ANNEXURE D:

Recommended Code



~~Implementation Guidelines to~~ The Queensland Code of Practice for the Building and Construction Industry

[insert date]

~~Implementation Guidelines to~~ The Queensland Code of Practice for the Building and Construction Industry

Contents

1. Introduction 3
2. Application and Scope 4
3. Legal and Related Obligations 7
4. Workplace Arrangements 8
5. Cost, efficiency and productivity 10
6. Project Agreements 12
7. Dispute settlement, industrial action, strike pay and payments 13

1. Introduction

The Queensland Code of Practice for the Building and Construction Industry (the **Queensland Code**) ~~was published in [insert date]. The Code~~ outlines the Government's expectations for the principles and standards of behaviour to be observed within the building and construction industry in Queensland.

~~The Queensland Code provides for the development of Implementation Guidelines (**Guidelines**) to expand on the priorities and objectives of the Queensland Code~~ The ~~following Guidelines have~~ Queensland Code has been developed to assist effective workforce management at all levels of the building and construction industry. ~~that achieves the objectives of the Queensland Code~~ In particular, ~~these Guidelines~~ the Queensland Code supports:

- **Proactive management of workplace relations.**
  Workplace relations practices shall ensure the strict rule of law applies so all parties are protected from unlawful conduct.
- **Cost efficiency and productivity**
  Projects are to be delivered on time and within budget with real value for money for the Government and the Queensland taxpayer.
- **Workplace Health and Safety and Rehabilitation**
  Parties shall achieve and maintain high standards in workplace health and safety and rehabilitation management and practices.
- **Innovation and continuous improvement**
  Parties are to demonstrate a commitment to innovation and continuous improvement in workplace and workforce management practices at the enterprise and project levels, and in the industry generally.

~~These Guidelines~~ This Code reflects the Queensland Government's commitment to greater flexibility, innovation and productivity within the State's building and construction industry to ensure that the Queensland Government maximises taxpayer value-for-money on publicly funded building and construction projects.

2. Application and Scope

2.1 Application

~~These Guidelines~~ The Queensland Code shall apply from [insert date] to all publicly funded building and construction work, as defined in section 11, exceeding [insert] million in value that is the subject of an expression of interest or request for tender by the Queensland Government.

For the purposes of the application of the requirements of Section 5 (the requirement to provide a Workplace Relations Management Plan), publicly funded building and construction work shall mean:

a) **building construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding [insert].

b) **road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding [insert].

Subject to section 2.1A, from [insert date], all parties and related entities must comply with ~~these Guidelines~~ the Queensland Code from the date on which that party first expresses an interest in, tenders for, or enters into a contract to perform public building and construction work to which ~~these Guidelines~~ the Queensland Code applies ~~apply~~.

2.1A Olympic Infrastructure

From [insert date] all parties and related entities who have entered into a contract for, or who have tendered for and remain in contention to be awarded a contract for, Olympic Infrastructure must comply with the Queensland Code.

2.2 Contract documentation and project management procedures

Client agencies and head contractors are responsible for ensuring the application of, and compliance with, ~~these Guidelines~~ the Queensland Code by:

- ensuring that compliance with ~~these Guidelines~~ the Queensland Code is an integral component of their contract management systems and procedures; and
- all expressions of interest, tender and contractual documents clearly set out the requirements specified in ~~these Guidelines~~ the Queensland Code.

While the form of wording may vary according to the contract form and the type of service supplied, the relevant contractual documents must incorporate a warranty by the head contractor, subcontractors, other contractors, consultants and/or related entities (as applicable) to comply with all aspects of the Queensland Code ~~and these Guidelines~~.

Relevant contractual documents must also incorporate the consent of the head contractor, subcontractors, other contractors, consultants and/or related entities (as applicable) to allow Building Construction Compliance Branch (**BCCB**) officials and other Queensland Government authorised personnel to:

- inspect any work, material, machinery, appliance, article or facility;
- inspect and copy any record or document relevant to the project; or

- interview any person, as is necessary to demonstrate compliance with the Queensland Code ~~and these Guidelines~~.

Head contractors will be required to ensure that their subcontractors consent to and allow BCCB officials and other Queensland Government authorised personnel to monitor and investigate compliance as indicated in ~~these Guidelines~~ the Queensland Code through relevant contractual provisions and documentation.

2.3 Notification of any threatened, impending, possible or probable, or actual unlawful industrial conduct.

Head Contractors and consultants undertaking work covered by the Queensland Code ~~and these Guidelines~~ must notify the Director, BCCB and the client agency of any threatened, impending, possible, probable or actual unlawful industrial conduct or breach of ~~these Guidelines~~ the Queensland Code within 24 hours of becoming aware of the threatened, impending, possible, probable or actual unlawful conduct or breach.

Parties with an obligation under the Queensland Code ~~and Guidelines~~ will also be required to provide the BCCB with advice of their response (actual and/or proposed) to the threatened, impending, possible, probable or actual unlawful industrial conduct or remedy to the breach as soon as practicable after becoming aware of the threatened, impending, possible, probable or actual unlawful industrial conduct or remedy to the breach.

2.4 Scope

A party interested in performing public building and construction work is expected to strictly comply with ~~these Guidelines~~ the Queensland Code from the date that party first expresses interest in, tenders for, or enters into a contract to perform public building and construction work to which ~~these Guidelines~~ the Queensland Code ~~apply~~ applies. A party will also be required to comply with Sections 3, 4, 7, 8 and 9 of ~~these Guidelines~~ the Queensland Code (except where expressly exempted) when undertaking privately funded building and construction work in Queensland where expressions of interest or tenders are called for after [insert date]. To avoid doubt, the Queensland Code applies in respect of a party's privately funded work from this time.

~~These Guidelines apply~~ The Queensland Code applies solely to parties who participate in on-site activities.

