



Australian Government

Department of Education, Employment
and Workplace Relations

Fact sheet

National Code of Practice for the Construction Industry (the Code) and the associated Australian Government Implementation Guidelines (the Guidelines)

A Guide for Government Agencies

The Code and Guidelines set out the responsibilities of all parties on building and construction projects funded by the Australian Government. The Guidelines were developed to assist Government and interested parties to interpret and implement the Code.



Where the Code and Guidelines apply

The Code and Guidelines apply to all **directly and indirectly funded** building and construction activities undertaken by Australian Government agencies and funding recipients including:

- › building refurbishment or fit out, installation of building security systems, fire protection systems, air conditioning systems, computer and communication cabling, and building and construction of landscapes (Section 2.1 of the Guidelines refers);
- › all organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining (excluding mining operations) and heavy engineering.
 - » The Code and Guidelines do not cover the ongoing maintenance of building systems, including the maintenance of fire protection and air-conditioning systems, maintenance of computer and communication cabling, landscaping (such as lawn mowing, pruning and other horticultural activities), and cleaning buildings.

The Code and Guidelines apply to **indirectly funded** projects such as grants and programme funding where:

- › the Australian Government funding contribution is at least \$5 million and represents at least 50% of the total construction value; or
- › the Australian Government contribution to the project is \$10 million or more, irrespective of the proportion of Australian Government funding.

**Information Hotline:
1300 731 293**



Model Tender and Contract Documentation

Model tender and contract documentation which include the requirement to comply with the Code and Guidelines are available at www.workplace.gov.au/building. Government agencies should use these clauses when preparing tenders and contracts, and funding agreements for building and construction projects funded directly or indirectly by the Australian Government.

The model contract clauses require contractors to:

- › undertake to comply with the Code and Guidelines and ensure all related entities engaged in Australian construction activity comply with the Code and Guidelines;
- › ensure that subcontractors, consultants and material suppliers' workplace arrangements comply with the Code and Guidelines before engaging them on the project;
- › continue to ensure that all contracts on the project include the requirement to comply with the Code and Guidelines;
- › agree to allow the Office of the Australian Building and Construction Commissioner (ABCC) to monitor Code compliance on the site and to investigate any breaches of the Code and Guidelines;
- › acknowledge that the Commonwealth may impose a sanction should they not comply with the Code and Guidelines;
- › agree to comply with the Code and Guidelines on new privately funded construction projects.



What does being Code Compliant mean?

Only companies and contractors (including head contractors, project managers, consultants and material suppliers) who are Code compliant can tender to undertake building and construction activities on Australian Government funded projects.

Compliance with the Code and Guidelines means that:

- › the workplace arrangements used by the contractor comply with the Code and Guidelines.
 - » *workplace arrangements* include industrial instruments (e.g. awards, collective and individual workplace agreements), unregistered agreements, common law contracts and on-site practices and behaviours.
- › the on-site behaviours of the contractor are consistent with the Code and Guidelines (Section 8 of the Guidelines refer). Briefly, these:
 - » require the contractor to comply with the provisions of workplace agreements and to meet their obligations under law to Occupational Health and Safety;
 - » prohibit the contractor attempting to unduly influence subcontractors to have particular workplace arrangements or to make over-award payments;
 - » require the contractor to adopt arrangements which ensure freedom of choice and freedom of association—the choice of employees to be or not to be in a union;
 - » require the contractor to comply with the procedures for right of entry under the *Workplace Relations Act 1996*;
 - » prohibit the contractor from negotiating arrangements that restrict the efficient performance of work on the project.



Your responsibilities

The attached checklist will assist government agencies meet their requirements under the Code and Guidelines. Most building and construction activities undertaken by Australian Government agencies will need to conform with the current version of the Guidelines (Blue cover). However, if the funding or formal arrangement was entered into before November 2005 then the previous version of the Guidelines (Orange cover) will normally apply.



Further information

The Code and Guidelines documents are available from the Workplace website: www.workplace.gov.au/building; by emailing a request to building@deewr.gov.au; or calling the Code Hotline on 1300 731 293.

