



Government of **Western Australia**
Department of **Commerce**
Building and Construction Code Monitoring Unit

Implementation Guidelines to the Western Australian Building and Construction Industry Code of Conduct 2016

April 2017

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1. Introduction

The Western Australian Building and Construction Industry Code of Conduct 2016 (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 dealings with the State of Western Australia, and within the building and construction industry more generally.

These Implementation Guidelines (Guidelines) have been developed to provide guidance and further information on the obligations contained within the BCI Code.

In particular, these Guidelines are directed to support:

- **Compliance**

Parties must comply with the law, without exception.

- **Freedom of association**

Parties must recognise and uphold the right of individuals to be or not to be involved in lawful industrial activity and to be free from harassment in relation to workplace relations.

- **Fair Subcontracting**

Parties should achieve and maintain fair Subcontracting practices and timely payment of Subcontractors within the building industry in Western Australia.

- **Safety**

Parties should achieve and maintain high standards in occupational health and safety.

Terms used in these Guidelines have the same meaning as in the BCI Code.

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

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.

2. Application and scope

2.1 Application

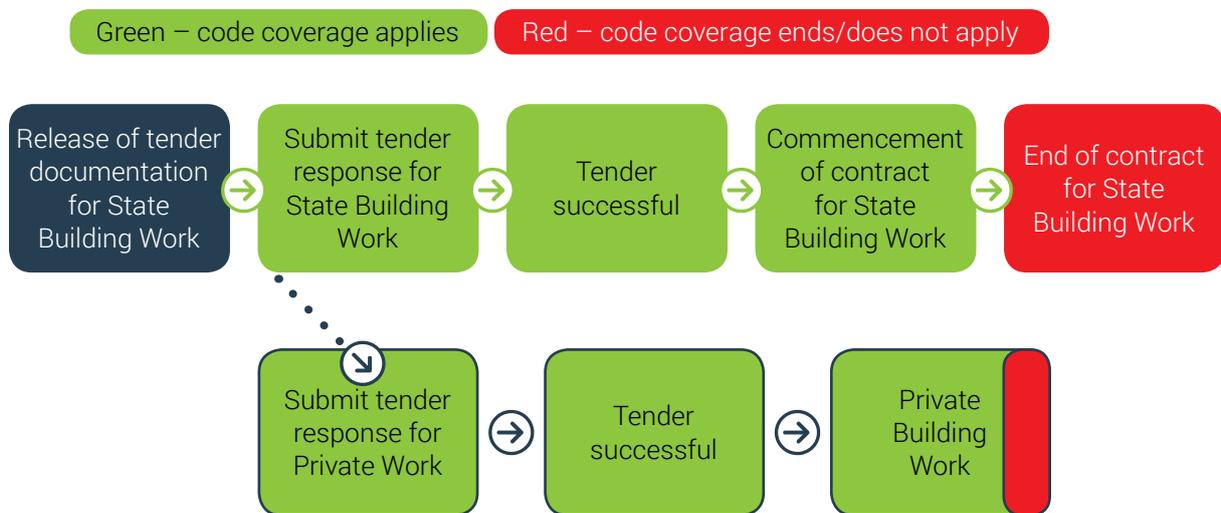
The BCI Code applies to all State Building Work that is the subject of an expression of interest or Tender Process on or after 1 January 2017.

A Building Contractor becomes covered by the BCI Code upon submitting a response to a Covered Tender Process and will remain subject to the BCI Code for the duration of that Covered Tender Process; and if successful, the duration of the term of the Covered Contract.

During a period that a Building Contractor is covered by the BCI Code, it must also comply with the BCI Code on all Private Covered Building Work.

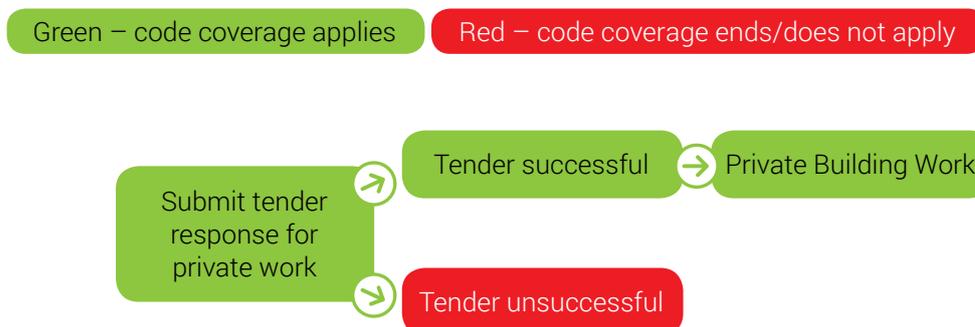
2.1 (a) Illustration – BCI Code coverage for State Building Work

The diagram below shows when a Building Contractor is covered by the BCI Code for State Building Work.



