispute is not able to be expeditiously resolved by the parties to the dispute:

- (a) the Building Contractor must advise the Small Business of the potential application of the dispute resolution processes under the *Construction Contracts Act 2004* (WA) and Division 2 of Part 3 of the *Small Business Development Corporation Act 1983* (WA); and
- (b) where the dispute is a small business dispute (as defined in section 15A of the *Small Business Development Corporation Act 1983* (WA)), the parties to the dispute may request the Small Business Commissioner to undertake alternative dispute resolution in respect of the dispute in accordance with section 15D of that Act.

24.2 The Small Business Development Corporation may, through any of its officers or delegates, refer any instance of potential Code non-compliance to the BCCMU where it considers such referral would facilitate and encourage the fair treatment of Small Businesses in their commercial dealings with other businesses in the marketplace.

## 25. Collusive tendering

25.1 A Building Contractor which submits a Tender Response in relation to a Tender Process must not discuss any aspect of its Tender Response with other potential Tenderers prior to award of the relevant contract, unless the party conducting the Tender Process is present at the discussion.

25.2 A Building Contractor must not engage in collusive conduct during its participation in a Tender Process. Collusive conduct shall include, but not be limited to:

- (a) agreement between Tenderers as to who should be the successful Tenderer;
- (b) any meeting of Tenderers to discuss Tender Responses prior to the submission of their Tender Responses which is intended to, or results in, disadvantage to the party conducting the Tender Process;
- (c) exchange of information between Tenderers about their Tender Responses, prior to the close of the period for submitting Tender Responses;
- (d) agreement between Tenderers for the payment of money or the securing of reward or benefit for unsuccessful Tenderers by the successful Tenderer;
- (e) agreements between Tenderers to fix prices of contract. This includes any collaboration between Tenderers on prices to be included in contracts or commissions without the consent of the party conducting the Tender Process;
- (f) the submission of a cover Tender Response (that is, a pre-arranged inflated bid), which is intended to advantage

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another Tenderer or disadvantage the party conducting the Tender Process; and/or

- (g) any unlawful or illegitimate agreement between Tenderers prior to submission of Tender Responses to fix the rate of payment of Industrial Association fees.

25.3 A Building Contractor must not:

- (a) accept or provide secret commissions;
- (b) enter into any improper commercial arrangements with other Tenderers;
- (c) seek to influence contract decisions by improper means during Tender Processes; or
- (d) accept incentives to provide contracts or services to other participants that financially disadvantage the party conducting the Tender Process.

25.4 A Building Contractor which becomes subject to this Code on submission of a Tender Response relating to State Building Work must advise the BCCMU in writing within 24 hours of submission of that Tender Response if any aspect of its preparation of that Tender Response was inconsistent with any obligation under this paragraph 25.

## 26. Interaction with the BCCMU

26.1 A Building Contractor must advise the BCCMU in writing when Covered Contracts having a value in excess of \$2 million are executed by the Building Contractor in respect of Private Covered Building Work.

26.2 A Building Contractor:

- (a) must provide the BCCMU with access to the site of State Building Work, the site of Private Covered Building Work, the Building Contractor's business premises and any other places where records, documents or information is kept;
- (b) must assist the BCCMU in locating and accessing any record, document or information, whether in hard copy or electronic format;

- (c) must allow the BCCMU to speak with or interview the Building Contractor's employees or contractors;

- (d) must allow the BCCMU to take copies of any record, document, information or other evidence whether in hard copy or electronic format;

- (e) must respond to requests for information made by the BCCMU; and

- (f) must not obstruct the BCCMU.

26.3 Acts or omissions of a Building Contractor which would, but for this paragraph 26.3, breach paragraph 26.1 or 26.2 will not breach those paragraphs where such acts or omissions occur in the context of Private Covered Building Work, and are necessary in order to prevent the Building Contractor from breaching a contractual obligation (such as a contractual obligation of confidence) owed to a third party in circumstances where:

- (a) the Building Contractor became subject to the contractual obligation prior to becoming subject to this Code; or

- (b) the Building Contractor became subject to the contractual obligation after becoming subject to this Code but could not reasonably have avoided becoming subject to the contractual obligation without suffering material adverse commercial or operational consequences.

