



# **Model Workplace Relations Management Plan**

**Implementation Guidelines to the New South  
Wales Code of Practice for Procurement:  
Building and Construction – July 2013**



Authorised by the New South Wales Government

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## Purpose and objectives

The New South Wales Government wishes to encourage greater flexibility and productivity within the State's building and construction industry and to ensure maximum value for money on its spending on infrastructure projects. To that end, the New South Wales Government has introduced *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction* that take effect from 1 July 2013 (the Guidelines).

Section 6 of the Guidelines requires that for projects where the New South Wales Government contributes \$10million or more (or where the Government contributes at least \$5million and this represents at least 50 per cent of the project's value), any procurement process response (including expression of interest and tenders) must be accompanied by a Workplace Relations Management Plan (the WRMP).

## Compliance and audit

The Treasurer and Minister for Industrial Relations has overall responsibility for the implementation of the Guidelines, and the Construction Compliance Unit (CCU) in NSW Industrial Relations has been established to monitor Guideline compliance and to receive reports of any alleged breaches.

The CCU will conduct both desktop and field audits and inspections as part of its compliance and assurance obligations. Where a respondent is required to submit a WRMP, the CCU's primary audit focus will be against the WRMP. Respondents should be cognisant of this when developing and implementing their WRMPs.

# Track record

## On time and on budget

Section 6.1 (d) of the Guidelines requires that respondents must demonstrate that they have a track record of delivering construction projects on time and on budget. In satisfying this obligation, respondents should provide a summary of all projects completed in New South Wales over the last three years, indicating the completion cost and date as at the time of tender, and the actual completion cost and date of completion. Where delay and cost escalation has occurred as a result of industrial relations matters, the respondent must advise details of the reasons for the failure, and the steps that it has taken to address those failures. Those steps should be specific and measurable, and may be the subject of CCU audit and verification.

## Efficient and productive work practices

Section 6.1 (e) of the Guidelines requires that respondents must demonstrate that they have a track record of adopting efficient and productive work practices. In satisfying this obligation, respondents should provide actual labour productivity data including labour efficiencies and output per labour hour, or similar objective, verifiable and precise data. Respondents should provide actual examples where above average labour productivity has been achieved, and what initiatives underpinned that performance. Where respondents are unable to demonstrate previous performance in this area, they should advise what steps are being taken or are proposed to achieve improved performance. Those steps should be specific and measurable, and may be the subject of CCU audit and verification.

# Model Workplace Relations Management Plan

The model Workplace Relations Management Plan (WRMP) is intended to provide respondents with an overview of the CCU's expectations of an effective and auditable WRMP. Use of the pro forma is not mandated, but if departing significantly from the suggested layout and content, respondents are advised to contact the CCU to discuss their proposed approach.

## Part A – Administration

The purpose of this section is to outline the organisational structure for the project, including the identification of staff, reporting lines and responsibilities, with particular emphasis on those roles and responsibilities which affect labour productivity and compliance with the Code and Guidelines (including reporting in accordance with section 3.5(c) of the guidelines). Where the Project intends to rely on external support, such as consultants, solicitors or employer associations, the details of those persons and organisations should be included. Where there is a significant use of sub-contractors, the organisational structure should nominate who is responsible for sub-contractor management in accordance with Part D.

## Part B – Risk assessment

The purpose of this section is to obtain the respondent's view on the industrial relations risks that the project might face. The risk assessment should demonstrate an understanding of the industrial relations environment, lessons from previous projects and project-specific issues. Where there is off-site fabrication or modularisation involved in the delivery strategy, the risk assessment should include industrial relations risk associated with procurement, including transport. The risk assessment should explicitly identify issues that will affect the respondent's ability to comply with the Code and Guidelines and also identify any barriers to meeting their objectives of efficiency and productivity.

## Part C – Site establishment

The purpose of this section is to outline how the respondent intends to establish the site(s). Issues that may affect labour productivity will include access control and security; parking and commuting issues; and how employees will move from the access point(s) to amenities and to and from the workface. For remote sites, the respondent should address issues of accommodation and transport.

The WRMP should show how the respondent intends to ensure that any preparatory works including security, site clearance, fencing, utilities supply and the establishment of offices, amenities and lay down areas are carried out productively and in compliance with the overall objectives of the Guidelines.

## Part D – Sub-contractor management

The purpose of this section is to outline how the respondent will select and manage sub-contractors. The WRMP should outline how the selection and mobilisation of sub-contractors is carried out in accordance with the requirements of Section 5.3 of the Guidelines.

