



**Industrial
Relations**

Introduction to the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction

**Presented by Patrick Quinlan, Associate Director,
Construction Compliance Unit**



Disclaimer

The information which is provided during this webinar, and set out in these slides, is based on a range of sources and analysis (both internal and external).

The information provided is of a general nature
Parties should seek legal advice in relation to their specific
circumstances.

The NSW Government and its employees do not accept liability for
action taken in reliance on these slides, and disclaim all liability from
any error or omission.



Industrial
Relations

What is the Construction Compliance Unit?

The Construction Compliance Unit (**CCU**) has been established within New South Wales Industrial Relations (**NSWIR**) to monitor and ensure compliance with the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (**the Guidelines**).



About the Guidelines

- Came into force on 1 July 2013.
- Apply to building and construction companies that bid or tender for NSW Government infrastructure work.
- Are consistent with the guidelines introduced in Victoria and Queensland.
- A copy of the Guidelines can be downloaded from the NSWIR website.



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

July 2013



Issued: 1 July 2013



“building and construction work”

Includes

- all organised activities concerned with demolition, building, landscaping, civil engineering, process engineering, mining and heavy engineering; and
- building refurbishment or fit out, installation of building security systems, fire protection systems, air conditioning systems, computer and communication cabling, building and construction of landscapes

Excludes

- mining operations, maintenance, landscaping such as lawn mowing, pruning and other horticultural activities and cleaning buildings.



Commonwealth Building Code 2013

- Applies to Commonwealth funding entities which procure building work on behalf of the Australian Government.
- The NSW Government's view is that the Commonwealth Building Code 2013 does not override the NSW Guidelines, and the NSW Guidelines continue to apply.



Why are the Guidelines required?

The Guidelines assist the building and construction industry maintain productive and efficient construction sites, help ensure State infrastructure delivers value for money for taxpayers and leads to job creation and economic growth.

On 1 July 2013, NSW Treasurer and Minister for Industrial Relations Mike Baird, issued a media release, in which he stated:

“The NSW Government wants to make sure that every dollar we invest in infrastructure delivers value for the people of NSW...”

...Without these guidelines, the cost to NSW based on our \$61.8 billion infrastructure program is estimated to increase by up to \$790 million over the Budget period, and jobs would also be at risk.”



The client agencies

- Large infrastructure program
- Stronger interest in industry
- Will act to achieve change
- Taxpayer benefit



About the Guidelines

- The New South Wales Code of Practice for Procurement (issued January 2005) (**the NSW Code**) incorporates the requirements previously contained in the 1996 NSW Code of Practice.
- The 1996 NSW Code provided the basis for the National Code of Practice for the Construction Industry (the National Code), which was developed in 1997 by the Commonwealth and States.
- The Guidelines which commenced on 1 July 2013 have been developed to assist in the achievement of the NSW Code and in particular, IR, WH&S and workforce reform elements.



Elements of the Guidelines

The key elements of the Guidelines are:

- Proactive management of workplace relations
- Efficiency and productivity
- Workplace Health and Safety
- Innovation and continuous improvement

The Guidelines also address:

- Legal and related obligations of parties
- Dispute settlement, industrial action and strike pay
- Freedom of association and right of entry



Where do the Guidelines apply?

- All public building and construction work the subject of an Expression of Interest or Request for Tender after 1 July 2013.
- Upon entering into a construction contract with the client agency, a head contractor will also need to comply with the Guidelines on privately funded building and construction projects.
- Public private partnerships (PPPs), alliance contracts, design and construct (D&C) procurement method and any other project funding arrangements
- On-site activities, which means the primary construction site(s) or any auxiliary or holding sites.



Who is affected by the Guidelines?

- Client agencies
- Head contractors
- Subcontractors
- Consultants
- Industry associations
- Unions



Client agencies - responsibilities

Client agencies calling for tender or expression of interest for NSW publicly funded building and construction work must ensure:

- compliance with the Guidelines is included as an integral component of all contract management procedures
- all expressions of interest, tender and contractual documents clearly set out the requirements specified in the Guidelines.