~~These Guidelines are~~ The Queensland Code is intended to apply to all forms of procurement methods including but not limited to: traditional fully documented/lump sum contracts, public private partnerships (**PPPs**), alliance contracts, managing contractor arrangements -design and construct (**D&C**); construction management procurement method and any other project funding arrangements or other procurement methods that may be introduced from time to time to reflect changes in Queensland Government contractual and delivery practices.

To achieve the objectives of ~~these Guidelines~~ the Queensland Code outlined in section 1, a party must require and actively ensure compliance with ~~these Guidelines~~ the Queensland Code by any party with whom it contracts, or enters into an arrangement, to undertake public building and construction work.

A client agency may seek to waive elements of ~~these Guidelines~~ the Queensland Code, but only in exceptional circumstances where it is considered in the public interest to do so. In instances where waiver is sought, the client agency chief executive officer must fully document the reasons for seeking the waiver and submit these to the Responsible Minister for consideration. Following a request from the Responsible Minister, the [insert the appropriate Minister] may either approve or not approve the waiver.

Related entities of any party that first expresses interest ~~for~~ in, tenders for, or enters into a contract to perform public building and construction work are also required to comply with ~~these Guidelines~~ the Queensland Code in respect of any building and construction work they undertake in, or connected with, Queensland.

An entity is a related entity of a tenderer if it is engaged in building and construction work and:

- the entity is connected with the tenderer as defined below; or
- it is a body corporate which is related to the tenderer as defined below.

Connected means the entity:

a) can control, or materially influence, the tenderer's activities or internal affairs; or

b) has the capacity to determine or materially influence the outcome of the tenderer's financial and operating policies; or

c) is a member of the tenderer; or

d) is financially interested in the tenderer's success or failure or apparent success or failure.

Related means the body corporate—within the meanings in the *Corporations Act 2001* (Cth):

a) is a holding company of the tenderer; or

b) is a subsidiary of the tenderer; or

c) is a subsidiary of a holding company of the tenderer; or

d) has one or more directors who are also directors of the tenderer; or

e) without limiting the above, controls the tenderer.

~~2.5 Relationship with the Federal Building Code [insert date]~~

~~The Commonwealth Government issued the Building Code 2013 (the National Code) effective from 1 February 2013. The National Code is a statutory instrument pursuant to s.27(1) of the Fair Work (Building Industry) Act 2012 (Cth).~~

~~These Guidelines support the Queensland Code of Practice for the Building and Construction Industry. and are to be interpreted in a manner that ensures that they do not contravene the National Code.~~

2.5 Relationship with the *Fair Work Act 2009* (Cth)

a) ~~These Guidelines~~ The Queensland Code does ~~do~~ not require, encourage or promote conduct that would constitute a contravention of the *Fair Work Act 2009* (Cth).

b) To the extent that any provision of ~~these Guidelines~~ the Queensland Code, or a party's compliance with any provision of ~~these Guidelines~~ the Queensland Code, would, but for this Section ~~2.6~~ 2.5, require, encourage or promote conduct that would constitute a contravention of the *Fair Work Act 2009* (Cth), that provision is of no effect.

c) Subject to paragraph (f) below, if any party that is required to comply with ~~these Guidelines~~ the Queensland Code considers that a provision of ~~these Guidelines~~ the Queensland Code would, but for this Section ~~2.6~~ 2.5,

   i) require, encourage or promote conduct by them or any of their contractors, or

   ii) apply to or in relation to them or any of their contractors in a manner that would constitute or give rise to a contravention of the *Fair Work Act 2009* (Cth), that party must within 7 days give notice to the BCCB of the reasons why and circumstances in which that party considers the provision would so require or apply, and must thereafter provide the BCCB with any further details of the reasons and circumstances that the BCCB may reasonably require.

d) Without limiting the generality of paragraphs (a) and (b) above, if the BCCB considers at any time that a provision of ~~these Guidelines~~ the Queensland Code would or may, but for this Section ~~2.6~~ 2.5, require, encourage or promote conduct that would constitute a contravention of the *Fair Work Act 2009* (Cth), the BCCB may issue (and may modify or withdraw from time to time) a Practice Direction declaring the extent to which and the circumstances in which the relevant provision is inoperative while the Practice Direction is in force, and the relevant provision is inoperative and is to be disregarded accordingly.

e) For the avoidance of doubt, if a party acts in reliance on a Practice Direction issued by the BCCB, conduct undertaken in such reliance does not constitute non-compliance with the ~~Guidelines~~ Queensland Code.

f) Parties are not required to notify the BCCB under paragraph (c) in relation to provisions of the ~~Guidelines~~ Queensland Code where the BCCB has issued a Practice Direction specifying that the provision is inoperative in the relevant circumstances.

3. Legal and Related Obligations

3.1 Legal obligations relating to employment

As a minimum, a party must comply, and demonstrate ~~past~~ compliance required by ~~these Guidelines~~ the Queensland Code, with all applicable:

- legislation
- court and tribunal orders, directions, and decisions; and
- industrial instruments.

An industrial instrument is an award or agreement, however designated, that:

- is made under or recognised by an industrial law; and
- concerns the relationship between an employer and the employer's employees.

Where a party cannot demonstrate ~~past~~ compliance required by ~~these Guidelines~~ the Queensland Code, consideration will be given to the extent of non-compliance and the capacity for future compliance.

3.2 Practices designed to avoid compliance with legal obligations

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. Without limiting the foregoing, this includes arrangements or practices:

- that are sham contracting arrangements;
- that are designed to avoid or circumvent strike pay obligations;
- that are designed to avoid or circumvent strict conformance with their right of entry requirements in accordance with applicable legislation; or
- that undermine freedom of association.

When undertaking building and construction work, contractors must implement on-site practices and procedures which:

- ensure proactive management of industrial relations for compliance with the objectives of the Queensland Code ~~and these Guidelines~~;
- encourage cost efficiency and productivity
- provide workplace health, safety and rehabilitation management and practices;
- promote innovation and continuous improvement.