The WRMP should demonstrate the process by which sub-contractors are pre-qualified, with an emphasis on demonstrating a track record of compliance, the ability to manage grievances, disciplinary matters and administrative capability (payroll etc).

The WRMP should outline how sub-contractor labour productivity will be measured and what steps will be taken to improve performance, including commercial incentives that address and reward productivity.

The WRMP should outline how sub-contractor industrial relations issues, including grievances are to be managed and reported to the head contractor. The WRMP should also contain details as to how the head contractor proposes to ensure that the obligations contained at Sections 8.7 – 8.11 of the Guidelines are given effect, including ensuring that sub-contracts contain provisions that ensure that:

- grievances, disputes and industrial action are reported to the head contractor; and
- the sub-contractor agrees to take all requisite steps to stop any unlawful industrial action, and to ensure that any damages or penalties are appropriately pursued (refer to Part M).

## Part E – Conditions of employment

The purpose of this section is to outline how the respondent will establish terms and conditions of employment.

The WRMP should include reference to the use of common law contracts, in the form of offer letters, conditions of employment and the like to reinforce the employer's expectations in relation to matters that relate to the Guidelines, including freedom of association, grievance management and unlawful industrial action.

## Part F – Recruitment of direct labour

The purpose of this section is to outline how the respondent will attract, recruit and retain suitable direct labour. Depending on the size, scope and location of the Project, the respondent may need to address issues of skills shortages, interstate and off shore sourcing of labour, training and competency assurance.

The WRMP should include details of how prospective employees are to be assessed and reference checked to ensure that they are of a standard that will meet the Guidelines' labour productivity expectations.

## Part G – Induction and mobilisation

The purpose of this section is to outline how the respondent will ensure that direct and sub-contract employees can be mobilised to the site efficiently and effectively, and with a full awareness and understanding of the Project, and the expectations of the New South Wales Government in terms of safety, productivity and continuity of operations.

## Part H – Labour productivity

The purpose of this section is to outline how the respondent proposes to achieve the labour productivity and value for money objectives of the New South Wales Government. The WRMP should address how the respondent proposes to measure labour productivity, identify barriers and opportunities to efficient and timely performance, and outline the key initiatives that will differentiate the Project.

The WRMP should demonstrate that the respondent and all sub-contractors have the ability to effectively identify and manage unsatisfactory employee performance, up to and including termination of employment.

## Part I – Performance metrics

The purpose of this section is to outline how the respondent will measure and report labour productivity and performance. The WRMP should identify those key performance indicators which are relevant to the labour productivity initiatives identified as part of the WRMP, and indicate how they will be collected and reported. In addition, the WRMP should provide for data as to overall site and labour efficiency, lost time and continuity of operations, delays and disruptions due to industrial matters, including grievances, right of entry and the activities of shop stewards.

The WRMP should specify who is responsible for collating the performance metrics, and who is responsible for their review and for ensuring that unsatisfactory performance is acted upon.

## Part J – Freedom of association

The purpose of this section is to outline how the respondent will comply with the Freedom of Association objectives of the Guidelines. Appendix 2 contains a summary of the FoA objectives and prohibitions provided for by the Guidelines. The WRMP should outline how the respondent proposes to meet the Guidelines' FoA objectives in a holistic and integrated manner. This might include reinforcing the principles and prohibitions in recruitment and induction processes and documents; reinforcement of employees' obligations in employment documents; ongoing education and training; and an inspection and audit programme.

## Part K – Right of entry

The purpose of this section is to outline how the respondent will comply with the right of entry requirements of the Guidelines. The WRMP should include an assessment of site security and access and a requirement that relevant staff are familiar with the RoE requirements and procedures provided for under the *Fair Work Act 2009* and the *Work Health and Safety Act 2011*, including ensuring that union officials hold valid permits. The WRMP should include how the respondent will ensure that RoE standards are maintained and enforced by sub-contractors. The WRMP should also demonstrate how the respondent will monitor union officials' activities and interest in the project/site, and what steps are to be taken where officials breach or otherwise misuse their right of entry.