Queries about the Code and Guidelines can be directed to:

- › the Code Hotline: 1300 731 293; or
- › the National Code Mailbox: building@deewr.gov.au

Checklist

National Code of Practice for the Construction Industry (the Code) and the associated Australian Government Implementation Guidelines (the Guidelines)

A Checklist for Government Agencies

The following checklist will assist government agencies to ensure compliance with the Code and Guidelines on Australian Government funded building and construction projects.



Prior to commencement of the project

Have you:

- included application of the Code and Guidelines in processes for building and construction projects and contract management within your organisation?
- included the requirement to comply with the Code and Guidelines in project tender advertisements, expressions of interest, tender documentation and contracts?
Model tender and contract documentation which include the requirement to comply with the Code and Guidelines are available at www.workplace.gov.au/building.
- included “ability to comply with the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines” as an evaluation criterion in tender documentation for directly funded projects?
- ensured that all funding agreements for **indirectly funded** projects include the requirement for funding recipients to apply the Code and Guidelines and ensured a model deed of agreement for funding has been put in place? (refer to model and tender contract documentation).
- reported the project to the Department of Education, Employment and Workplace Relations (DEEWR) through e-Code?
- encouraged tenderers seeking Government work to undertake an early assessment of their workplace arrangements for Code compliance?
- verified that the contractor is compliant with the Code and Guidelines at the time they lodge an expression of interest or tender?
 - checked that the contractor has not been precluded from tendering for Australian Government work? Go to www.workplace.gov.au/building ⇒ Sanctions under the Code
 - checked that the contractor’s workplace arrangements comply with the Code and Guidelines?

An entity’s *workplace arrangements* include industrial instruments, unregistered agreements, common law contracts and on-site practices and behaviours.

The method you choose to verify Code compliance of the contractor is an exercise in risk management. It is important to remember this process must be rigorous, defensible and demonstrable. You can request as little or as much information as you require.

- The preferred method is that:
 - › contractors submit a copy of the formal letter of Code compliance from DEEWR at the time they lodge an expression of interest or tender; and
 - › that the contractor complete the Declaration of Compliance in the tender (refer to Model tender and contract documentation).

Note: A formal assessment letter from DEEWR should be requested by contractors as soon as possible when considering tendering for Australian Government work. The requesting party will receive a letter advising them whether its workplace arrangements are consistent or inconsistent with the Code and Guidelines.

Note: Verification of Code compliance is not limited to the above-mentioned methods.

Checklist

National Code of Practice for the Construction Industry (the Code) and the associated Australian Government Implementation Guidelines (the Guidelines)

A Checklist for Government Agencies



Following commencement of the project

Government agencies must be able to demonstrate they have put in place a satisfactory process to ensure that the head contractor or project manager complies with the Code and Guidelines following commencement of the project. In the event of an audit by the ABCC, this process will be scrutinised.

Does the contractor have:

- verification processes in place to confirm that subcontractors, consultants and material suppliers' workplace arrangements comply with the Code and Guidelines?
- processes in place to monitor on-site compliance of subcontractors engaged during the life of the project?
- the application of the Code and Guidelines as a standing item on the agenda for site or project meetings?
- processes in place to ensure that all subcontractors, consultants and material suppliers and consultants down the contractual chain take action to rectify behaviour which is not compliant with the Code and Guidelines?
- processes in place to ensure all allegations of breaches of the Code and Guidelines are reported to the Code Monitoring Group within 21 days of becoming aware of the alleged breach?

Reminder

- Have you finalised reporting of the project to DEEWR through e-Code?

Only contractors who are Code compliant can undertake building and construction on Australian Government funded projects.

- *Where an agency has been found to have not applied the Code and Guidelines to the maximum extent the Code Monitoring Group may bring the matter to the attention of the relevant portfolio Minister and the Minister for Finance and Deregulation.*
- *Where a contractor has been found to have breached the Code and Guidelines, the Code Monitoring Group may consider a sanction against the contractor. A sanction can take the form of a formal warning, preclusion from, or reduction of, tendering opportunities from Australian Government funded work.*