3.3 Unregistered written agreements

A party must not enter into an unregistered written agreement with any third party or parties. 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 association.

However, it does not include common law agreements made between an employer and an individual employee.

3.4 Independent contractors

Genuine independent contractors undertake a legitimate form of work on Queensland Government building and construction sites and must not be discriminated against.

Arrangements that constrain or otherwise constrict the use of independent contractors and the terms of their engagement are inconsistent with the ~~Guidelines~~ Queensland Code.

This includes terms of an enterprise agreement that (in effect) requires a contractor to ensure where it engages subcontractors, that these subcontractors and their employees will receive terms and conditions of engagement (or terms no less favourable) as they would receive if they were engaged as employees of the head contractor.[1]

4. Workplace Arrangements

The Queensland Code ~~stipulates~~ requires that workforce management will ensure workplace health and safety; industrial relations; training and skill development are integrated within the organisational procedures, practices and performance standards of the organisation.

Effective workforce management at all levels of the construction industry is a key contributor to achieving the key priorities and objectives of the Queensland Code. The Queensland Government is committed to continuous improvement by ensuring service providers achieve an effective workforce-management focus at the enterprise and project levels and in the industry generally.

The following Workplace Arrangements, however described or implemented, are inconsistent with the requirements of the ~~Guidelines~~ Queensland Code:

a) Parties are prohibited from applying direct or indirect coercion or pressure on another party to make over-award payments. Further, no contractor or consultant is allowed to unduly influence, enter into any agreement, or issue a contract, subcontract or industrial instruction that directly or indirectly binds or otherwise pressures or coerces another party into making over-award payments.

b) Payments to industry superannuation, redundancy and income protection funds which provide for contributions in excess of award and legislative requirements are prohibited ~~are matters to be~~ unless decided by each employer subject to applicable legislation.

c) Provisions should not require, or have the effect of coercing or pressuring, any third party including labour-hire firms or group apprenticeship schemes or similar providers to set particular terms and conditions, including the making of an over-award payment.

[1] Agreements that invoke an 'average' of wages from enterprise agreements other than the agreement of the head contractor would also be inconsistent with the Queensland Code ~~these guidelines~~.

d) Parties are prohibited from requiring or attempting to unduly influence another party to have particular Workplace Arrangements in place. This includes, but is not limited to, the imposition, or attempted imposition, of a requirement for a contractor to apply project-specific wages and conditions. It is the responsibility of a contractor to negotiate with its employees the form and content of their Workplace Arrangements free of any coercion or undue influence. Provisions that impose a site allowance by the head contractor will be non-compliant with the Queensland Code ~~and these Guidelines~~.

e) Parties shall not negotiate or implement Workplace Arrangements that restrict the efficient performance of work or contain provisions that restrict productivity improvement. Without limiting the foregoing, the following will be non-compliant with the Queensland Code ~~and these Guidelines~~ if the Workplace Arrangement, is not otherwise required by a relevant Commonwealth or state law:

i) no ratios of employees. A Workplace Arrangement must not prescribe or limit the number of employees or workers a company may engage on a particular site or work area, or within their company in general. This includes references to permanent, temporary and casual employees, or the source of labour a company may engage;

ii) no one-in-all-in arrangements. A Workplace Arrangement must not allow for situations where one-in-all-in practices occur, such as in relation to overtime;

iii) no last on, first off clauses. A Workplace Arrangement must not contain selection criteria for redundancy that ignore the employer's operational requirements, such as last on, first off clauses. Similarly, an industrial instrument should not contain clauses that determine redundancy solely by reference to the seniority of employees, or by reference to the engagement of other sources or types of labour;

iv) no restrictions on labour. A Workplace Arrangement must not contain a provision that restricts an employer's short or long-term labour requirements (including casual labour; part-time labour; labour hire or the source of labour etc) nor provisions that stipulate the terms and conditions for the labour of any person not a party to the industrial instrument. Accordingly, a Workplace Arrangement must not include provisions that require an employer to ~~consult or~~ seek the approval of a third party to the employment relations (such as a union) over the number, source, type (for example casual, contract) or payment of labour required by the employer; and

v) no prohibiting of all-in payments. A Workplace Arrangement must not preclude the employer from making all-in payments. For this purpose, all-in payments mean payment to an employee for work done that is made on an hourly, daily or weekly basis and which is in lieu of payment for all or some entitlement specifically provided for by legislation or awards, such as annual leave loading or overtime. A payment to a subcontractor is not an all-in payment for the purpose of this definition. All-in payments are not to include statutory obligations, such as superannuation contributions. Arrangements where the intended outcome is to avoid employer/ employee obligations are illegal and inconsistent with ~~these Guidelines~~ the Queensland Code.

vi) no restrictions on the arrangements of rostered days off (RDOs). A Workplace Arrangement must not prevent an employer from substituting an RDO for another day.

f) No relaxation of the right of entry provisions for officials of industrial organisations. A 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 organisations and/or provide for a person or entity that is not a party to the instrument to monitor its operation. For this purpose, any reference in an industrial instrument to right of entry must provide for entry in the same terms as Part 3-4 of the *Fair Work Act 2009* (Cth) and/or any relevant and applicable Queensland legislation. These procedures govern access to employer and employee records and/or the holding of discussions with employees. Attempts to avoid right of entry requirements for union officials by allowing delegates or shop stewards to have access to employer and employee records and/or the holding of discussions with employees, and/or the exercise of a right of entry under the *Work Health and Safety Act 2011* (Qld) are inconsistent with ~~these Guidelines~~ the Queensland Code. Any breaches of this requirement may be deemed a significant breach of the contract.

g) An employer must not allow, and an instrument must not provide for, a person or entity that is not covered by the instrument to monitor its operation. Monitoring does not include activity required or permitted under Commonwealth or State law, or monitoring by a Queensland Government or Commonwealth Government agency to ensure compliance with the Queensland Code ~~and these Guidelines~~. This is not intended to prevent a contractor from monitoring in respect of a subcontractor.