## Part L – Grievance management

The purpose of this section is to outline how the respondent will ensure that employee grievances are managed effectively and in accordance with the relevant industrial instrument and the Guidelines. The WRMP should include mechanisms for monitoring and recording the nature and frequency of grievances amongst the direct workforce and the sub-contract workforce. The WRMP should ensure that the Guidelines' requirement that the employee is free to choose whether and by whom to be represented in a grievance process is monitored and enforced (unless there is a requirement to the contrary in the relevant industrial agreement).

## Part M – Management of unlawful industrial action

The purpose of this section is to outline how the respondent will ensure that the project is set up and resourced to properly monitor, respond to and report unlawful industrial action, including ensuring that the costs associated with unlawful action can be recovered.

The WRMP should consider the issues raised at Appendix 3 in completing this section.

The WRMP should ensure that the prohibition against the payment of strike pay is complied with and that such compliance can be verified in respect of its own employees and in respect of sub-contractors' employees. This may include ensuring that the respondent can audit the payroll systems and associated records of the sub-contractor.

## Part N – Audit and review

The purpose of this section is to outline how the respondent will audit and review the WRMP. The WRMP should be reviewed regularly over the life of the project, and modified wherever there is scope for improved performance.

# Appendix 1 – Project agreements

Section 7 of the Guidelines deals with Project Agreements. A Project Agreement is an industrial instrument which has the effect of binding or otherwise imposing one or more conditions on all employers associated with a particular project or projects.

For the purpose of the Guidelines, any industrial instrument, instruction or understanding which contains any provision (howsoever it may be worded) which has the effect of directly or indirectly making any term of the instrument apply to employers other than the employer who is party to the instrument, shall be considered to be a Project Agreement.

In this context, respondents are reminded that Section 4.3 of the Guidelines explicitly prohibits a respondent or associated entity to enter into an unregistered written agreement.

No client can agree to a Project Agreement for public building and construction projects unless authorised in advance and in writing by the Treasurer and Minister for Industrial Relations.

Where a respondent proposes to utilise a Project Agreement, it must provide the following additional information to the WRMP:

- identify previous or current New South Wales projects of the respondents where a Project Agreement is in place and identify the costs and benefits associated with the use of a Project Agreement on those projects;
- demonstrate that the use of a Project Agreement will not have deleterious flow on effects to other New South Wales construction projects, with particular attention to the Government's objectives of maximising value for money on its construction projects;
- outline how it intends to involve sub-contractors in the development of the Project Agreement before it is finalised (Section 7.4 of the Guidelines);
- demonstrate that the use of a Project Agreement will not distort local construction labour markets;
- demonstrate that the use of a Project Agreement will not have the effect of dissuading potential sub-contractors from tendering for work on the project;
- provide evidence showing that the union(s) likely to be parties to the proposed Project Agreement have complied with the terms of other Project Agreements and industrial instruments generally;
- quantify in detail the benefits to the client accruing from the use of a Project Agreement; and
- identify the risks of not achieving those benefits.

Respondents are advised to discuss any proposal for a project agreement with the CCU prior to formal submission for tender.

## Appendix 2 – Summary of freedom of association objectives and prohibitions

| Item                            | Prohibition/requirement  | Guideline                                   |
|---------------------------------|--|---|
| General prohibition             | A party must not enter into, participate in, or facilitate arrangements or practices designed to avoid its own legal obligations, or the legal obligations of others. This includes arrangements or practices that undermine freedom of association.                               | 4.2   |
| Dispute settlement              | Dispute settlement provisions must allow an employee to have freedom of choice in deciding whether to be represented, and, if so by whom.  | 8.4   |
| Policies                        | Contractors must adopt policies that promote freedom of association.   | 10.1  |
| Personal information            | Contractors may not provide the names of new staff, job applicants, contractors or sub-contractors to unions other than as required by law.  | 10.2, dot point 1                           |
| Union membership                | Contractors may not permit 'no ticket, no start' signage; 'show card' days; or any other practice which implies that union membership is anything other than a matter for individual choice, including employers unlawfully encouraging or discouraging employees to join a union. | 10.2, dot point 2, 3                        |
| Inductions                      | Contractors must not allow employee representatives, shop stewards or other union officers to undertake or administer site induction processes.*   | 10.2 dot point 4<br><i>*note exception</i>  |
| Discrimination                  | Contractors must not discriminate against or disadvantage elected representatives.   | 10.2 dot point 5                            |
| Forms                           | Contractors must not use any form which requires an employee to identify their union status, nor should they require that sub-contractors identify the union status of their employees or sub-contractors.   | 10.2 dot point 6                            |
| Refusal to employ or terminate  | Contractors must not refuse to employ or terminate an employee because of their union status.  | 10.2 dot point 7                            |
| Refusal of request to represent | Contractors must not refuse a reasonable request from a workplace delegate to represent employees in relation to grievances and disputes or discussions. Contractors are reminded of the Dispute Settlement prohibition, outlined above (Guideline 8.4).                           | 10.2 dot point 8                            |
| Non-working shop steward        | Contractors must not permit the imposition, or attempted imposition, of a requirement for any employer on site to engage a non-working shop steward or delegate or to hire an individual nominated by a union.   | 10.2 dot point 9                            |
| Logos and indicia               | Contractors must not require the display of union or related logos, mottos or other indicia on company property or equipment, including clothing.*   | 10.2 dot point 10<br><i>*note exception</i> |

