Code of Practice

for the South Australian Construction Industry

Value for money for South Australians by improving the way we do business together

Government of South Australia

Reproduction of this publication is encouraged, provided that due acknowledgment is given to the Government of South Australia.

Reproduction of the principles drawn from Australian Standards must acknowledge the Standards Association of Australia.

The Work undertaken by governments and by industry bodies in other States and Territories in developing codes of practice is acknowledged. In particular the contribution made by the Australasian Procurement and Construction Council and the Australian Government in developing the National Code of Practice for the Construction Industry.

This revised code is consistent with and adopts the principles which the Australian, State and Territory Governments have agreed should underpin the development of the Construction Industry in Australia.

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INTRODUCTION

The Government of South Australia has two objectives in promoting a code of practice.

The first is part of an economic development objective to keep South Australia competitive with other Australian States and Territories and with other regions anywhere in the world. A strong and competitive Construction Industry is an important factor in the State's economy.

A second objective is concerned with the effective management of the State's considerable portfolio of assets. A strong and competitive Construction Industry is important for the efficient delivery of infrastructure and services to the community.

The *Code of Practice for the South Australian Construction Industry* and its *Implementation Guidelines* is a statement of the principles that the industry wants to apply to a range of procedures from project conception and initiation, through tendering and construction, to project completion.

The Code was initiated by the private sector of the State's construction industry as part of the ongoing process of industry development. It is a tool to assist the industry to be nationally competitive by strengthening the Best Practices that already exist and by introducing new Best Practices. The Code supports the introduction of asset management policies by the Government of South Australia and the achievement of these delivery standards by the private sector.

The *Code of Practice for the South Australian Construction Industry* and its *Implementation Guidelines* aims to:

- establish standards of behavior and standards for the management of relationships between parties in various roles within the industry
- introduce reforms as agreed by the industry and by the Government of South Australia.

The *Implementation Guidelines* are in two parts. Part one contains the procedures that South Australian Government agencies and the private sector will follow to implement the Code. Part two contains the schedules that nominate industry best practice and the mechanisms to introduce them into government procurement.

The Code will assist the private sector to meet the service delivery standards that are required by asset management and construction policies developed and implemented by DPTI. It is consistent with the prequalification procedures implemented under those policies for selecting contractors and consultants for any South Australian Government funded Construction

Projects.

The industry has determined that a code identifying best practices and providing incentives for their introduction is a necessary tool.

Code of Practice for the South Australian Construction Industry and its *Implementation Guidelines* are mandatory on all South Australian Government funded and managed construction projects. Other industry participants who wish to implement the Code as it may apply to their own projects, operations and/or membership are not required to adopt the guidelines and procedures, but they are encouraged to do so in the interests of increasing consistency in practices across the construction industry in South Australia.

OBJECTIVES OF THE CODE OF PRACTICE

- Promote *action to improve efficiency and productivity*. Eliminate unacceptable practices *including those that result from short term and expedient decision making.*
- Establish standards *which the industry requires to be observed.*
- Improve performance and maintain good practice *of all participants in the South Australian Construction Industry.*
- Promote the highest standards within the Construction Industry *by seeking the commitment of all those covered by this Code to comply with the full spirit and intent of all laws, regulations and standards applying to the industry.*
- *Obtain the best value by sharing risks equitably through assigning each risk to the party most able to bear the risk.*
- Entrench *secure and fair payment and contracting practices* as a cornerstone of industry behaviour.
- Promote the application of sensible and proper practices *for the long term benefit of the industry and all parties involved.*
- Seek to secure improvements in practice *that have been achieved so far.*
- Seek to promote goodwill in the industry and prevent disputes *by observing agreements, statutory requirements and obligations of employment.*

DEFINITIONS

Affected Agency

The South Australian Government agency managing or responsible for the project on which a reported or alleged breach occurred.

Appropriate Body

A body established to implement and or enforce legislation, regulations, recognised agreements or other Government policies (for example, the South Australian Employment Tribunal and Safework SA.

Appropriate Minister

The Appropriate Minister is the Minister with overall responsibility for implementation of the Code and that Minister at any point in time with the portfolio responsibility for Construction Industry policy, unless otherwise nominated by the Premier. At the time of publication of the Code and the *Implementation Guidelines* the Appropriate Minister is the Minister for Infrastructure and Transport.

Best Practice

Best practice is a term that describes a practice or procedure that has been formally recognised as the best way - or one of the best ways - to achieve a specific outcome. Best practice includes compliance with legislation and regulation applicable to both the Construction Industry specifically and the community in general.

Firms or individuals that successfully introduce and adhere to Best Practice in their operations may make significant efficiency and productivity gains and are often better able to compete internationally.