h) No 'standing' authorisation to cease work. A Workplace Arrangement must not provide an entitlement for employees to take paid time off to attend union activities (subject to modern award and legislative obligations).

i) A Workplace Arrangement that attempts to negate or render ineffective the application of the Queensland Code ~~and these Guidelines~~ is inconsistent with ~~these Guidelines~~ the Queensland Code.

j) An industrial instrument must not make provision for project agreements to apply in whole or in part, other than for major contracts as defined by the client. (See Section 6 for further details on project agreements.)

k) If an industrial instrument provides for a site allowance (howsoever described), the amount of the allowance must be specified in the industrial instrument, or the instrument must contain an objective and predictable method of determining the allowance amount.

l) A Workplace Arrangement must not provide for non-working workplace delegates.

5. Cost, efficiency and productivity

~~The Queensland Code states that key~~ Key contributors to quality and value for money outcomes in the building and construction industry are an improved workplace and management culture, better employer and employee relationships, and improved industrial relations planning and management.

All parties must ensure their tenders or expressions of interest strictly comply with the Queensland Code ~~and Guidelines~~.

5.1 Obligations in Expressions of Interest or tender response

The requirement to provide a Workplace Relationship Management Plan (**WRMP**) as specified in this section will apply to:

a) **building construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding [insert].

b) **Road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding [insert].

The requirement to provide a WRMP does not extend to future privately funded building and construction work or to publicly funded building and construction work under the aforementioned threshold although the tenderer is encouraged to adopt a WRMP to meet the obligations of ~~the Guidelines~~ the Queensland Code.

The WRMP must address the following matters:

a) Sourcing of labour requirements (e.g. trade packages, direct employees, labour hire, apprentices)

b) how Workplace Arrangements will be regulated, including the provision of any industrial instruments;

c) how the head contractor will ensure subcontractors will comply and remain in compliance with the Code ~~and Guidelines~~;

d) engagement of the required labour including, but not limited to, selection processes for engaging contractors, apprentices and other labour procurement arrangements; reference checks and inductions;

e) approach to developing and maintaining a productive workforce, ensuring the optimal use of labour requirements (e.g. approach to managing inclement weather and heat, RDOs); and sourcing, selection and training of suitably experienced construction supervisors;

f) utilisation of major plant and equipment and the minimisation of unproductive time;

g) approach to relationship management with employees, employee representatives and/or unions including, but not limited to, the approach and process for communicating and consulting with the workforce;

h) approach to the use and engagement of labour hire;

i) approach to managing third party site access;

j) approach to ensuring compliance with statutory workplace rights including, but not limited to, freedom of association, freedom from unlawful coercion and freedom from unlawful discrimination;

k) approach to performance and conduct management of labour (e.g. disciplinary process to be applied);

l) identification of industrial 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:

   i. approach to dispute resolution;

   ii. approach to dealing with demarcation disputes;

   iii. response to industrial action (both threatened, impending, probable and actual, lawful and unlawful; protected and unprotected) including in respect of subcontractors;

   iv. approach to management of disputes in relation to rights of entry; and

   v. approach to minimising lost time or limitations due to industrial disputes.

m) approach to the management of subcontractors, outlining:

   i. the measures to be taken to select subcontractors who have the skills, capacity and resources to comply with legislative requirements, employment obligations and the WRMP (to the extent relevant);

   ii. contractual conditions to be imposed on subcontractors to ensure they comply with legislative requirements, employment obligations and the WRMP (to the extent relevant);

   iii. how dealings with subcontractors and other contractors are to be managed including, but not limited to, identification of representatives and methods for engaging with those representatives; and

   iv. how subcontractor compliance with the workplace relations requirements will be monitored and enforced

n) Be able to demonstrate how it will:

   i. achieve the objectives of the Queensland Code ~~and these Guidelines~~ on the project; and

   ii. deliver the project on time and within budget.

   For example, a tenderer must be able to demonstrate how the objectives of the Queensland Code ~~and these Guidelines~~ relating to costs and improved efficiency and productivity can be met in the context of any of the following (if applicable to the tenderer):

   1. restrictions on when work can be performed, such as mandated or fixed rostered day off schedules and one-in-all-in arrangements;

   2. the potential for unexpected costs or increased costs during the life of a project, such as site allowances which are not quantifiable at the time of contracting;

3. adoption of a pattern agreement to a project or an industry and which has terms and conditions that are not specific to, or reflect, the needs of the enterprise; and
4. impositions or restrictions on the engagement and/or utilisation of labour.

o) Demonstrate that it has a track record of delivering construction projects on time and within budget. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such objectives in the future.

   For example, where a tenderer has failed to deliver construction projects on time and within budget in the past as a result of industrial relations matters, that tenderer must be able to identify:

   i) the reasons for the failure; and

   ii) the steps it has taken to address those matters for future projects.

p) Demonstrate that it has a track record of adopting efficient and productive work practices. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such objectives in the future.

q) Demonstrate what Workplace Arrangements a contractor will institute to provide improved productivity and/or cost outcomes as against a BPIC Arrangement that a contractor was or is subject to upon entering into the Workplace Arrangements.

r) Measures to support the recruitment and retention of women.

A model WRMP is available at [insert link].

5.2 Contractor obligations

A successful contractor must:

- Comply with its WRMP.
- Act in accordance with its tender response.
- Require compliance with these matters set out above by any party with whom it contracts, or enters into an arrangement, to undertake public building and construction work, to the extent applicable to that party.
- Comply with any reasonable request for access and information from the BCCB or other authorised Government officer.
- Submit to and cooperate with any investigation process by the BCCB or other authorised Government officer on any matters pertaining to compliance with the Queensland Code ~~and Guidelines~~, including investigations into claims made by a contractor as to its ability to comply with the Queensland Code ~~and Guidelines~~.