# Appendix 3 – Management of unlawful industrial action

## The Guidelines

The New South Wales Government wishes to encourage greater flexibility and productivity within the State’s building and construction industry and to ensure that the New South Wales Government maximises value for money on its spending on infrastructure projects. One of the major sources of inefficiency, delay and cost to the industry and to the State is unlawful industrial action.

The guidelines provide for the following requirements in relation to industrial action:

| Item               | Requirement   | Guideline |
|--------------------|---|-----------|
| Dispute settlement | Parties must ensure industrial action does not occur while dispute settlement procedures are being followed (unless the relevant industrial agreement requires otherwise).  | 8.3       |
| Reasonable steps   | Parties must take all reasonable steps to resolve industrial action which adversely affects, or has the potential to adversely affect, the delivery of a project or other related contracts on time and within budget.  | 8.9       |
| Reporting          | Contractors must report any threatened or actual industrial action to the CCU and the Client within 24 hours that may impact the project, project costs, related contracts or timelines. The contractor must also provide regular updates to the CCU and the client in relation to the steps being taken to resolve the threatened or actual industrial action. | 8.10      |
| Legal Response     | Contractors must take all steps reasonably available to them to prevent or end unprotected action occurring on or affecting the projects, including taking legal action.  | 8.11      |

In developing WRMPs, respondents should consider the following:

### What is unlawful action?

The WRMP should ensure that the concept of unlawful action is properly defined and that site management and sub-contractor management understand what behaviours constitute unlawful action. For example, a stoppage in relation to an alleged safety issue that is not in accordance with the terms of the industrial instrument or the Work Health and Safety Act 2011 is likely to constitute unlawful action.

### How is the unlawful action to be recorded?

The WRMP should ensure that any unlawful action is properly recorded. This should include details as to who is involved, the issues underlying the action, the unions involved, and the proposed nature and duration of the action. In order to properly comply with the Guidelines’ requirements, respondents will need to ensure that site management, particularly supervisors of direct and sub-contract labour are able to properly record the details of the circumstances surrounding the action in a format that is satisfactory to include in affidavits and witness statements.

Where unlawful action is reported to the CCU, there will be a specific audit of the respondent's compliance with this requirement.

**How will the contractor respond to notification of a rally or other protest activity involving workers on site, including requests by workers to attend a rally?**

The WRMP should outline how the respondent proposes to ensure that rallies, protests and other activities that result in lost time are managed in accordance with the Guidelines. This includes taking all reasonable steps to prevent or end the proposed action, to recover losses associated with the action, and ensuring that workers are not paid strike pay during a period of unlawful industrial action.

**Is the contractor aware of the range of legal options available and properly resourced to apply those options?**

The Guidelines require that contractors take all reasonably available steps to bring unlawful industrial action to an end. The WRMP should demonstrate that the contractor has an awareness of the range of options available to counter unlawful action, including all legislative and common law sources of action. The WRMP should also identify what resources are available to the respondent and sub-contractors to ensure that legal responses to unlawful action are prompt and effective.

**Identification of losses and costs associated with unlawful industrial action**

In order to claim interlocutory relief from unlawful action, respondents must be able to promptly identify the costs arising from the action. The WRMP should outline who is responsible for the collection and collation of this information.

**Authority to settle, withdraw or otherwise terminate legal proceedings**

Where respondents or sub-contractors initiate legal proceedings following unlawful action, the contractor should discuss any proposed settlement or withdrawal of the proceedings with the CCU. This step should be reflected in the WRMP in order to ensure compliance with Part 6, sub-clause 1.8 (g) of the Model Tender and Contract Documentation issued May 2013.