Client tender and contract clauses

Client agencies should use the model tender and contract clauses on the NSWIR website for:

- Advertisements
- Requests for expressions of interest and tenders
- Construction contracts



Model Tender and Contract Documentation

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



Head contractors – tender stage

- Head contractors that express interest in, or tender for NSW government work from 1 July 2013 must comply with the Guidelines on that project and all subsequent public **and** private projects.
- When tendering for NSW publicly funded building and construction work, a head contractor must submit documents which include the following:
 - a signed compliance schedule
 - a Workplace Relations Management Plan (**WRMP**) (if applicable)
 - a Work Health Safety Management Plan or site safety plan



Head contractors – project stage

- During the project, a head contractor must:
 - act in accordance with its tender response
 - ensure on-site practices and procedures comply with the Guidelines and their WRMP
 - ensure that their on-site contractors on publicly funded projects comply with the Guidelines and their WRMP
 - comply with any reasonable request for access and information from the CCU
 - report all suspected breaches of the Guidelines to the CCU and the client agency within 24 hours of becoming aware of the suspected breach
- Model tender and contract clauses are available on the NSWIR website to assist contractors ensure compliance through their contract management procedures.



When is a Workplace Relations Management Plan required?

- Where the NSW Government department or public sector body contribution (directly or indirectly) to a project is \$10 million or more, or is at least \$5 million and represents at least 50% of the total construction project value.



Workplace Relations Management Plan

- A tenderer must, as part of any expression of interest or tender response, provide a WRMP (where applicable).
- A tenderer will not be awarded a contract in the absence of an acceptable WRMP.
- The WRMP will be assessed at the tender stage by the CCU in consultation with the client agency.



Model Workplace Relations Management Plan

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





Examples of information a WRMP will include

- Organisational structure
- Industrial relations risks that the project might face
- Selection and management sub-contractors
- Attraction, recruitment and retention of suitable direct labour
- How labour productivity and value for money objectives will be achieved
- Measurement and reporting of labour productivity and performance
- Compliance with the freedom of association objectives and right of entry requirements of the Guidelines
- Audit and review the WRMP



Subcontractors on a NSW Government project

- Comply with the Guidelines
- Comply with the head contractor's WRMP
- Comply with the head contractor's applicable safety plans
- Ensure their subcontractors comply with the Guidelines
- Allow NSW Government authorised personnel to monitor and investigate compliance.



Practice Direction 2013/1

- On 7 June 2013, the NSW Government advised changes to the Guidelines in the form of Practice Direction 2013/1, in response to the Federal Court decision of 17 May 2013 - *CFMEU v State of Victoria* [2013] FCA 445.
- Pending the outcome of the Victorian Government's appeal against the decision, the NSW Guidelines will not apply to current enterprise agreements.



Freedom to make agreements

- Contractors are entitled to make, vary, extend or terminate an agreement under the *Fair Work Act 2009*.
- Contractors are not required to have an enterprise agreement or to make a new enterprise agreement to comply with the Guidelines.
- It is illegal for a person to coerce another person in relation to their decision on these matters.



What is compliance and monitoring?

- Education: working cooperatively with other bodies, including the Fair Work Building Commission and WorkCover
- Review of provisions in project contracts and tender documentation
- Investigation of a tenderer's current workplace compliance
- Conduct site visits, inspections, audits, voluntary advisory audits
- Receipt of reports of alleged breaches and investigating
- Reporting proven breaches to the Minister for Industrial Relations



Reporting to the CCU

- Within 24 hours of becoming aware, contractors must notify the CCU and the client agency of:
 - Alleged breaches of the Guidelines
 - Any grievance or dispute relating to workplace relations or WHS matters that may impact on project costs, related contracts or timelines
 - Threatened or actual industrial action.
- Contractors must also provide updates in relation to the above and steps taken to resolve industrial action.
- Client agencies must report all breaches to the CCU.

Reports should be made to the CCU mailbox:

ccu@industrialrelations.nsw.gov.au



Powers of the CCU

- Under contractual provisions set out in contracts between client agencies and head contractors, NSW Government authorised personnel will be allowed to:
 - access the project site and other premises;
 - monitor and investigate compliance with the NSW Code and NSW Guidelines;
 - inspect any work, material, machinery, appliance, article, or facility;
 - inspect and copy any record relevant to the project; and
 - interview any person;as is necessary to demonstrate compliance with the NSW Code and NSW Guidelines.



Possible sanctions for contractors

- Formal warning
- Referral of a complaint to the relevant industry organisation for assessment against its own professional code of conduct
- Reduction in tendering opportunities at either agency or government-wide level
- Reporting of the breach to an appropriate statutory body
- Publicising the breach and the identity of the party



Industrial
Relations



- The North West Rail Link is a large rail infrastructure project for the NSW Government involving new railway stations, commuter car parking spaces and 15km of tunnels.
- The \$8.3 billion project is due for completion by the end of 2019.



**Industrial
Relations**

Contacts

Website: www.industrialrelations.nsw.gov.au

Follow the links to “Construction” and “New Construction Guidelines”

Email: ccu@industrialrelations.nsw.gov.au

Twitter: Follow us @NSW_IR