Building and Construction Industry (Construction Industry)

The industry that provides the services associated with the activities of the construction sector covering buildings and associated engineering services (including commercial, housing, and/or residential) and civil engineering (sometimes referred to as 'construction')

(Glossary of Asset Management Terms (Second Edition), Department for Administrative and

Information Services – December 1997)

Building Terms

The definitions used in the Code (unless otherwise stated) will be those developed by Standards Australia and the National Committee on Rationalized Building (NCRB), HB 50 Glossary of Building Terms.

DIT Commercial Construction Industry Forum (DCCIF)

The DIT Commercial Construction Industry Forum (DCCIF) was originally formed in 1997 as the Construction Industry Forum (CIF) to provide industry input on operational issues and to provide a communication channel linking the industry at all levels and across all sectors and the South Australian Government. The renamed DCCIF comprises representatives from key industry sectors and acts as a reference group for the development and implementation of Best Practice initiatives. Its role focuses on addressing current operational issues and it provides an industry perspective on the development of the industry.

Construction Industry Training Board

The Construction Industry Training Board (CITB) administers funds collected through the Construction Industry Training Fund. The CITB's aims are to:

- plan, coordinate and facilitate systematic and structured training in the South Australian Construction Industry
- improve career path development for those employed in the South Australian Construction Industry
- improve the efficiency of the construction process operating in South Australia
- improve the national and international competitiveness of the South Australian Construction Industry
- promote and market the improvements made.

Consultant

A consultant is defined in the Australian Standard AS 4121—1994 Code of ethics and procedures for the selection of consultants as any party submitting proposals. Consultants can be further defined as an independent professional person performing work under a contract and not for any purpose a partner, joint venturer, servant, agent or employee of the principal. In general, a consultant is anyone commissioned to advise on specialised aspects of a Construction Project, including project and contract managers. The term includes

representatives of the group referred to as 'the professions' e.g. architects, engineers, quantity surveyors, designers, surveyors and others. In this context the term does not refer to management consultants. Consultants may be referred to as professional service contractors.

Construction Projects

This term includes any project undertaken by the Construction Industry as defined in the Code of Practice. It includes any project involving those services associated with the activities of the construction sectors encompassing buildings, associated engineering services and civil engineering.

The Department of Infrastructure and Transport (DIT), is the South Australian Government's public construction authority responsible for the provision of a central agency and whole of Government policy development function on building asset management, construction procurement, risk management and Construction Industry issues.

APPLICATION

This Code must be observed by all parties engaged in the Construction Industry for South Australian Government managed or fully or partly funded projects.

It applies to clients, Consultants, sub-Consultants, contractors, sub-contractors, suppliers, professional organisations and other associations.

All parties involved in Local and Australian Government and non-government construction work are encouraged to adopt the code on a voluntary basis.

SCOPE

The Code includes, but is not limited to, the following areas of industry activity.

Contract Administration

All individuals and parties involved in the administration of contracts will have a commitment to:

- ensure fairness in contracting within agreements to enable fair competition, collaboration and equitable treatment of all parties involved
- co-operate with each other in the administration of the contract to enable all other parties to fulfil their contractual obligations
- protect commercial-in-confidence information
- ensure persons appointed to administer contracts have an appropriate level of competence, authority and accountability
- respond promptly to reasonable requests for advice and information
- deal with contractual claims in a timely manner
- ensure that all progress claims submitted are accurate and in accordance with all contractual arrangements
- ensure the timely processing and payment of contractual entitlements for all parties
- ensure that overruns are mitigated by co-operative efforts to solve problems and limit

claims or disputes

- adopt a co-operative approach to resolve disputes and reserve litigation for a last resort.

Consultant Selection and Ethics

The ethics to be adopted by the industry apply to all parties and reflect those identified in the Australian Standard AS 4121—1994 Code of ethics and procedures for the selection of consultants. This standard is based on the following principles.

- The conditions of inviting proposals are the same for each consultant.
- The consultant selection process is conducted honestly and fairly.
- Consultants retain their right and title to intellectual property submitted unless specific engagement conditions or payments are made for that intellectual property or there are exceptional circumstances clearly warranting an alternative approach.
- The Principal will have regard to the costs of preparing proposals with a view to minimising the overall cost of selection.
- Briefing documents will specify the Principal's requirements as clearly and precisely as possible.
- The Principal will specify what information in the proposal documents is to be treated as confidential.
- Consultants often provide professional services without payment but the Principal shall not require work without payment.
- Consultants will not respond to an invitation unless they genuinely believe they have the competence and capacity to undertake that project.
- Parties shall be prepared to attest to their probity, if necessary by statutory declaration or other reasonable means.
- Parties will comply with all legislative obligations including those required by trade practices and consumer affairs legislation.
- Parties will seek and submit proposals with the firm intention to proceed.
- Parties will not engage in any practices which give one party an improper advantage over

another.

- Parties will not engage in practices such as collusion, secret commissions, or any other such improper arrangements.
- Any party with a conflict of interest will immediately disclose that conflict of interest, including actual, potential and/or any perceived conflicts.

