

# Industrial Action and Dispute Settlement

The *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction* (the Guidelines) require parties to take all reasonable steps to prevent, resolve, and report industrial action on construction sites.

## Industrial action

Industrial action is any or all of the following:

- refusing to work
- implementing work bans
- 'go slow' activities
- preventing employees from working.

Protected action during a bargaining period is not unlawful action unless it contravenes the *Fair Work Act 2009* provisions. Further information about industrial action under the *Fair Work Act 2009* can be found in the Fair Work Building and Construction fact sheets at [www.fwbc.gov.au](http://www.fwbc.gov.au).

Parts 8.9 to 8.11 of the Guidelines are specific to industrial action and state that the parties must take all reasonable steps to resolve industrial action. Contractors must report actual or threatened industrial action, and must take all steps reasonably available to them to prevent and resolve unprotected industrial action. Reports under the Guidelines should be made to the CCU mailbox at [ccu@industrialrelations.nsw.gov.au](mailto:ccu@industrialrelations.nsw.gov.au).

## Dispute settlement

Parts 8.1 to 8.8 of the Guidelines are specific to dispute settlement.

The Guidelines require that grievances or matters under dispute are dealt with at the workplace between the appropriate level of management, employees and where applicable, employee representatives.

Section 8 of the Guidelines explain further the reporting requirements of the principal contractor during a dispute.

## Strike pay

Pursuant to sections 470 and 473 of the *Fair Work Act 2009* it is illegal to pay, accept or ask the employer to make payment (known as strike pay) during periods of industrial action. Further information about the illegality of strike pay can be found in the Fair Work Building and Construction fact sheets at [www.fwbc.gov.au](http://www.fwbc.gov.au).

## Reporting obligations

Part 8.8 of the Guidelines states the principal contractor **must** implement procedures to enable the reporting of grievances or disputes relating to workplace relations or work health and safety, to occur at the earliest opportunity.

Part 8.10 of the Guidelines states that contractors **must** report any threatened or actual industrial action to the Construction Compliance Unit (CCU) within 24 hours and provide regular updates about steps being taken to resolve the threatened or actual industrial action.

In addition, positive obligations about reporting requirements are set out in Part 6 of the *Model Tender and Contract Documentation*, which comprises a Compliance Schedule for inclusion in tender contracts for works valued over \$25,000 - see section 1.8(d) and (e).

The *Model Tender and Contract Documentation* is available on the NSW Industrial Relations website.

## Workplace Relations Management Plan

Parts L and M of the *Model Workplace Relations Management Plan* require a tenderer to explain how it will ensure employee grievances are managed effectively, and how the tenderer will ensure that the project is set up and resourced to deal with unlawful industrial action.

The *Model Workplace Relations Management Plan* and the CCU's fact sheet on the Workplace Relations Management Plan are available on the NSW Industrial Relations website.

Potential consequences of industrial action and disputes:

- poor productivity
- increase in resentment
- can affect the principal contractor and contractors' track records
- can be detrimental to the project costs
- can have impact on securing future state government works.

### For further information

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