6. Project Agreements

The Queensland Code prohibits Project Agreements.

Project Agreements are Workplace Arrangements that seek to dictate terms and conditions for all employers on a project and therefore prevent an employer and its employees from agreeing to different terms and conditions that may suit their arrangements on that project.

This prohibition is not intended to restrict the use of single enterprise project-specific greenfields agreements under the *Fair Work Act 2009* (Cth).

~~The Queensland Code provides that certified agreements, project agreements and multi-employer agreements can provide scope for employers and their employees to improve working conditions and gain a competitive edge by ensuring value for money and quality outcomes. Parties are encouraged to make certified agreements appropriate to their circumstances.~~

~~*This section does not apply to privately funded building and construction work.*~~

~~Project agreements on public building and construction projects may only be considered for major contracts as defined by the client. Consideration of a project agreement will be at the discretion of the client agency. Other than in exceptional cases, project agreements will not be permitted on projects worth less than $100 million.~~

~~In relation to public building and construction work, the client must not agree to project agreements or project awards unless there is a clear and demonstrable benefit to the Queensland Government in doing so and the use of a project agreement is approved in advance by the Attorney-General on the recommendation of the Responsible Minister. Approval for the use of a project agreement rests with the Attorney-General.~~

~~In deciding whether to seek [insert approving Minister] approval for the use of a project agreement, the following must be considered:~~

- ~~the degree of commitment demonstrated by the parties to the proposed agreement to improving productivity and workplace relations;~~
- ~~the form of improved time or cost performance compared to what might reasonably be expected in the absence of a project agreement; and~~
- ~~past performance and the parties' history of maintaining strict compliance and abiding by agreements.~~

~~The client agency Chief Executive Officer is accountable for decisions to seek approval of a project agreement and must state the reasons for seeking approval for such an agreement in writing to the responsible Minister. The reasons must satisfy the public interest and include objective and detailed grounds and clearly demonstrate the benefit to the project and the Queensland Government.~~

~~Subcontractors must be involved in the process of developing a project agreement before it is finalised.~~

7. Dispute settlement, industrial action, strike pay and payments~~2~~

The Queensland Code ~~provides~~ requires that

- all parties are required to make every effort to resolve grievances or disputes with their employees and applicable unions at the enterprise level, in accordance with the procedure outlined in the relevant award or workplace arrangements.
- the client of the head contractor shall be advised during the progress of the work, and at the earliest opportunity within 24 ~~hrs~~ hours, of any industrial relations or WH&S matter which may have an impact on the construction program, the head contract, other related contracts or project costs.
- no payment shall be made to employees for time spent engaged in industrial action, unless payment is legally required or properly authorised by an industrial tribunal (where this is permitted by relevant industrial legislation).
- No payments, commissions, gratuities or similar payments shall be made directly or indirectly by any contractor or their representatives to a union delegate, union official, union representative or agent or to any union-controlled account or fund however described, for any reason. Payment of any monies is a breach of ~~these guidelines~~ the Queensland Code.

7.1 Dispute Settlement

Grievances or matters under dispute are to be dealt with at the workplace between the appropriate level of management, employees and where applicable, union representatives.

Agreements should contain arrangements providing graduated steps for discussion of disputes involving higher levels of authority to which the matter in dispute can be referred if it cannot be resolved.

[2] ~~This section replaces Section 5.3.2 of the Queensland Code of Practice for the Building and Construction Industry.~~

Reasonable time limits should be allowed for each stage of relevant dispute settlement processes. While dispute settlement procedures are being followed the parties are to ensure that:

- industrial action does not occur;
- the circumstances that existed prior to the dispute prevail; and
- work continues as normal without detriment to any of the parties.

Dispute settlement provisions must allow an employee to have freedom of choice in deciding whether to be represented, and, if so, by whom. Accordingly, dispute settlement provisions must allow for an employee to raise an issue either directly with their employer or through a representative of their choice.

An enterprise agreement may contain its own dispute settlement process that gives a third party the ability to arbitrate or otherwise impose an outcome to settle the dispute. In such cases, the clause must contain an express limitation that any outcome determined by the third party cannot be inconsistent with the Queensland Code ~~and these Guidelines~~ or inconsistent with legislative obligations.

Where a dispute relates to WH&S issues, the procedures contained in the relevant WH&S legislation shall be strictly followed. Parties must take all reasonable steps to resolve grievances or disputes at the enterprise level at the earliest opportunity, in accordance with the procedures outlined in the relevant industrial instrument or other workplace arrangement. Any time lost through industrial action, either lawful or unlawful, and/or through any WH&S matter or purported WH&S matter must be reported to the BCCB as soon as practicable or within 24 hours of the commencement of the lost time.

The head contractor must report any grievance or dispute, including any threatened~~, possible probable~~ or impending dispute, relating to workplace relations or WH&S matters (purported or otherwise) that may impact on project costs, related contracts or timelines to the BCCB and the client agency within 24 hours of it becoming aware of the grievance or dispute. The head contractor must provide regular updates to the BCCB and the client agency about the steps being taken to resolve such grievances or disputes.

The head contractor must implement procedures to enable such reporting to occur at the earliest opportunity. All lost time information as a consequence of lawful and unlawful industrial conduct must be accurately recorded and provided to the BCCB and client agency on a timely basis.

7.2 Industrial Action

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.

Contractors must report any threatened or actual industrial action that may impact the project, project costs, related contracts or timelines to the BCCB and the client agency as soon as practicable and within 24 hours of the threatened or actual industrial action. The contractor must provide regular updates to the BCCB and the client agency about the steps being taken to resolve the threatened or actual industrial action.

Contractors must take all steps reasonably available to them to prevent or bring to an end unprotected industrial action occurring on, or affecting the project, including by pursuing legal action where possible. Contractors will be required to use their best endeavours to pursue legal remedies to protect their rights and obligations under the Queensland Code ~~and Guidelines~~. A failure to instigate appropriate legal remedies may be considered to be a breach of the ~~Guidelines~~ Queensland Code.