Tendering Processes

No party will require or compel another party, either directly or indirectly, to be bound by a contract, contractual direction and/or tender which includes provisions contrary to the intent of this Code.

The Best Practice principles that this Code adopts reflect those identified in the Australian Standard AS 4120—1994 Code of tendering. These include the requirements that all parties at all levels of the industry involved in the tendering process must:

- conduct tendering honestly and fairly and refrain from seeking or submitting tenders without a firm intention to proceed
- seek to constrain the costs of bidding
- apply the same conditions of tendering for each tenderer and avoid any practice that gives one party an improper advantage over another
- produce tender documents that clearly specify the Principal's requirements and evaluation criteria
- preserve the confidentiality of all tender information nominated as confidential during the tendering process other than public opening of tenders and disclosure of tender prices which are acceptable
- comply with all statutory obligations, including trade practices and consumer affairs legislation
- refrain from practices such as collusion on tenders. Collusive tendering practices are defined as including but not limited to:
    - agreements between tenderers as to who should be the successful tenderer,
    - any meeting of tenderers prior to the submission of their tenders that may disadvantage

the Principal,

- agreements between tenderers to fix prices,
- the submission of a cover tender (a pre-arranged inflated bid or a non-genuine bid) or any assistance to submit such a cover tender that is intended to advantage another tenderer or disadvantage the Principal,
- any unlawful or illegitimate agreement between tenderers before submission of tenders, such as fixing a special rate of payment to a third party where the payment of such fees is conditional on the tenderer being awarded the contract or commission,
- agreement between tenderers for payment of money, the securing of reward or benefit, incentives or other concessions for unsuccessful tenderers or other third parties by the successful tenderer, particularly where that benefit does not relate to the provision of bona fide services relevant to the object of the tender,

- be prepared to attest to their probity by statutory declaration, in particular on issues concerning collusive practices and conflicts of interest
- recognise that tenderers retain their right to intellectual property, unless otherwise provided in the contract
- not conduct post-tender negotiations solely on price. Neither clients nor contractors shall seek to trade off different tenderers' prices against others in an attempt to seek lower prices.

Security of Payments

All parties to a contract have the right to receive payment due for work undertaken in accord with that contract. The following agreed national principles apply to construction contracts.

- All parties will receive full payment as and when due.
- All cash security and retention monies should be secured for the benefit of the party entitled to receive them.
- Payment periods lower in the contractual chain must be compatible with those in the head contract.
- Outstanding payments to the participants, to the extent consistent with Australian and State

legislation, should receive priority over payments to other unsecured creditors.

- All construction contracts should provide for non-payment to be a substantial breach.
- All construction contracts should make provision for alternative dispute resolution mechanisms.
- Only those parties who have the financial and technical capacity and business management skills to carry out and complete their obligations should participate in the industry.
- All construction contracts in the contractual chain should be in writing.

The following minimum practices are to be adhered to in construction contracting:

- payment terms within a contract that match accepted industry practice including intervals at which payments are to be made
- the safeguard and return of all cash and other securities when all work under the contract is agreed to have been satisfactorily completed
- the safeguard and return of all retention monies held during the course of the delivery of work under the contract at a time stipulated in the agreed terms of the contract
- timely and effective dispute resolution procedures. In the event of a dispute, all payments that are not directly subject to dispute will continue to be made in accord with the agreed process and conditions and any agreed payment cycle
- "*paid when paid*" and "*paid if paid*" practices are prohibited
- all parties are to avoid frivolous and vexatious claims and disputes, particularly those affecting the amount or timing of payments.

Work Health and Safety (WH&S)

WH&S obligations must be actively addressed by all industry participants. Unequivocal commitment to WH&S management must be demonstrated in systems that address responsibilities, policies, procedures and performance standards to be met by all parties involved in a project and are directly linked to quality WH&S outcomes.

The highest priority has been given by all jurisdictions to improvement in the management of WH&S in the Construction Industry. Participants must meet their WH&S obligations according to relevant laws whether working on private or government client's projects and sites. Additionally, contractors and consultants are expected to prove that they have an

appropriate WH&S management system operating within their individual enterprise.

There may be a requirement to establish a site specific WH&S management plan before work commences on a government project or site.

Clients will prefer to deal with service providers who recognise that the active management of WH&S issues leads to superior safety and less costly outcomes than reliance on the lowest common denominator approach typified by simple regulatory compliance.

Environmental Management

All industry parties have a responsibility to contribute to meeting the community's demand for ecologically sustainable development. Sound environmental practices above and beyond mere compliance with regulatory requirements are encouraged. Service providers should develop and implement a systematic approach to environmental management to ensure that it becomes an integral part of organisational culture and day to day work practices.

Clients will encourage ecologically sustainable development by working with industry to:

- define ecologically sustainable development in a way which is meaningful for participants in the Construction Industry
- establish environmental Best Practice on projects
- showcase projects with outstanding environmental innovation and management
- pilot recycling and re-use of material on government Construction Projects
- support effective use of scarce resources.

