

Table of Proposed Provisions for Inclusion in an Amended Building Code 2014

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Proposed provision	Description
<p data-bbox="230 240 607 264">Unregistered written agreements</p> <p data-bbox="230 304 607 360">Consistent with Section 4.3 of the Victorian Guidelines</p>	<p data-bbox="741 240 1346 264">Unregistered written agreements will not be permitted.</p> <p data-bbox="741 304 920 328"><u>Possible wording</u></p> <p data-bbox="741 336 2105 456">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 associations. However, it does not include common law agreements made between an employer and an individual employee.</p>
<p data-bbox="230 504 506 528">Independent Contractors</p> <p data-bbox="230 568 607 624">Consistent with Section 4.4 of the Victorian Guidelines</p>	<p data-bbox="741 504 1480 528">There will be no restrictions on the use of independent contractors.</p> <p data-bbox="741 568 920 592"><u>Possible wording</u></p> <p data-bbox="741 600 2105 687">Genuine independent contractors undertake a legitimate form of work on Australian Government funded building and construction sites and must not be discriminated against. Arrangements that constrain or otherwise restrict the use of independent contractors and the terms of their engagement are inconsistent with the Building Code 2014.</p>
<p data-bbox="230 735 696 791">Workplace arrangements and Over-Award payments</p> <p data-bbox="230 831 696 887">Consistent with Section 5 of the Victorian Guidelines</p>	<p data-bbox="741 735 2105 791">Applying direct or indirect coercion, or pressure, on another party to make over-award payments will be inconsistent with the Building Code 2014.</p> <p data-bbox="741 831 920 855"><u>Possible wording</u></p> <p data-bbox="741 863 2105 983">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.</p>
<p data-bbox="230 1031 696 1086">Workplace Arrangements and Over-Award Payments</p> <p data-bbox="230 1126 696 1182">Consistent with Section 5 of the Victorian Guidelines</p>	<p data-bbox="741 1031 2105 1054">Clauses in industrial instruments that attempt to negate the application of the Building Code 2014 are not permitted:</p> <p data-bbox="741 1094 920 1118"><u>Possible wording</u></p> <p data-bbox="741 1126 2105 1286">Clauses that attempt to negate or render ineffective the application of the Building Code 2014 are not permitted. Such clauses may include wording such as: 'nothing shall be contrary to law...', 'clauses that are inconsistent with Commonwealth law...' and 'clauses that are inconsistent with the Building Code 2014 will have no effect...' (or similar wording). This also includes attempts to render clauses in agreements ineffective that may otherwise have been inconsistent with legislative requirements and/or the Building Code 2014.</p>

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<p data-bbox="226 188 712 244">Workplace Arrangements and Over-Award Payments</p> <p data-bbox="226 280 712 336">Consistent with Section 5 of the Victorian Guidelines</p>	<p data-bbox="736 188 2051 220">Clauses in agreements that restrict the efficient performance of work will be inconsistent with the Building Code 2013.</p> <p data-bbox="736 248 927 272"><u>Possible wording</u></p> <p data-bbox="736 280 2107 408">Parties shall not negotiate or implement arrangements or agreements that restrict the efficient performance of work or contain provisions that restrict productivity improvement. Without limiting the foregoing, industrial instruments that contain the following kinds of provisions will be non-compliant with the Building Code 2014, if the provision is not otherwise required by a relevant Commonwealth or state law:</p> <ul data-bbox="736 416 2107 1230" style="list-style-type: none"> • No ratios of employees. An industrial instrument must not prescribe the number of employees a company may engage on a particular site or work area or within their company in general. This includes permanent, temporary and casual employees; • No one-in-all-in arrangements. An industrial instrument, or workplace practices, must not allow for situations where one-in-all-in practices occur, such as in relation to overtime; • No last on, first off clauses. An industrial instrument 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; • No restrictions on labour. An industrial instrument must not contain a provision that restricts an employer's short or long-term labour requirements, nor provisions that stipulate the terms and conditions for the labour of any person not a party to the industrial instrument. Accordingly, an industrial instrument must not include provisions that require an employer to consult or seek the approval of a union over the number, source, type (for example casual, contract) or payment of labour required by the employer • No prohibiting of all-in payments. An industrial instrument 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 the Building Code 2014. • If an industrial instrument provides for a site allowance (that is an allowable award matter), the amount must be specified in an industrial instrument certified or approved under the <i>Fair Work Act 2009</i> or otherwise approved under relevant state legislation, or in a project agreement or project award. • 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.