2.1 (b) Illustration – BCI Code coverage for private Building Work

The diagram below shows that a Building Contractor who is already covered by the BCI Code for State Building Work must also comply with the BCI Code with respect to any new private Building Work that it submits a tender for or enters into a contract to provide.



If a Building Contractor is covered by the BCI Code (as it has submitted a tender for or is contracted to undertake State Building Work), then new private Building Work by the Building Contractor will also be covered by the BCI Code for as long as the BCI Code applies to the Building Contractor (by virtue of the State Building Work tender/contract).

However the BCI Code will cease to apply to the Building Contractor's private Building Work when the tender for the State Building Work is unsuccessful or the State Building Work contract comes to an end.

A Building Contractor who is covered by the BCI Code (as it has submitted a tender for or is contracted to undertake State Building Work) must advise the BCCMU in writing when it enters into any contract having a value in excess of \$2 million in respect of Private Covered Building Work.

If the Building Contractor is **not covered** by the BCI Code when it submits a tender for or enters into a contract for the new private Building Work, then that private Building Work can **never be covered** by the BCI Code.

2.2 Scope of the BCI Code

A Building Contractor must comply with, and take all reasonable steps to ensure that all Building Industry Participants comply with each obligation of the BCI Code. Any provision of the BCI Code that requires a Building Contractor to do something is to be interpreted as requiring the Building Contractor to take all reasonable steps to ensure Subcontractors and Building Industry Participants also comply.

A Building Contractor must ensure that its contracts with Subcontractors require those Subcontractors to comply with the BCI Code; including rights for the BCCMU to access sites, to inspect and copy records, documents and information, to speak to personnel of Subcontractors and to respond to requests for information from the BCCMU.

The BCI Code applies to State Building Work and Private Covered Building Work, solely in relation to participation in on-site activities and conduct that relates to on-site activities but does not occur on the site, including Building Work performed on auxiliary or holding sites.

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)(f), (g) and (h) 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).

Broadly speaking, Building Work is described as the construction, alteration, extension, restoration, repair, demolition or dismantling of buildings, structures or works that form, or are to form, part of land, whether or not the buildings, structures or works are permanent.

The definition expressly excludes the construction, repair or restoration of any single-dwelling house or building associated with a single-dwelling house unless it is part of a multi-dwelling development that consists of, or includes, the construction of at least 5 single-dwelling houses.

Is 'maintenance' covered under the definition of 'Building Work'?

In the event that a contract contained both a construction and an ongoing maintenance package, the coverage of Building Work would cease upon practical completion of the construction phase, however so described.

For small 'maintenance' projects, in making any assessment, the BCCMU would consider whether the package of work involved 'repair' (included in the definition of Building Work) or 'maintenance'. If the work involved keeping a structure working in its existing state i.e. preventing its failure or decline, likely in a routine, scheduled or anticipated fashion, it is likely that this would meet the definition of 'maintenance' and not constitute Building Work.

Work involving 'repair' usually involves the restoration of a structure damaged, faulty or worn. A number of other factors would need to be considered such as the scale and complexity of the project.

2.3 Reporting breaches

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

3. Legal and related obligations

3.1 Legal obligations relating to employment

As a minimum, a Building Contractor and its Subcontractors must comply with all applicable:

- Designated Industrial Laws (as defined in the BCI Code);
- Relevant Orders (e.g. court and tribunal orders, directions and decisions);
- State and Commonwealth Industrial Instruments; and
- Work Health and Safety Laws

An Industrial Instrument is an award or agreement, however designated, that:

- is made under or recognised by an industrial law (e.g. *Fair Work Act 2009* (WA), *Industrial Relations Act 1979* (WA)); and
- concerns the relationship between an employer and the employer's employees.

All parties must proactively ensure that a person engaged to undertake Building Work is lawfully entitled to work in Australia.