Contractors must also report any request by any industrial organisation or their representative for payment of any kind in relation to a threatened, impending, possible, probable or actual industrial dispute.

7.3 Reporting of Misconduct

Where a contractor becomes aware of Misconduct it must report such Misconduct to the BCCB within 24 hours of it becoming so aware.

For this purpose, Misconduct means:

- any act (or threat of) or omission that amounts to abusive, blackmailing, bribing, bullying, corrupt, criminal, harassing, inflammatory, intimidatory, menacing, misogynistic, offensive, threatening, uncooperative, unlawful, violent or otherwise morally reprehensible behaviour, and without limitation to the above, also includes any scheme or arrangement designed to circumvent any law.

8. Workplace health and safety and rehabilitation

~~Consistent with the National Code,~~ The Queensland Code provides that workplace health and safety obligations must be actively addressed by all industry participants.

All parties must meet their WH&S obligations according to relevant laws.

8.1 Achievement of the workplace health and safety objectives of the Queensland Code ~~and these Guidelines~~

A tenderer must have policies and practices and be able to demonstrate how they will achieve the objectives of the Queensland Code ~~and these Guidelines~~ in relation to workplace health, safety and rehabilitation including how it will promote the highest standards of safety practice in the industry.

8.2 Effective workplace health and safety risk management

A tenderer must have policies and practices and be able to demonstrate:

- detailed risk management processes that can be applied to both the design and construction phases of the project;
- processes for reviewing, updating and communicating the WH&S and Rehabilitation Management Plans
- a documented 'Fit-for-Work' policy and procedures applicable on all projects.[3]
- provision of adequate WH&S and rehabilitation resources during the project, including human resources, financial resources and technical resources;
- emergency response and incident management processes, including identification of personnel with specific responsibilities and proposed engagement with emergency services prior to and during the project;
- processes for the preparation and communication of task specific safety procedures (e.g. SWMSs), including sample procedures for addressing high risk construction activities (e.g. work at heights);
- processes for ensuring all persons working on the project receive necessary information and training, including general induction training, site induction training and task-specific training;
- reporting and investigation of incidents resulting in (or with the potential to result in) personal injury and property damage;
- strict adherence to lawful right of entry provisions;
- appropriate WH&S and rehabilitation performance monitoring, auditing and reporting processes for the project, including frequency and responsible personnel;

[3] A framework for alcohol and drug management in the workplace is available at [insert link].

- appropriate systems for case management and rehabilitation of injured workers;
- appropriate record-keeping and document management systems.

A tenderer must be able to demonstrate that it has a track record of delivering construction projects safely. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such a track record in the future.

For example, where a tenderer has failed to deliver construction projects safely in the past, that tenderer must be able to identify:

- the reasons for the failure; and
- the steps it has taken to address those matters for future projects.

8.3 Commitment of senior management to safety

A tenderer must have policies and practices that demonstrate its senior managers are proactively involved in, and committed to, achieving safety objectives and improving safety outcomes on the project.

Such commitment may be demonstrated by:

- recognition under the Queensland Government prequalification systems and/or WH&S Queensland's Zero Harm at Work Program;
- the tenderer's WH&S policy;
- governance structures and reporting requirements that enable senior management to understand and respond to WH&S issues on the project including the identification of WH&S and rehabilitation personnel, WHS and rehabilitation responsibilities and accountabilities and WHS and rehabilitation reporting lines.

8.4 Consultation and issue resolution

A tenderer must have policies and practices and demonstrate how it will engage with other parties about safety on the project and resolve safety issues that arise in order to achieve the objectives of the Queensland Code ~~and these Guidelines~~, including how it will promote the highest standards of safety practice in the industry as well as the delivery of the project on time and within budget.

A tenderer must have a process for each of the following:

- **Consultation with workers and employee representatives,** which addresses: determination of designated work groups, election/training of health and safety representatives, establishment of health and safety committees, agreement on specific roles/rights for Health and Safety Representatives (**HSRs**) and committee members, establishment of WH&S right of entry protocols and the procedural requirements for consultation (e.g. how consultation is to occur – in person, via email, through HSR)
- **Consultation, cooperation and coordination with other stakeholders**, which addresses: transfer of knowledge and information before and during the project, allocation of WH&S roles and responsibilities, collaboration about risk management and emergency response and communication/reporting protocols. Relevant stakeholders may include (depending on the project) other contractors/consultants, residents or occupiers near the project site; utility/asset owners and emergency services;
- **WH&S issue/dispute resolution**, which addresses: reporting of WH&S issues to the tenderer, roles and responsibilities for responding to issues reported, consultation requirements, protocols for involving third parties (including regulators, employee representatives, other stakeholders, independent bodies/experts, etc) and timelines for resolution/escalation; and
- **Engagement with regulatory authorities**, which addresses: proactive engagement and relationship building with relevant regulators; consultation with regulators regarding safety issues and best practice, provision of information regarding the project to regulators and responding to the exercise of regulatory powers and/or enforcement action.

9. Freedom of association and right of entry

~~Consistent with the National Code,~~ Under the *Fair Work Act 2009* (Cth) and the Queensland *Industrial Relations Act* *2016* ~~*1999*~~, all parties have the right to freedom of association. This means that parties are free to join or not to join an industrial organisation 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 organisation. A person cannot be forced to pay a fee to an industrial organisation if not a member.