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<p data-bbox="228 172 584 197">Cost Efficiency and Productivity</p> <p data-bbox="228 239 696 296">Consistent with Section 6 of the Victorian Guidelines</p>	<p data-bbox="734 172 2056 229">Tenderers will be required to submit a workplace relations management plan detailing how workplace relations will be managed during the life of the project before they will be considered for the work.</p> <p data-bbox="734 271 931 296"><u>Possible wording</u></p> <p data-bbox="734 306 2107 363">A tenderer must, as part of any expression of interest or tender response, provide a Workplace Relations Management Plan (WRMP) for the project aimed at meeting the objectives of the Building Code 2014 addressing the following criteria:</p> <ul data-bbox="734 405 2107 1002" style="list-style-type: none"> • labour requirements (e.g. skills, numbers required, manner of supply, recruitment, engagement, termination, redundancy of labour to allow for changing demands across the life of the project); • how workplace arrangements will be regulated; • engagement of the required labour including, but not limited to, mobilisation plans and selection procedures (e.g. reference checks and inductions); • 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); • sourcing, selection and training of suitably experienced construction supervisors; • 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; • approach to the use and engagement of labour hire; • approach to managing third party site access; • 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; • approach to performance and conduct management of labour (e.g. disciplinary process to be applied); • identification of industrial relations risks in relation to the project and details as to the proposed approach to managing those risks; • approach to the management of subcontractors;

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<p data-bbox="230 196 454 220">Project Agreements</p> <p data-bbox="230 256 696 312">Consistent with Section 7 of the Victorian Guidelines</p>	<p data-bbox="736 196 1424 220">Project agreements will only be considered on major projects.</p> <p data-bbox="736 256 927 280"><u>Possible wording</u></p> <p data-bbox="736 288 2096 376">Project agreements on public building and construction projects will only be appropriate for major contracts as defined by the client. Other than in exceptional cases, project agreements will not be permitted on projects worth less than \$100 million. Clients are free not to agree to the creation of project agreements.</p> <p data-bbox="736 416 2112 536">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 Victorian Government in doing so and the use of a project agreement is approved in advance by the Minister for Finance. In deciding whether to seek approval for the use of a project agreement, the following must be considered:</p> <ul data-bbox="736 544 2078 703" style="list-style-type: none"> • 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 and abiding by agreements. <p data-bbox="736 711 2107 831">The client is accountable for decisions to seek approval of a project agreement and must state their reasons for seeking approval for such an agreement in writing to the Minister for Finance (and copied to the responsible Minister). The reasons must include objective and detailed grounds and clearly demonstrate the benefit to the project. Approval of a project agreement rests with the Minister for Finance.</p> <p data-bbox="736 839 1865 863">Subcontractors will be involved in the process of developing a project agreement before it is finalised.</p> <p data-bbox="736 871 1552 895">A project agreement must be made under the Fair Work Act 2009 (Cwth).</p>
<p data-bbox="230 911 696 967">Dispute Settlement, Industrial Action and Strike Pay</p> <p data-bbox="230 1007 696 1062">Consistent with Section 8 of the Victorian Guidelines</p>	<p data-bbox="736 911 2096 935">Enterprise Agreement must have effective dispute resolution processes aimed at resolving disputes at the workplace level.</p> <p data-bbox="736 975 927 999"><u>Possible wording</u></p> <p data-bbox="736 1007 2096 1062">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.</p> <p data-bbox="736 1102 2074 1158">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.</p> <p data-bbox="736 1198 2078 1254">Reasonable time limits should be allowed for each stage of the dispute and an employee must have freedom of choice in deciding whether to be represented and if, so by whom.</p> <p data-bbox="736 1294 2063 1350">Where a dispute settlement procedure gives a third-party the ability to arbitrate outcome to settle the dispute, it must contain an express limitation that any outcome imposed cannot be inconsistent with the Building Code 2014.</p>

Proposed provision	Description
<p>Freedom of Association</p> <p>Consistent with Section 10 of the Victorian Guidelines</p>	<p>Respect for freedom of association will be a fundamental requirement of the Building Code 2014.</p> <p><u>Possible wording</u></p> <p>Contractors must adopt policies that promote freedom of association. Practices that do not promote freedom of association are inconsistent with the Building Code 2014:</p> <ul style="list-style-type: none"> • 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 undertake or administer site induction processes. This process should be undertaken by 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 contractors. • Refusing to employ, or terminating an employee, because of their union status. • Employers refusing a reasonable request from a workplace delegate to represent employees in relation to grievances and disputes or discussions with members. • The imposition, or attempted imposition, of a requirement for any contractor, subcontractor or employer to employ a non-working shop steward or job delegate or to hire an individual nominated by a union. • A requirement for an employer to apply union or any other logos, mottos or other indicia to company supplied property or equipment, including clothing. • 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.
<p>Right of Entry</p> <p>Consistent with Section 10 of the Victorian Guidelines</p>	<p>Right of entry must only be granted in strict compliance with applicable legislation.</p> <p><u>Possible wording</u></p> <p>No employer or employee is to grant admission to a site by an employee or official of an industrial association other than in strict compliance with the procedures governing entry of such representatives under the <i>Fair Work Act 2009</i> and any relevant and applicable OHS or Commonwealth/State legislation. These procedures govern access to employer and employee records and/or the holding of discussions with employees.</p> <p>Attempts to avoid right of entry requirements for union officials by allowing delegates or shop stewards to perform a similar function are inconsistent with the Building Code 2014.</p> <p>An industrial instrument must not provide for a person or entity that is not a party to 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 Commonwealth Government agency to ensure compliance with the Building Code 2014.</p>