3.2 Other legal obligations

Building Contractors must comply with all Designated Building Laws (as defined in the BCI Code).

3.3 Practices designed to avoid compliance with legal obligations

Building Contractors must not enter into, participate in, or facilitate arrangements or practices designed to avoid its own legal obligations or the legal obligations of others. Without limiting the foregoing, this includes arrangements or practices:

- that are sham contracting arrangements;
- that are service contracts found to be unfair or harsh;
- that are designed to avoid or circumvent strike pay obligations;
- that are designed to avoid or circumvent strict compliance with their right of entry requirements, applicable legislation, court and tribunal orders, and industrial instruments; or
- that undermine freedom of association.

Building Contractors must implement on-site practices and procedures which proactively promote compliance with the BCI Code.

4. Workplace arrangements

4.1 Unregistered written agreements

Building Contractors must not bargain or enter into an unregistered written agreement.

An unregistered written agreement is an individual or collective agreement that has not been certified, registered, lodged or otherwise approved under an industrial law, but is concerned with the relationship between an employer and its employees and/or registered or unregistered industrial associations.

An unregistered written agreement does not include common law agreements made between an employer and an individual employee. An employer can make multiple individual common law agreements, provided the employer genuinely negotiates directly with each employee

4.2 Particular workplace arrangements, above-entitlements payments and contributions

Building Contractors must not, and must ensure that other Building Industry Participants do not:

- require any Subcontractor to have particular workplace arrangements in place;
- attempt to unduly influence a Subcontractor to have a particular workplace arrangement in place;
- coerce or exert undue influence or pressure on Subcontractors to either:
 - make above-entitlement payments; or
 - contribute to a particular redundancy or superannuation fund.

Examples of prohibited conduct include:

- requiring a Subcontractor to apply project specific wages and conditions;
- requiring a Subcontractor to enter into and be bound by a particular industrial agreement;
- having contractual terms requiring a particular workplace arrangement; and
- suggesting that a tender will not be awarded unless Tenderers have particular workplace arrangements in place.

5. Harsh or unfair contracts

5.1 Independent Contractors Act 2006 (Cth)

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

A services contract is a contract for services:

- (a) to which an independent contractor is a party;
- (b) that relates to the performance of work by the independent contractor; and
- (c) has the requisite constitutional connection (defined below).

A contract for services has the **requisite constitutional connection** if at least one party to the contract is:

- (a) a constitutional corporation;
- (b) the Commonwealth or a Commonwealth authority; or
- (c) a body corporate incorporated in a Territory in Australia.

A constitutional corporation is a trading, financial or foreign corporation under the Australian Constitution. To be a trading corporation, an organisation must be incorporated and engage in significant financial or trading activities.

The following factors may be considered in determining if a contract is unfair or harsh:

- the terms of the contract when it was made;
- the relative bargaining strengths of the parties;
- whether any undue influence or pressure was exerted upon, or unfair tactics were used against, a party to the contract;
- whether the contract provides total remuneration that is, or is likely to be, less than that of an employee performing similar work; and
- any other matter the court thinks is relevant.

For further information please see the *Independent Contractors Act 2006* (Cth)

5.2 Australian Consumer Law (Cth)

A Building Contractor **must not enter** into a standard form 'Small Business contract' (as defined in Part 2–3 of the Australian Consumer Law) which contains a term which is unfair.

A contract is a **Small Business contract** if:

- (a) the contract is for the supply of goods or services, or a sale or grant of an interest in land; and
- (b) at the time the contract is entered into at least one party to the contract is a business that employs fewer than 20 persons (including casual employees employed on a regular and systematic basis); and
- (c) either of the following applies:
 - (i) the upfront price payable under the contract does not exceed \$300,000; or
 - (ii) the contract is for more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000.

The upfront price payable includes any payments:

- provided, or to be provided, for the supply, sale or grant under the contract; and
- that are disclosed at or before the time the contract is entered into;

but does not include any other payments that are contingent on the occurrence or non-occurrence of a particular event.

A term of a Small Business contract is **unfair** if:

- (a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- (b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
- (c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied upon.

Examples of an unfair term include:

- a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract;

- a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract;
- a term that permits, or has the effect of permitting, one party to unilaterally vary the characteristics of the goods or services to be supplied under the contract;
- a term that limits, or has the effect of limiting, one party's right to sue another party; or
- a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract.