For consultants, sub-consultant, contractors, sub-contractors and suppliers a systematic approach to environmental management includes:

- explicit management commitment and environmental policy
- acceptance by the organisation that its activities, products or service have an impact on the environment
- development and implementation of planning processes and procedures that assist in identifying possible environmental impacts and measures to mitigate or minimise these impacts
- establishing organisational responsibility, systems and procedures to review the

implementation process

- establishing management processes for the review of systems and procedures which support the organisation's commitment to the environment and which lead to continuous improvement in performance.

Industry Relationships

Relationships between industry parties include employer and employee relations and the activities of industry, professional, employer and employee associations. All parties covered by this Code will abide by appropriate legislation covering workplace issues and employee relations and will comply with the State Government policy of freedom of association on its construction sites.

Unless they conflict with existing legislation or awards, the following Best Practice principles apply.

No party will require or compel:

- another party to join an association unless there is a requirement under existing legislation or awards for membership
- another party, either directly or indirectly, to be bound by an agreement, or by a contract, contractual direction and/or tender to which they are not a party
- any person who is, or may become, an employee either directly or indirectly to accept terms and conditions of employment less than those prescribed by the applicable Federal or State award, order or agreement, if any, registered under any relevant legislation
- another party to make payments or to abide by procedures that are not a requirement of legislation, an award, a registered agreement, an industry agreement to which they are a party, or the result of a ruling, order or authorisation of an industrial tribunal or other court.

The term "require or compel" includes "attempt to require or compel". This does not limit the right of organisations within the industry to encourage membership.

- The Principal in any contract must be advised during the progress of the work and at the earliest opportunity of any industrial relations matter that may have an impact on the cost

or completion of that contract or other related contracts.

- Parties within the industry may make agreements with respect to Best Practice or procedures that are binding on the parties to that agreement to the extent that such agreement does not require behaviour that is contrary to the provisions of this Code, any Australian or State legislation, award, ruling of an industrial tribunal or court, or industrial agreement.
- Any agreements in force between employer and employee bodies prior to this Code being implemented will continue to operate until otherwise amended or withdrawn. These agreements will only apply to those parties that are signatories to them.

Skills Development and Training

The Code supports skills development and training. In particular, it encourages the harnessing and extension of the skills and creativity of the people working in the industry and the continual development of training to help develop career paths.

The following principles will be encouraged as Best Practice.

- Employees should be encouraged to acquire those skills which match industry needs and assist them to rapidly understand new technology.
- Current job roles and contract practices should be continually tested against existing and emerging industry operational requirements.
- Changes to work systems and practices should be aimed at improving industry productivity.
- Employees should be employed in their most productive capacity.
- Work should be organised to encourage the development and introduction of Best Practice in skill development and training activity.
- All relevant parties should participate in skill development and training.
- Active management of OHS policies and procedures.

Best Practice

A commitment to the following Best Practices by all parties is encouraged and may be a

requirement for those seeking Government projects.

The industry should aim to achieve Best Practice in relation to:

- employee qualification and skill levels
- completion of projects on time
- value for money
- secure and fair payment practices
- fair contracting practices
- quality in all aspects of service, delivery and product
- training, research and development
- work health, safety and rehabilitation (including the return to work of injured workers)
- environmental management
- equal opportunity for employment.

ESTABLISHMENT AND IMPLEMENTATION

The Code will be supported by *Implementation Guidelines*, which describe the Best Practices that will complement and implement the principles described in this Code.

Operation

The Code is intended to be a positive influence to assist industry reform. It encourages the industry to achieve productivity and efficiency gains through Best Practice. The *Implementation Guidelines* establish procedures which allow for incentives for compliance and sanctions for breaches (breaches include instance of non-compliance with this Code). Sanctions may be applied to any party subject to the Code. Wherever possible all parties will be encouraged to seek an alternative resolution to any dispute.

Sanctions

The *Implementation Guidelines* will establish procedures to investigate any alleged or reported breach. The sanctions that may be introduced vary significantly and will depend on the nature

of the breach and may reflect the incidence of repeat offences. Sanctions may be in one or more of the following forms:

- reporting of the breach to an appropriate statutory body for further action
- referral to an industry association for action under that association's own code of practice, conduct or ethics
- a formal warning of more severe consequences for future breaches; record of a breach in a register of breaches or non-compliance
- referral to the Parliament of any breach by a government agency for consideration by the Parliament or by the Public Works Committee if appropriate
- referral to the chief executive officer of a South Australian Government agency where a breach involves an employee of that agency with the request that disciplinary action be considered
- preclusion from entering into contracts with the Government of South Australia (or subcontracts where government is the ultimate client) for a specified period of time or limited to a specified value of contract or sub-contract
- recommended suspension of a participant from any activity within the industry, including notification to the DIT Commercial Construction Industry Forum or any of its member organisations, committees, boards, panels or other industry organisations.