The ~~Guidelines~~ Queensland Code requires:

- All contractors must adopt policies and procedures that promote freedom of association;
- Practices which do not promote freedom of association are inconsistent with ~~these Guidelines~~ the Queensland Code. By way of example, the following practices are inconsistent with ~~these Guidelines~~ the Queensland Code:
  - providing the names of new staff, job applicants, contractors or subcontractors to unions 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. Administering site induction processes is a responsibility of site management and cannot be delegated. These processes are to be undertaken by site management. Where there is a requirement in any enterprise agreement for employee representatives, site delegates or other union representatives to administer site induction processes, then any such process must be overseen by, and actively involve, site management;
  - 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 engage, or terminating an employee's employment, because of their union or non-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;
  - the request, threat or imposition, or attempted imposition, of a requirement for any contractor, subcontractor or employer to hire any individual nominated by a union or to 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 Queensland Code ~~and Guidelines~~;
  - a requirement by a Union that an employer display Union or other logos, mottos or other signage at the worksite or on property or equipment supplied by an employer; and
  - any requirement that a person pay a bargaining fee, however described, to an industrial association of which he/she is not a member, in respect of services provided by it.
- A 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 organisations (see further, part 4 above) and/or provide for a person or entity that is not a party to the instrument to monitor its operation. For this purpose, any reference in an industrial instrument to right of entry must provide for entry in the same terms as Part 3-4 of the *Fair Work Act 2009* (Cth) and/or any relevant and applicable Queensland legislation. These procedures govern access to employer and employee records and/or the holding of discussions with employees. Attempts to avoid right of entry requirements for union officials by allowing delegates or shop stewards to have access to employer and employee records and/or the holding of discussions with employees are inconsistent with ~~these Guidelines~~ the Queensland Code. Any breaches of this requirement may

be deemed a significant breach of the contract.

- An employer must not allow, and an instrument must not provide for, a person or entity that is not covered by the instrument to monitor its operation. Monitoring for this purpose does not include activity required or permitted under Commonwealth or State law, or monitoring by a Queensland Government or Commonwealth Government agency to ensure compliance with the Queensland Code ~~and these Guidelines~~.
- A Workplace Arrangement that recklessly or deliberately ignores or seeks to undermine the boundaries of union coverage as defined by union rules of membership is inconsistent with ~~these Guidelines~~ the Queensland Code.
- The head contractor must report to the BCCB, ~~the~~ a breach or suspected breach of right of entry by a union within 24 hours of this arising.

10. Queensland Government oversight and administration of ~~these Guidelines~~ the Queensland Code[4]

The Queensland Government and its agencies are committed to the implementation of the Queensland Code ~~and these Guidelines~~. Breaches of the Queensland Code ~~and these Guidelines~~ may result in sanctions being imposed. These may include:

- Commercial sanctions;
- Remedies under the contract;
- Disciplinary action where the breach is by a public sector employee.

Commercial sanctions

Commercial sanctions for breaches of the ~~Guidelines~~ Queensland Code are based on the Government's right as the client to choose with whom they do business. Sanctions will depend on the nature and seriousness of the breach and on any lack of commitment shown to the requirements of the Code. The sanction imposed may involve one or more of the following:

- A formal warning;
- Partial exclusion from tendering for a specified period (i.e. a reduction in the number of tendering opportunities);
- Full exclusion from tendering for any work for an unspecified period;
- Review of prequalification accreditation;
- Publication of the breach.

Contractual remedies

Client agencies may choose to exercise the right to seek remedies under relevant clauses of the contract.

Where it is suspected that the breach of the ~~Guidelines~~ Queensland Code involves an infringement of a law or statute, the matter will be referred to the relevant administering agency. The monitoring of compliance with specific statutory requirements remains the responsibility of the relevant government agencies that administer those requirements.

10.1 Monitoring compliance

~~Attorney-General~~

The [insert the appropriate Minister] has overall responsibility for the implementation and management of ~~these Guidelines~~ the Queensland Code. The ~~Attorney-General~~ [insert the appropriate Minister] will report on performance and incidents of non-compliance with the ~~Guidelines~~ Queensland Code to Cabinet at least annually.

[4] The following section replaces the monitoring and compliance provisions contained in Section 6 of the Queensland Code.

The Building Construction Compliance Branch (BCCB)

The BCCB, within the [insert Department] will have operational responsibility for monitoring compliance with the ~~Guidelines~~ Queensland Code, investigating suspected breaches and reporting non-compliance.

Monitoring activity will include desktop and field audit activities, site visits, site inspections, inspection and copying of any relevant documentation, interviewing relevant stakeholders and post contract review and any other activity that will enable the BCCB to determine a party's compliance or otherwise with the Queensland Code ~~and Guidelines~~.

Where a tenderer is required to submit a WRMP the BCCB will assess the WRMP for compliance with the ~~Guidelines~~ Queensland Code and report to the client agency on its findings.

The BCCB will also:

- promote awareness of the Queensland Code ~~and these Guidelines~~ to all stakeholders through a range of information products and educational activities;
- liaise with relevant Commonwealth and other government agencies~~, including Fair Work Building and Construction,~~ on matters relating to the operation and compliance with the ~~Guidelines~~ Queensland Code;
- make recommendations for sanctions in the event of a proven breach of the ~~Guidelines~~ Queensland Code; and
- make recommendations to further develop the effectiveness of the ~~Guidelines~~ Queensland Code to deliver improved productivity and value for money for publicly funded projects.

The BCCB will respond to reports of alleged breaches of ~~these Guidelines~~ the Queensland Code and conduct audit activity on its own initiative.

The avenues already available to individuals in the private sector who wish to raise issues associated with the performance of government agencies, including representations to government Ministers, Members of Parliament and the Ombudsman are unaffected by ~~these Guidelines~~ the Queensland Code.

The BCCB will provide feedback to the head contractor and client agency as appropriate, including where alleged breaches of the ~~Guidelines~~ Queensland Code are identified.

The BCCB must give the party alleged to have breached the ~~Guidelines~~ Queensland Code an opportunity to make submissions to the BCCB. The BCCB may, or will if requested by a party, liaise with the relevant industry association representing the party alleged to have breached ~~these Guidelines~~ the Queensland Code.