See section 25 in Part 2–3 of the Australian Consumer Law for further examples.

6. Cost, efficiency and productivity

6.1 Security of payment

A Building Contractor must comply with all applicable laws relating to the security of payments.

A Building Contractor must proactively ensure that all payments are made in a reasonable and timely manner and ensure disputes are resolved in a reasonable, timely and consultative way.

Furthermore, a Building Contractor must not include any provision in its contract which is a prohibited provision for the purposes of Division 1 of Part 2 of the *Construction Contracts Act 2004* (WA). Examples include pay if paid/when paid provisions and provisions requiring payment to be made after 42 days. A construction contract entered into before 3 April 2017 was prohibited from requiring payment to be made after 50 days.

6.2 Collusive tendering

A Building Contractor that submits a Tender Response must keep confidential all aspects of the Tender Response and not discuss any detail with other potential Tenderers prior to the relevant contract being awarded, unless the party conducting the Tender Process is present at the discussion.

Examples of collusive conduct prohibited by the BCI Code include, but are not limited to:

- agreement between Tenderers as to who should be the successful Tenderer;

- any meeting of Tenderers to discuss Tender Responses prior to the submission of the Tender Response;
- any exchange of information between Tenderers about their Tender Response, prior to the closing time for submitting a Tender Response;
- agreement between Tenderers for the payment of money or the securing of reward or benefit for unsuccessful Tenderers by the successful Tenderer;
- agreements between Tenderers to fix prices of contracts;
- submission of a cover Tender Response (that is, a pre-arranged inflated bid), intended to advantage or disadvantage another Tenderer or disadvantage the party conducting the Tender Process; or
- unlawful or illegitimate agreement between Tenderers prior to submission of the Tender Response to fix the rate of payment of Industrial Association fees.

A Building Contractor must not:

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

A Building Contractor must, within 24 hours of submitting a Tender Response for State Building Work, advise the BCCMU in writing if any aspect of its preparation of the Tender Response was inconsistent with its obligations under paragraph 25 of the BCI Code (relating to collusive tendering).

6.3 Workplace Relations Management Plans

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 the 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:

- by creating a WRMP under the BCI Code; or
- by creating a WRMP that satisfies the requirements of a Commonwealth code if the Commonwealth code applies to the head contractor's business.

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

A Building Contractor is not required to submit its WRMP for assessment or approval. It is only required to ensure that it has a compliant WRMP in place before starting any State Building Work.

If a Building Contractor would like to have the BCCMU assess whether its WRMP is BCI Code compliant, it can send 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.

Although a Building Contractor is not required to have a WRMP for Private Covered Building Work or State Building Work contracts valued under \$10 million, it is encouraged to adopt a WRMP that meets the obligations of the BCI Code.

A WRMP consistent with Schedule two of the BCI Code must address the following matters:

General

- How the Building Contractor will ensure that it and its Subcontractors comply with the BCI Code.

Workplace arrangements and compliance

- What Industrial Instrument covers the Building Contractor's employees and how the Building Contractor will ensure Subcontractors comply with their Industrial Instruments.
- Approach to ensuring compliance with statutory workplace rights including, but not limited to, freedom of association, freedom from unlawful coercion and undue influence and freedom from unlawful discrimination.

Other parties and lines of communication

- Organisational responsibility for Subcontractor management, BCI Code compliance and grievance management.
- Approach to managing third party site access.
- Plan for monitoring and managing unauthorised entry.

Workplace relations risk and past experience

- Identifying workplace relations risks in relation to the project and details as to the proposed approach to managing those risks including, but not limited to, the following:
 - approach to dispute resolution; and
 - response to industrial action (threatened, impending, probable and actual, lawful and unlawful, protected and unprotected) for its own employees and in respect of Subcontractors.

Drug and alcohol management

A fitness for work policy must outline:

1. The steps the Building Contractor will take to ensure that no person attending the site for work does so under the influence of alcohol or other drugs.
2. How the Building Contractor will ensure that Subcontractors and their employees and workers comply with the relevant policy (e.g. through contract or some other enforceable means).
3. Which objective medical testing method/s will be used to detect the presence of drugs or alcohol in the person's system and outline the detection method/s used on the project.
4. The medical thresholds against which positive or negative test results will be determined;
5. How a person who returns a positive result will be prevented from performing work until it is safe for them to do so;
6. Procedures for the selection and frequency of personnel to be tested (including general random testing, voluntary testing and for-cause testing); and

7. How workers who return a positive test:
- (a) will be prevented from working until it is safe for them to do so; and
 - (b) may be counselled and assisted.