Sanctions will be applied by the *Appropriate Minister* where breaches of this Code are proven and where there is not specific legislation governing the activity in which the breach occurred.

REVIEW AND EVALUATION

The *Code of Practice for the South Australian Construction Industry* with its *Implementation Guidelines* will be subject to regular review, so that it can stay meaningful and relevant to the changing environment of the Construction Industry and will be republished following amendment. The Schedules that form Part Two of the guidelines will be reviewed and amended as appropriate to ensure that they reflect current industry best practice.

If, however, outside of a review period, the industry practitioners or clients believe that the Code is ineffective or in need of revision they may refer their concerns to the DCCIF for

investigation and report to the Appropriate Minister. If the DCCIF agrees that the Code has not been effective, it may suggest changes to either the *Code of Practice for the South Australian Construction Industry* or the *Implementation Guidelines* and Schedules.

IMPLEMENTATION GUIDELINES

PART 1: Implementation Processes

The *Implementation Guidelines* are in two parts. Part one contains the procedures that South Australian Government agencies and the private sector will follow to implement the Code. Part two contains the schedules that nominate industry best practice and the mechanisms to introduce them into government procurement.

These *Implementation Guidelines* must be observed by all parties engaged on South Australian Government managed or fully or partly funded projects.

The *Code of Practice for the South Australian Construction Industry* and its *Implementation Guidelines* applies to clients, consultants, principals and their agents, contractors, sub-contractors, suppliers, professional organisations and other associations including for, but not limited to, the following areas of industry activity.

- Contract administration
- Consultant selection and ethics
- Tendering processes
- Security of payments
- WH&S
- Environmental management
- Intra-industry relationships
- Skills development and training
- Best Practice.

Adoption of the Code will be supported in two ways - primarily through positive encouragement but also through sanctions applied against breaches.

Compliance and Enforcement

Industry participants who adopt the Code will be given greater access to South Australian Government funded and managed projects. In order to achieve this DIT, in consultation with government agencies and industry, has established consultant and contractor registers for use by the South Australian public sector. Industry participants considered for inclusion on these registers by DIT are assessed on criteria as part of the pre-qualification system.

On South Australian Government projects, a failure to comply with the Code can result in significant penalties.

All outcomes of non-compliance will be considered in future pre-qualification processes and could lead to the removal, suspension or downgrading of an industry participant on such a register. This can in future restrict an industry participant's ability to tender for government construction projects.

The Code will also be enforced through contract conditions on South Australian Government construction projects and through mechanisms established for specific purposes under other legislation or regulations, including the *South Australia Building Work Contractors Act 1995 (the Act)*.

In cases of non-compliance and in line with the Act, the South Australian Government can suspend or impose conditions on licence or registration in urgent circumstances.

Breaches of this code can occur in a variety of circumstances including, but not limited to:

- undertaking work when not licensed
- using another person's licence number or lending one's your licence
- failure to comply with the contract conditions
- not be fit and proper
- failure to advertise correctly
- failure to comply with an adjudicator's decision
- failure to pay invoice before the due date or to respond to the payment claim
- failure to notify of safety matters as required under legislation
- delay or obstruct compliance with a director to rectify
- failure to provide adequate supervision on site
- failure to report non-complying products or notifiable incident caused by one.

South Australian Government tender documents, including minor works over a prescribed limit, will contain a condition of tender that advises tenderers that by submitting a tender they will be deemed to have agreed to comply with the Code. A breach of the Code may be considered a breach of the contract through the mechanism of the conditions of tendering. This condition may include the following or similar phrases.

> *All tenderers must comply with the 'Code of Practice for the South Australian Construction Industry'. Lodgment of a tender will be evidence of the tenderer's agreement to comply with the Code for the duration of any resulting contract that may be awarded. If any tenderer fails to comply, the failure will be taken into account by the Government of South Australia and its agencies when considering this or any subsequent tender by the tenderer and may result in such tender being passed over and or a change in the status of the tenderer on any Government of South Australia register of consultants or contractors.*

Sanctions will vary according to the assessed severity of a breach. Sanctions may be applied to any contracting party, i.e. clients; developers; contractors; sub-contractors; specialist contractors; Consultants; sub-Consultants; industry, employee and employer associations and individuals.

In line with the provisions of the Act, disciplinary action for building work contractors, supervisors and building consultants can include a range of penalties, such one or more of the following: reprimand, fines, imposed conditions on licences or registrations, disqualifications (permanent, for a specified period, with conditions or further orders), and being prohibited from being employed or otherwise engaged in the business of building work.

Sanctions available include the reassessment of the status of an industry participant on any South Australian Government register of contractors and Consultants which can compromise the ability of that industry participant to continue to bid for government work.