## 27. Notification

27.1 A Building Contractor must notify the BCCMU of a breach or a suspected breach of this Code as soon as practicable, but no later than 48 hours after becoming aware of the breach or suspected breach.

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## Part 3. Compliance related matters

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### 28. Monitoring and reporting

- 28.1 The BCCMU may undertake Code monitoring and compliance activities including site visits, site inspections, interviews, audits, interrogation of electronic systems, and inspections of records, documents and information, whether in hard copy or electronic format.
- 28.2 The BCCMU may respond to reports of alleged breaches of this Code made to the BCCMU.

### 29. Breaches

- 29.1 Where the BCCMU believes that a Building Contractor has, or may have, breached this Code (whether such belief has arisen by reason of a notification received under paragraph 27.1, or monitoring and compliance activities undertaken pursuant to paragraph 28.1, or a report received under paragraph 28.2, or otherwise), the BCCMU may do any one or more of the following:
- (a) investigate the breach or potential breach;
  - (b) discuss the breach or potential breach with the Building Contractor or any other person who has, or may have, information concerning the breach or potential breach;
  - (c) invite the Building Contractor to rectify the breach, in which case the Building Contractor must notify the BCCMU of any steps taken to rectify the breach within 14 days (or such longer period as the BCCMU may allow) of the invitation; and
  - (d) report the breach or potential breach to an appropriate Government agency or statutory body.

### 30. Code Compliance Reports

- 30.1 The BCCMU may prepare a draft Code Compliance Report addressing a Building Contractor's compliance with the obligations imposed by this Code (and such report may address only State Building Work undertaken by the Building Contractor, or may additionally address Private Covered Building Work undertaken by the Building Contractor).
- 30.2 A draft Code Compliance Report may (amongst other content):
- (a) reach a finding that the Building Contractor has failed, in a material way, to comply with one or more obligations imposed by this Code ("**a finding of material Code non-compliance**"); and
  - (b) specify a time period for which a finding of material Code non-compliance remains current.
- 30.3 To the extent a draft code Compliance Report is likely to reach a finding of material Code non-compliance, the BCCMU must write to the Building Contractor setting out the alleged breach of the Code and inviting the Building Contractor to make written submissions in relation to the alleged breach. The BCCMU must have regard to any submissions received in preparing the draft Code Compliance Report.
- 30.4 A draft Code Compliance Report which reaches a finding of material Code non-compliance must be provided by the BCCMU to the Minister, accompanied by any written submissions received from the Building Contractor. The Minister may do any of the following:
- (a) accept the draft Code Compliance Report without amendment, in which case such report will comprise the final Code Compliance Report;
  - (b) amend any aspect of the draft Code Compliance Report, including:
    - (i) a finding of material Code non-compliance; or
    - (ii) the time period for which a finding of material Code non-compliance remains current,

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- in which case the amended report will comprise the final Code Compliance Report;
- (c) direct that the draft Code Compliance Report be amended by the BCCMU to address matters specified by the Minister, in which case the BCCMU must amend the draft Code Compliance Report and resubmit such report to the Minister; or
  - (d) direct that the draft Code Compliance Report be withdrawn, in which case no finding of material Code non-compliance will be reached in respect of the Building Contractor.
- 30.5 The BCCMU, in determining the materiality of a failure to comply with an obligation imposed by this Code, and in exercising discretion as to the specified time period for which a finding of material Code non-compliance remains current, and the Minister in exercising discretion under paragraph 30.4, may take into account any relevant factors, including:
- (a) the nature of the breach of the Code;
  - (b) the purposes of the Code as documented in paragraph 5, and the extent to which the breach of the Code adversely affects or is otherwise inconsistent with those purposes;
  - (c) the extent to which the Building Contractor has co-operated with the BCCMU;
  - (d) whether the Building Contractor has taken any voluntary actions to rectify the breach, and the effectiveness of such voluntary actions;
  - (e) in the case of breaches of the Code relating to Private Covered Building Work:
    - (i) the extent to which it was practicable for the Building Contractor to comply with the Code obligation which was breached; and
    - (ii) proportionality between the harm which was or might have been caused by reason of the breach of
- the Code obligation, and the cost and inconvenience of taking steps which would have prevented the breach of the Code obligation; and
- (f) in the case of breaches of obligations owed under paragraph 8 of the Code, any steps the Building Contractor did take in an attempt to ensure Subcontractors and Building Industry Participants conducted themselves in a manner consistent with the Code, and the reasonableness of those steps in the circumstances.
- 30.6 To the extent a final Code Compliance Report makes a finding of material Code non-compliance, such finding may, in respect of future procurement processes for State Building Work undertaken while such finding remains current, be taken into account in such procurement processes, and may adversely affect the prospects of, or serve to prevent, the Building Contractor and its Related Entities being awarded the State Building Work the subject of the procurement processes.