To ensure a robust drug and alcohol plan, the BCCMU recommends the plan includes:

- The requirement that all of the following substances are tested for:
 - Alcohol;
 - Opiates;
 - THC;
 - Cocaine;
 - Benzodiazepines;
 - Amphetamine; and
 - Methamphetamine.
- Processes that will apply in the event of a positive result or deemed positive result (i.e. a failure to submit a test).
- The requirement that, as a minimum, frequent and periodic testing (at least once per month) of the workforce (both construction workers and site office workers) will be as follows:
 - (a) where there are less than 30 workers on site – at least 10 per cent of the workforce per month;
 - (b) where there are 30 to 100 workers on site – a minimum of 5 workers per month; and
 - (c) where there are greater than 100 workers on site – a minimum of 10 workers per month.

7. Dispute settlement, Industrial Action, strike pay and payments

The BCI Code provides that:

All parties are required to make every effort to resolve grievances or disputes with their employees and relevant unions at the workplace level, in accordance with the procedure outlined in the relevant industrial instrument and/or an applicable industrial law.

7.1 Dispute settlement

Industrial instruments entered into by a Building Contractor while subject to the BCI Code must contain a genuine dispute settlement procedure.

The minimum requirements for such procedure are:

1. the ability for employees to appoint a representative in relation to the dispute;
2. procedures to settle the dispute at the workplace level in the first instance;
3. 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
4. if the dispute is not settled, the capacity for an independent third party to settle the dispute by a decision binding on the parties.

7.2 Industrial Action

Building Contractors **must report any threatened or actual Industrial Action** by employees or Subcontractors engaged on **State Building Work** (whether Protected Industrial Action or Industrial Action that is not protected) **as soon as practicable but no later than 24 hours after becoming aware of the threat or action.**

Building Contractors **must report any threatened or actual Industrial Action** by its employees on **Private Covered Building Work** (that is not Protected Industrial Action) **as soon as practicable but no later than 24 hours after becoming aware of the threat or action.**

Building Contractors must take all steps reasonably available to them to prevent

or bring to an end unprotected industrial action occurring on, or affecting State Building Work or Private Covered Building Work, including by pursuing legal action where possible. Building Contractors will be required to use their best endeavours to pursue legal remedies to protect their rights and comply with their obligations under the BCI Code.

7.3 Disputes involving Small Business

Where a dispute involving a Building Contractor and a Small Business is not able to be expeditiously resolved by the parties, the Building Contractor must advise the Small Business of the 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).

Please see www.commerce.wa.gov.au/bccmu for information and fact sheets in relation to Small Business disputes.

Where the dispute is a Small Business dispute as defined in s.15A of the *Small Business Development Corporation Act 1983* (WA), either party may request the Small Business Commissioner to undertake alternative dispute resolution in accordance with s.15D of that Act.

8. Freedom of association and right of entry

8.1 Freedom of association

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 to 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.

The BCI Code requires:

- All Building Contractors must adopt and implement policies that promote freedom of association.
- Building Contractors must ensure that behaviour which is inconsistent with the BCI Code does not occur. By way of example, the following practices would be inconsistent with the BCI Code:

- providing the names of new staff, job applicants, contractors or Subcontractors to Industrial Associations other than as required by law;
- no ticket-no start signs, show card days or any other similar practices that imply that union membership is anything other than a matter for individual choice;
- employers unlawfully encouraging or discouraging employees to join a union;
- using employee representatives, site delegates or other union representatives to administer site induction processes. Site management is responsible for administering site induction processes and this cannot be delegated;
- discriminating against or disadvantaging elected employee representatives;
- using forms requiring the employee to identify their union status, or requiring employers and contractors to identify the union status of employees or Subcontractors;
- refusing to employ, or terminating an employee's employment, because of their union status;
- an employer refusing a reasonable request from a workplace delegate to represent an employee or employees in relation to grievances and disputes or discussions with members; and
- requesting, threatening, imposing or attempting to impose a requirement for any Building Contractor, Subcontractor or employer to:
 - hire any individual nominated by a union; or
 - employ a non-working shop steward or job delegate.