The Appropriate Minister will receive recommendations from the Affected Agency or from

DIT with respect to a finding that a breach has been proved or not proved, and with respect to sanctions and appeals. The Appropriate Minister may accept or reject any recommendation made by the Affected Agency or by DIT. If a recommendation is accepted any sanction will apply automatically. If a recommendation is rejected the Appropriate Minister may:

- refer the allegation or the report or any aspect of the investigation to DPTI for review
- dismiss any breach, unproven or proven, completely.

Monitoring

Compliance to the Code, as an industry document, will be overseen and monitored by the DCCIF, on behalf of the Appropriate Minister, will actively monitor the implementation of the Code on South Australian Government projects through regular audits and inspections, and will, in conjunction with the DCCIF, advise the Appropriate Minister and Government on any need to expand the application of the Code on a mandatory basis to private sector projects.

South Australian Government's active monitoring will help prevent additional costs and project delivery delays, and ensure all work is done safely, to standard and to the Code, while breaches and non-compliances are appropriately addressed.

Investigation

Minor breaches need not be reported or investigated unless required under separate legislation, regulation or agreements.

All parties should attempt to reconcile disputes arising from breaches of the Code through dispute resolution procedures before referral for investigation and possible sanctions. If all parties to a reported or alleged breach agree, the question of a breach may be referred to an appropriate civil or criminal court before being referred to the Affected Agency or to DPTI for consideration.

Allegations or reports of breaches will be received by the Affected Agency or the Chief Executive of DIT from any party to a contract, tender or proposal, or from any party with a relationship to a usual process within the construction industry. DIT will investigate all matters for compliance with legislative requirements.

This will include individuals; corporate and other business entities; industry associations; and employer and employee associations.

Where appropriate, DITs role in the investigation process will include:

- receiving reports and allegations of breaches from any party to a contract or from any organisation with regard to those alleged or reported breaches that are required to be, or may be referred to, the Chief Executive of DIT
- receiving recommendations for Government wide sanctions
- receiving appeals from any party to a reported or alleged breach
- maintaining a register and monitoring the progress and outcomes of the investigation of alleged or reported breaches and appeals
- notifying the party alleged or reported to be in breach that a report or allegation of a breach has been received for investigation by DIT

- referring, wherever possible and appropriate, alleged or reported breaches to the appropriate investigating body, statutory authority, civil or criminal court, or other empowered body for processing
- establishing panels to:
    - investigate each alleged or reported breach, if there is no other appropriate body to which it should be referred,
    - make recommendations to the Appropriate Minister, for consideration, that each breach has been found to be proved or not proved,
    - make recommendations to the Appropriate Minister, for consideration, that a sanction be applied
- monitoring of the implementation and effect of any sanction
- advising parties to a breach of progress and outcomes.

Breaches by South Australian Government Agencies

If a South Australian Government agency is reported to be in breach of the Code or these *Implementation Guidelines* the report of the breach shall be made to the Chief Executive of DIT.

Other circumstances in which the issue may at the discretion of the Affected Agency or agencies be referred to the Chief Executive of DIT include those where the alleged or reported breach is considered to be serious and those that involve more than one South Australian Government agency as the Affected Agency or agencies.

Where appropriate, DITs role in the investigation process will include:

- receiving reports and allegations of breaches from any party to a contract or from any organisation with regard to those alleged or reported breaches that are required to be, or may be referred to, the Chief Executive of DIT
- receiving recommendations for Government wide sanctions
- receiving appeals from any party to a reported or alleged breach
- maintaining a register and monitoring the progress and outcomes of the investigation of alleged or reported breaches and appeals
- notifying the party alleged or reported to be in breach that a report or allegation of a breach has been received for investigation by DIT

- referring, wherever possible and appropriate, alleged or reported breaches to the appropriate investigating body, statutory authority, civil or criminal court, or other empowered body for processing
- establishing panels to:
    - investigate each alleged or reported breach, if there is no other appropriate body to which it should be referred,
    - make recommendations to the Appropriate Minister, for consideration, that each breach has been found to be proved or not proved,
    - make recommendations to the Appropriate Minister, for consideration, that a sanction

be applied

- monitoring of the implementation and effect of any sanction
- advising parties to a breach of progress and outcomes.

Breaches by Other Parties

If the party that is reported, or alleged, to be in breach of the Code or these *Implementation Guidelines* is not a South Australian Government agency the report of that breach or alleged breach shall be made to the Chief Executive of the Affected Agency.

Referral of the investigation to the Chief Executive of DIT may occur where the alleged or reported breach is considered to be serious, or if it involves more than one South Australian Government agency as the Affected Agency or agencies.