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## Schedule 1 State Building Work

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1. Building Work that is being undertaken by or on behalf of a Funding Entity.
2. Building Work that is indirectly funded by the State by a grant or other program in circumstances in which funding for the Building Work is an explicit component of the grant or program.
3. Building Work:
  - (a) for which the State provides assistance in advance of the commencement of construction; and
  - (b) which has an identified capital component.

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## Schedule 2 Workplace Relations Management Plans

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Each WRMP must include, document or address each of the following:

### 1. General

The Building Contractor's approach to ensuring compliance with the requirements of this Code on the particular project, including the systems, processes and procedures that are in place (or will put in place) to:

- (a) monitor and promote compliance with this Code (including compliance against the WRMP) throughout the life of the project;
- (b) clearly and effectively communicate with Subcontractors and Building Industry Participants in relation to the requirements of this Code and the Building Contractor's expectations relating to the discharge of such requirements; and
- (c) promote a fair, lawful, efficient and productive workplace.

### 2. Workplace arrangements and compliance

- (a) The Building Contractor's approach to regulating and monitoring workplace arrangements on the project.
- (b) The Building Contractor's approach to ensuring compliance with statutory workplace rights including, but not limited to, applicable Commonwealth and State Industrial Instruments, freedom of association, freedom from unlawful coercion and undue influence and freedom from unlawful discrimination.

### 3. Other parties and lines of communication

- (a) The organisational structure and reporting lines that will be implemented on the project, including identifying the personnel that will be responsible for:
  - (i) Subcontractor management;
  - (ii) compliance with this Code; and
  - (iii) grievance management.
- (b) The Building Contractor's approach to managing site access by third parties, including:
  - (i) how right of entry and the requirements of this Code will be monitored and implemented on the project (including by Subcontractors);
  - (ii) how unauthorised entry will be monitored and dealt with.

### 4. Workplace relations risk

- (a) The identification of workplace relations risks in relation to the project and the Building Contractor's approach to managing those risks.
- (b) The Building Contractor's approach to managing Subcontractors that are engaged by the Building Contractor.
- (c) The Building Contractor's processes and procedures for dealing with and addressing:
  - (i) Industrial Action (including threatened Industrial Action); and
  - (ii) employee and workforce grievances.

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## 5. Drug and alcohol management

The Building Contractor's fitness for work policy to manage alcohol or other drugs in the workplace, which must outline:

- (a) the steps the Building Contractor will take towards ensuring that no person attending the site for work does so under the influence of alcohol or other drugs;
- (b) how the Building Contractor will ensure that all Subcontractors and their employees and workers agree to comply with the relevant policy (through contract or some other enforceable means);
- (c) which objective medical testing method/s the Building Contractor proposes to implement (at the Building Contractor's cost and without passing such cost on to Subcontractors) to detect the presence of alcohol or specified drugs in a person's system;
- (d) the medical thresholds against which positive or negative test results will be determined (noting that, subject to testing detectable levels, the acceptable level for all substances is zero);
- (e) how persons will be selected for testing and the frequency of that testing (including general random testing, voluntary testing and for-cause testing);
- (f) how persons returning a positive result will be prevented from working until it is safe for them to do so; and
- (g) counselling and rehabilitation processes that may apply in the event of a positive test.



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