Practices or arrangements which facilitate non-working shop stewards or job delegates are inconsistent with the BCI Code:

- requiring any individual 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.

8.2 Right of entry

Building Contractors and other Building Industry Participants are required to strictly comply with, and enforce, right of entry requirements.

This means that:

- An employer, or workplace arrangement, must not seek to relax or circumvent the legislative provisions or processes in relation to the right of entry for officials of Industrial Associations.
- Attempts to avoid right of entry requirements by union officials by allowing delegates or shop stewards to have access to employer and employee records and/or hold discussions with employees are inconsistent with the BCI Code.
- If a permit holder enters a site after being refused entry by the site occupier, or remains on the site after being directed to leave, the site occupier must take all practicable steps to have the permit holder removed. These steps should include calling the WA Police to have the permit holder removed as a trespasser. Building Contractors should be careful not to hinder or obstruct a permit holder lawfully exercising a right.

9. Monitoring compliance

9.1 Building and Construction Code Monitoring Unit (BCCMU)

The Department of Commerce, through the BCCMU, is responsible for the following elements of implementing the BCI Code:

- overall policy responsibility;
- setting the overall direction and work plan for the BCCMU;

- providing policy advice to the Western Australian Government through the Minister for Commerce;
- promoting awareness of the BCI Code through a range of information and educational activities;
- liaising with relevant Commonwealth and Western Australian bodies;
- undertaking monitoring and compliance activities including investigating alleged breaches;
- preparing a draft Code Compliance report for the Minister, outlining the finding of material BCI Code non-compliance and recommending a period that the finding should remain current.

9.2 Compliance

The Minister for Commerce has overall responsibility for implementing the BCI Code.

The BCCMU is established to monitor and enforce compliance with the BCI Code.

The relevant government agencies that administer specific statutory requirements remain responsible for monitoring compliance with those requirements.

9.3 Granting access to premises and records

A Building Contractor must allow, and confer obligations on its Subcontractors to allow, the BCCMU access to the site of State Building Work, Private Covered Building Work and to each party's business premises and personnel.

Building Contractors and Subcontractors must allow the BCCMU to inspect and make copies of any record, document, information or other evidence to confirm compliance with the BCI Code.

Building Contractors and Subcontractors must respond to requests for information concerning compliance with the BCI Code and not obstruct the BCCMU.

9.4 Monitoring and reporting

The BCCMU will undertake monitoring and compliance work including site visits, site inspections and audits.

The BCCMU will provide feedback and report to the Building Contractor as appropriate,

including where alleged breaches of the BCI Code are identified.

Where the BCCMU believes a Building Contractor has breached the BCI Code it will invite the Building Contractor to make submissions in relation to the finding. Any submissions provided will be considered and provided to the Minister where the BCCMU believes the breach can be substantiated.

In determining whether the failure to comply with an obligation imposed by the BCI Code is material, the BCCMU and Minister in exercising their functions may take into account any relevant factors, including:

- (a) the nature of the breach;
- (b) the purposes of the BCI Code, as outlined in paragraph 5 of the BCI Code, and the extent to which the breach 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 took any voluntary actions to rectify the breach and the effectiveness of such actions;
- (e) in the case of breaches relating to Private Covered Building Work:
 - (a) the extent to which it was practicable for the Building Contractor to comply with the BCI Code obligation which was breached; and
 - (b) proportionality between the harm which was or might have been caused by reason of the breach of the BCI Code obligation, and the cost and inconvenience of taking steps which would have prevented the breach; and
- (f) in the case of breaches of obligations owed under paragraph 8 of the BCI Code, any steps the Building Contractor took in an attempt to ensure Subcontractors and Building Industry Participants conducted themselves in a manner consistent with the BCI Code, and the reasonableness of those steps in the circumstances.