The Affected Agency will determine if a breach has occurred and the appropriate sanction in line with the processes set out in these *Implementation Guidelines*. On receipt of a report of a breach or an alleged breach the Affected Agency's role in the investigation process will include:

- receiving reports and allegations of breaches from any party to a contract or from any organisation
- maintaining a register of reports and allegations
- monitoring the progress and outcomes of the investigation of alleged or reported breaches reported to it
- notifying the party alleged or reported to be in breach that a report or allegation of a breach has been received
- referring, wherever possible and appropriate, alleged or reported breaches to the appropriate investigating body, statutory authority, civil or criminal court, or other appropriate body (such as DIT), for processing
- investigating alleged or reported breaches if there is no other appropriate body to which it should be referred
- making recommendations to the Appropriate Minister for determination that each breach has been found to be proved or not proved
- making recommendations to the Appropriate Minister for determination that a sanction be

applied

- monitoring of the implementation and effect of any sanction
- advising parties to a breach of progress and outcomes
- advising DPTI in order that any contractor and consultant registers may be amended and updated as appropriate.

Panels

The Chief Executive of DIT or delegate will, under the direction of the Appropriate Minister, establish a panel to consider any appeal received by that minister or referred by another government agency.

It is necessary to establish a clear division between the investigatory and appeal roles. DIT will establish separate panels subject to its supervision, involving Government agencies and the DCCIF as appropriate, to undertake each of the necessary independent activities.

- Investigate reported or alleged breaches, assess the impact of any proved breach and recommend sanctions.
- Hear appeals against the outcomes of investigations and the recommended sanctions.

Each panel will consist of five members chaired by a DIT nominee, with a quorum of the Chair and two other members. DIT will provide the secretariat and forward copies of the panel outcomes to the Affected Agency and DCCIF.

Appeals

Any party subject to a sanction as the result of an investigation under the Code has the right to appeal against that sanction.

Any appeal must be lodged with the Chief Executive of DIT within fourteen days after the date that the notification of that sanction is dispatched to all parties.

Any appeal will be considered using the framework detailed above.

Sanctions

DIT or, where appropriate, the Affected Agency or agencies concerned will investigate any reported or alleged breach and will recommend to the Appropriate Minister the sanction to be

applied to each proven breach. Affected agencies shall refer a breach to the Chief Executive of DIT if a Government wide sanction is recommended, or if there is an appeal against a sanction.

Where some other body has, under legislation, regulation or registered enterprise agreement been established to administer a specific aspect of the Code all breaches of the Code relevant to that aspect will be referred to that body. Such bodies include but are not limited to the Australian Securities Commission, Australian Competition and Consumer Commission, Industrial Relations Commission and other courts or tribunals.

The sanctions that may be recommended by DIT or the Affected Agency will depend on the nature of the breach and may be increased for repeat offenders.

Sanctions will take one or more of the following forms:

- reporting of the breach to an appropriate body for further action
- referral to an industry association for action under that association's own code of practice, conduct or ethics
- formal warnings of more severe consequences for future breaches
- recording of a breach in a register of breaches or non-compliances. (This register will be published so as to be available for inspection by public agencies during the preparation of contractor and consultant registers and will be considered in the assessment of pre-qualification criteria.)
- referral to Parliament of any breach by a Government agency for consideration by Parliament or by the Public Works Committee if appropriate
- referral to the Chief Executive of a South Australian Government agency where a breach involves an employee of that agency with the request that disciplinary action be considered
- preclusion from entering into contracts with the Government of South Australia or subcontracts where the Government of South Australia is the ultimate client. Preclusion will be for a specified time period and/or for contracts or subcontracts over a specified value.

Sanctions will not apply until fourteen days after the dispatch of the notification of that sanction. This allows time for an appeal to be lodged. Suspension of the sanction during this process is at the discretion of the Chief Executive of DIT.

IMPLEMENTATION GUIDELINES

PART 2: Schedules of Best Practice

Schedules that detail best practice form part of the *Implementation Guidelines*. Industry participants who comply with the schedules will be deemed to be complying with the *Code of Practice for the South Australian Construction Industry* and its *Implementation Guidelines*. Those who comply will have a significantly greater chance of gaining prequalification required to tender for South Australian Government Construction Projects.

Schedule 1: Contract Administration

In order to implement the best practice contract administration principles listed in the Code, the Government of South Australia will produce a suite of contracts for government managed or fully or partly funded construction projects. This suite includes standard forms of contract with minimal amendment or special conditions.

Government agencies have developed a set of standard special conditions of contract for use in conjunction with standard contracts.

Schedule 2: Consultant Selection and Ethics

In order to implement the best practice consultant selection and ethics principles listed in the Code, Australian Standard AS 4121—1994 Code of ethics and procedures for the selection of consultants is adopted on all South Australian Government managed or fully or partly funded construction projects.

Schedule 3: Tendering Processes

In order to implement the best practice tendering processes principles listed in the Code,

Australian Standard AS 4120—1994 Code of tendering is adopted on all South Australian Government managed or fully or partly funded construction projects.

Schedule 4: Security of Payments

The Government of South Australia has endorsed the set of agreed national principles applying to security of payment as stated in the Australasian Procurement and Construction Council's 'National Action on Security of Payment in the Construction Industry' document.