After the party has been given the opportunity to respond to the alleged breach of the ~~Guidelines~~ Queensland Code, the Director, BCCB or delegate will provide a notice of the outcome of the investigation to the party and to the client agency. Notification of any proven breach may be accompanied by a recommendation for any sanction or remedial action. Action in response to the notification, including sanction, is to be timely to ensure the breach is remedied and future breaches are discouraged. Such action is to be reported to the BCCB within 14 days of receipt of the notice of outcome from the Director, BCCB.

Review of a decision made under ~~these Guidelines~~ the Queensland Code

Any party wishing to contest or appeal any action or decision made by the BCCB under ~~these Guidelines~~ the Queensland Code in relation to alleged non-compliance with ~~these Guidelines~~ the Queensland Code may request a review of that action or decision by writing to the Director-General, Department of Justice and ~~Attorney-General~~ [insert the appropriate Minister] within 14 days of the date of the letter advising of the action or decision.

The review will be conducted by a person appointed by the Director-General Department of Justice and ~~Attorney-General~~ [insert the appropriate Minister] who, in the Director-General's opinion, has relevant experience.

The review is to be conducted in an informal manner and taking into account those matters considered during the process in light of the matters raised in the letter requesting the review. It is intended that there will be no delay to a project as a result of the conducting a review.

The person conducting the review shall provide a written report to the Director-General who, in turn, will respond to the person requesting the review and provide the report to the [insert the appropriate Minister]. The report and response must be completed within 28 days of the request for review.

Breaches by agencies and agency employees

The Government has made adherence to ~~these Guidelines~~ the Queensland Code a key measure of agencies' performance. Chief Executive Officers are responsible for ensuring their agency's compliance with the ~~Guidelines~~ Queensland Code. Proven breaches by a client agency will be reported to the Chief Executive Officer of the client agency. The client agency CEO will provide advice to the BCCB of remedial action taken to remedy the breach and stop a recurrence (including any disciplinary action where the breach is by a public sector employee).

Industry associations

Industry Associations are expected to contribute towards making the Queensland Code ~~and Guidelines~~ operate effectively. Where a Head contractor, contractor, consultant or related entity is found to have breached the Code, the circumstances of the breach may be referred to the relevant association for appropriate action under the association's rules or code of practice.

Notification to client agencies

Where a tendering party is to be subject to an industrial instrument that has been approved by Fair Work Commission, the party must include details of any areas wherein the instrument does not conform with the requirements of ~~these Guidelines~~ the Queensland Code and for any related entity or entities in any declarations it makes to client agencies in relation to compliance with ~~these Guidelines~~ the Queensland Code.

11. Definitions[5]

The following are explanations of terms used in ~~these Guidelines~~ the Queensland Code:

a) **Building and construction work** includes:

i) all organized activities concerned with demolition, building, landscaping, civil engineering, process engineering, mining and heavy engineering; and

ii) 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;

but excludes

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

[5] Definitions are to be drawn from the Section 7 of the Queensland Code of Practice for the Building and Construction Industry.

For the purposes of the application of the requirements of Section 5 (Workplace Relationshiip Management Plan) publicly funded building and construction work shall mean:

i) **building construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding [insert].

ii) **Road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding [insert] million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding [insert].

b) **BPIC Arrangement** means a Workplace Arrangement that was implemented in the period 2019 – 2025 and that gave effect to some aspect of the Best Practice Industry Conditions (or an earlier iteration thereof).

c) **Building and Construction Compliance Branch (BCCB)** means the Branch established within the ~~Department of Justice~~ [Insert appropriate Department] and ~~Attorney-General~~ [insert the appropriate Minister] which has operational responsibility for the administration of the ~~Guidelines~~ Queensland Code.

d) **Client** means the project, building or facility owner or their agent. In relation to public building and construction work means the client agency.

e) **Client agency** means any department or statutory body as those expressions are defined in the *Financial Accountability Act 2009* and any government owned corporation and its subsidiaries where the shareholding Minister has given a notification pursuant to section 123 of the *Government Owned Corporations Act 1993* that enters into a contract for building and construction work with the head contractor.

f) **Consultant** means a professional acting as an organisation or individual such as an architect, engineer, quantity surveyor, project manager, building scientist or the like, commissioned to advise on or undertake planning, design, supervision or specific technical advisory activities relevant to a project or building.

g) **Contractor** means an organisation, entity or individual responsible for the performance of the work specified under a contract.

h) **Olympic Infrastructure** means any building and construction work that involves or is related to the delivery of the 2032 Olympic and Paralympic Games.

i) **On-site** includes the primary construction site(s) or any auxiliary or holding sites, where building and construction related work is performed.

j) **Over-award payment** means any payment and/or benefit above that set out in the relevant award, registered agreement and/or legislation and includes payments provided for in workplace arrangements.

k) **Party** includes, but is not limited to, clients, agents of clients, head contractors , subcontractors, suppliers, consultants, employees, unions including their officials, employees and members and industry associations while undertaking a representative role.

l) **Head contractor** means the party with whom the client agency enters into a contract for building and construction work as nominated under the Queensland *Work Health and Safety Regulation 2011.*

m) **Privately funded building and construction work** means building and construction work in Queensland that is not publicly funded building and construction work.

m) **Public building and construction work** means publicly funded (in whole or in part) building and construction work undertaken by, or on behalf of a client agency.

n) **Responsible Minister** means, in relation to a client agency, the Minister responsible for the portfolio within which the client is located.

o) **Tender** means an offer in writing, which includes price, bids, quotations and consultant

proposals in response to an invitation to execute work or supply goods.

p) **Tenderer** means any party responding to an expression of interest or submitting a tender for public building and construction work, including head contractors, contractors, subcontractors and suppliers.

q) **WH&S** means work, health and safety.

r) **Workplace Arrangement** means an agreement, understanding, practice, policy, procedure or other arrangement whether written or not.

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