The BCCMU will report all alleged findings of material Code non-compliance to the Minister in the form of a draft Code

Compliance Report. The draft Code Compliance Report may:

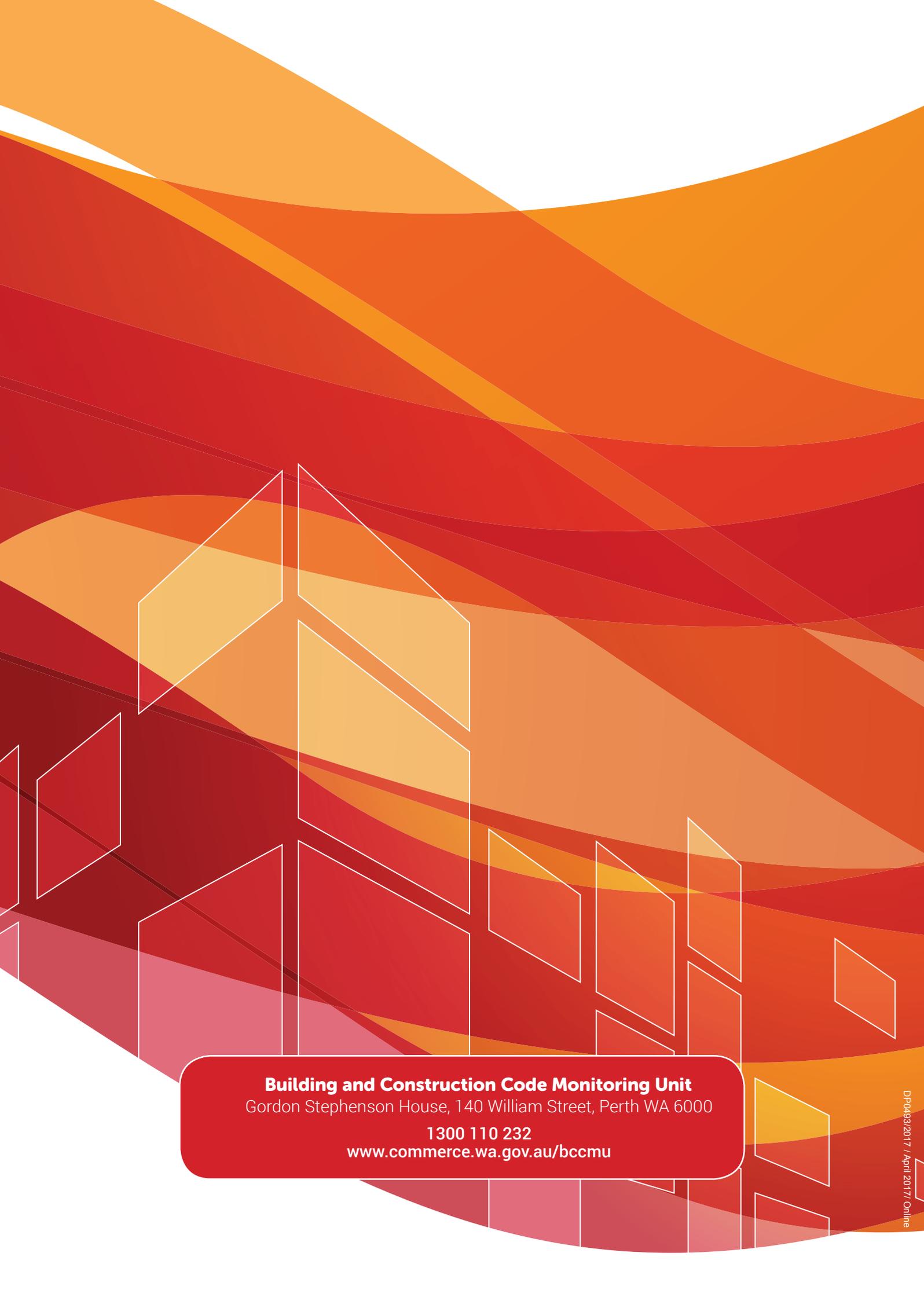
- reach a finding that the Building Contractor has failed, in a material way, to comply with the Code; and
- specify a time period for which a finding of material Code non-compliance remains current.

9.5 Draft Code Compliance Report

The Minister may then elect to do the following:

- accept the draft Code Compliance Report;
- amend any aspect of the draft Code Compliance Report including;
 - a finding of material Code non-compliance; or
 - the time period for which a finding of material Code non-compliance remains current.
- direct the BCCMU to amend the report;
- direct that the draft Code Compliance Report be withdrawn.

Any finding of material Code non-compliance, while current, may be taken into account in respect of future procurement processes for State Building Work and may adversely affect the prospects of, or serve to prevent, the Building Contractor and its related entities from being awarded that State Building Work.



Building and Construction Code Monitoring Unit

Gordon Stephenson House, 140 William Street, Perth WA 6000

1300 110 232

www.commerce.wa.gov.au/bccmu