Schedule 5: Intra-Industry Relationships

In order to implement the best practice intra-industry relationships principles listed in the Code all South Australian Government funded and managed construction projects will operate in accord with the appropriate State and Federal legislation and awards. The Code requires that the government's policy of freedom of association on its construction projects be implemented.

The best practice principles listed in the Code will apply on all government construction sites except to the extent that awards or legislation are recognised as taking precedence.

Schedule 6: Skills Development and Training

In order to implement the best practice skills development and training principles listed in the Code all South Australian Government funded and managed projects will be managed in accordance with those principles. Contractors, sub-contractors, specialist contractors, consultants and sub-consultants will be responsible for ensuring that these principles are met and will be subject to sanctions for failure to comply.

The South Australian Government will implement specific policies and legislation to ensure that its training goals are met. These will include but not be restricted to compliance with directions and requirements with respect to the Construction Industry Training Levy and Fund and training on government managed or fully or partly funded construction projects.

All contractors are expected to be aware of the Construction Industry Training Fund and make payment of the appropriate levy on each of these projects. Government agencies will assume that the appropriate levy amount has been included in any tender submitted to them and will not provide additional funding to cover the levy.

In order to ensure that the appropriate construction industry training levy is paid on all South

Australian Government funded and managed projects all government agencies managing construction industry activity will provide a regular report to the Construction Industry Training Board of all contracts let and the specific details as appropriate including the name and nature of the asset, the name of the successful contractor and the approximate value of the contract/project.

Agencies may require proof of payment of the Construction Industry Training Levy prior to:

- the payment of the first or any subsequent progress payment; and/or
- providing access to the construction site.

Construction industry businesses tendering for South Australian Government managed or fully or partly funded construction projects are to comply with the Workforce Participation in Government Construction Procurement Policy.

Schedule 7: Work Health and Safety (WH&S)

The South Australian Government has given the highest priority to improving the management of work health and safety in the construction industry. A systematic approach to WH&S management is to be encouraged to ensure that WH&S management becomes an integrated part of the organisational culture of construction industry enterprises and facilitates continuous improvement of WH&S performance in both individual enterprises and on projects.

Improving the industry's WH&S performance requires positive measures that aim for prevention rather than correcting things when they go wrong. To this end, service providers should be encouraged to have WH&S management systems and to establish a site-specific WH&S management plan before work commences even if not required by legislation. A comprehensive WH&S management system and plan aims to prevent and eliminate hazards that cause injuries and illnesses at the workplace.

A comprehensive WH&S management system and plan will include:

- explicit management commitment
- worker involvement
- rigorous work practices analysis
- proactive worksite analysis that anticipates and assigns roles and responsibilities and

defines efficient procedures while on site

- hazard identification, prevention and control
- induction and task training
- appropriate injury management and rehabilitation
- efficient maintenance of records.

It is essential that a WH&S management system is fully documented and clearly communicated to people in an enterprise and on a project. It should systematically cover the way that everyone is expected to work safely, the way the contractor managing a project and each sub-contractor or other service provider will ensure others work safely and the ways they intend to improve their practices over time. This will also entail defining roles, duties and responsibilities so that everyone knows what they have to do, when and in what circumstances.

Schedule 8: Environmental Management

The Government of South Australia has endorsed initiatives for application on all government managed or fully or partly funded construction projects, in order to contribute to better environmental management.

The Energy Efficiency Action Plan defines basic energy efficiency measures for new government buildings, major refurbishment projects, operation and maintenance practices, vehicle fleet management and equipment procurement policies.

Key actions relevant to construction projects are as follows.

- The construction of new buildings and major refurbishments of existing assets will include a life cycle approach.
- Operation and maintenance of existing assets are to incorporate energy management practices.

The South Australian Government guide note 'Ecologically Sustainable Development - Planning, Design and Delivery' provides guidance for the planning, design and delivery of new or refurbished government buildings and their associated sites.

Schedule 9: Best Practice

In order to implement the best practice principles listed in the Code all South Australian Government funded and managed projects will adopt in their objectives the best practices

contained in this section of the Code.

All tenderers will be advised that by submitting a tender they are deemed to have agreed to comply with the Code and its *Implementation Guidelines*. These principles will only be enforceable to the extent that is allowed within the conditions of tendering and conditions of contract for each project. The sanctions contained in the Code will only be applied where the breach of the contract conditions, in the opinion of the Chief Executive of DIT, clearly warrants actions and sanctions additional to those provided under contract.

For example the Chief Executive of DIT might determine that the removal of a contractor or consultant from a register is justified where a contractor or consultant has been found to have continually breached the appropriate legislation or regulations or the spirit of WH&S requirements, although each individual breach is not otherwise of sufficient significance to initiate action under this Code.

FURTHER INFORMATION

Copies of the *Code of Practice for the South Australian Construction Industry* and its *Implementation Guidelines* can be downloaded from

http://www.dpti.sa.gov.au/contractor_documents

Email: DPTI.Tenders@sa.gov.au

Phone (08) 8343 2029

The above needs review by DIT