

# Code Declaration of Compliance

## August 2009



**Declaration of Compliance with the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (the Guidelines) and the Fair Work Principles**

**(Any Expressions of Interest (EOI) from 1 August 2009)**

### SECTION ONE: BUSINESS DETAILS

<b>Project Name</b>			
<b>Project Pack Name / Number</b>			
<b>Business Name</b>			
<b>Trading Name</b>			
<b>Australian Business Number (ABN)</b>			
<b>Business Type</b>	SOLE TRADER	PARTNERSHIP	COMPANY
<b>Business Address</b>			
<b>Postal Address</b>			
<b>Phone Number</b>		<b>Fax Number</b>	
<b>Email Address</b>			
<b>Contact Name</b>			
<b>Position</b>			
<b>Work Category / Trade</b>			
<b>Services Provided</b>	LABOUR ONLY	PLANT / EQUIPMENT / MATERIALS ONLY (DRY HIRE)	LABOUR AND PLANT / EQUIPMENT / MATERIALS (WET HIRE)

### SECTION TWO: CODE COMPLIANCE HISTORY

2.1	Has your business completed an assessment for compliance with the Code and Guidelines (August 2009) through JHG within the last three (3) months?  If <b>NO</b> please proceed to SECTION THREE. If <b>YES</b> please complete the section below.	Y	N
	Report Number:		
	Report Date:		
	Project:		
	Assessor Name:		
2.2	Have there been any changes to your industrial or business arrangements in the past three (3) months that would change the answers you provided in your previous Code Declaration of Compliance?  If <b>NO</b> please proceed to SECTION NINE. If <b>YES</b> please proceed to SECTION THREE.	Y	N

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### SECTION THREE: INDUSTRIAL ARRANGEMENTS

3.1	Does your business have any related entities?  If <b>YES</b> you must also complete SECTION TEN of this Declaration as well as the rest of this declaration.	Y	N
3.2	Does your business engage employees?  If <b>YES</b> please identify how many employees are currently engaged by the business including working directors.  Number of Employees:	Y	N
3.3	Whether currently engaging employees or not, please identify the industrial instrument(s) which will be applied on this project, including instrument name and approval details.  Enterprise Agreement(s):  Expiry Date(s):  Award (Modern Award, NAPSA):  Other:		
3.4	Has your business sought to have the industrial instrument(s) assessed by the Department of Employment, Education and Workplace Relations (DEEWR) for Code compliance?  If <b>YES</b> please attach the DEEWR assessment letter. If <b>NO</b> you are requested to contact DEEWR and have the industrial instrument(s) assessed (excludes Awards):  <a href="mailto:building@deewr.gov.au">building@deewr.gov.au</a> 1300 731 293 <a href="http://www.deewr.gov.au">www.deewr.gov.au</a>	Y	N
3.5	Is your business currently operating under any unregistered agreements or project specific workplace arrangements?  If <b>YES</b> please identify the nature of these agreements and attach a copy of these agreements to this declaration.  <i>Note: Unregistered Agreements will include side deals or memos of understanding or project specific workplace arrangements.</i>  Unregistered Agreement:	Y	N
3.6	Has your business been directed, required or coerced to make payments to, or on behalf of, employees in excess of an award, industrial instrument or legislative requirements including any site allowance, howsoever described?  If <b>YES</b> please describe the nature of these payments.  <i>Note: Payments may include industry superannuation, redundancy, sick leave funds and/or "top up" insurance schemes, ambulance cover or training levies.</i>  Payment Description:	Y	N
3.7	Is your business aware that "sham contracting" arrangements are considered to be inconsistent with the Code and Guidelines?	Y	N
3.8	Does your business undertake not to engage in "sham contracting" arrangements?	Y	N

### SECTION FOUR: FREEDOM OF ASSOCIATION

4.1	Do the industrial instruments (as identified in SECTION THREE) grant access to a site to a representative of an industrial association other than <u>in strict compliance</u> with the procedures	Y	N
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	governing entry and inspection under the <i>Fair Work Act 2009</i> (FW Act) or relevant State legislation?		
4.2	Does your business use induction forms that require employees to identify their union status?	Y	N
4.3	Does your business have workplace agreements, policies or practices that ENCOURAGE employees to join or maintain financial membership with a union or industrial association?	Y	N
4.4	Does your business have workplace agreements, policies or practices that DISCOURAGE employees to join or maintain financial membership with a union or industrial association?	Y	N
4.5	Do your employees have freedom of choice as to who represents them in dispute resolution procedures?	Y	N

### SECTION FIVE: SUBCONTRACTORS AND CONSULTANTS

5.1	Does your business engage subcontractors or consultants?  If <b>YES</b> you must also complete SECTION TEN of this Declaration as well as the rest of the Declaration. If <b>NO</b> please proceed to SECTION SIX.	Y	N
5.2	Do the contracts used to engage subcontractors or consultants incorporate the requirement to comply with all aspects of the Code and Guidelines?	Y	N
5.3	Do the contracts used to engage subcontractors or consultants incorporate the Model Contract Clauses?  <i>Note: Model contract clauses are available at <a href="http://www.deewr.gov.au/building">www.deewr.gov.au/building</a></i>	Y	N
5.4	Are there any requirements or practices that encourage, suggest or pressure subcontractors or consultants to have a specific form of industrial instrument or to adopt any particular terms and conditions of employment?	Y	N
5.5	Does your business direct, require or coerce subcontractors or consultants to make payments to, or on behalf of, their employees in excess of an award, industrial instrument or legislative requirements?	Y	N
5.6	Does your business use induction forms that require subcontractors or consultants to identify the union status of employees?	Y	N
5.7	Does your business ensure subcontractors and consultants are aware of the obligation to provide the Commonwealth or any person authorised by the Commonwealth with access to sites, documents and personnel to monitor compliance?	Y	N
5.8	Does your business ensure that subcontractors and consultants are aware of the requirement to change their business practices in order to comply with the Code and Guidelines when non-compliant practices are drawn to their attention?	Y	N
5.9	Does your business undertake to make payments in a timely manner and settle any disputes regarding payments in a reasonable, timely and cooperative way?	Y	N

### SECTION SIX: ONSITE PRACTICES

6.1	Does your business have policies (whether written or verbal) in place that ensure:		
	The site is free from posters, signs and other promotional material implying compulsory union membership?	Y	N
	Employee records are securely stored and not provided to a third party other than as required by law?	Y	N
	Employees are not required to identify their union status in any way?	Y	N
6.2	Does your business have systems in place that ensure union officials:		
	Hold a valid federal right of entry permit?	Y	N

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	Provide at least 24 hours written notice of entry, unless in relation to relevant Workplace Health and Safety laws?	Y	N
	Provide details of any alleged breach they are investigating?	Y	N
	Only visit during working hours and hold discussions during meal times or other breaks?	Y	N
	Show their valid permit and notice of entry upon request?	Y	N
	Comply with your reasonable requests about the areas on site they can use for holding discussions or interviews?	Y	N
	Comply with your reasonable requests about the route they should take to access these areas?	Y	N
6.3	Does your business intend to put in place any arrangements for the employment of a non-working shop steward or job delegate, or other such person, on the project site?	Y	N
6.4	Does your business undertake to remain Code compliant on privately funded work?	Y	N
6.5	Does your business have arrangements to ensure that payment is not made for any time spent engaged in industrial action?	Y	N
6.6	Is your business aware of the requirement to change your business practices in order to comply with the Code and Guidelines when non-compliant practices are drawn to your attention?	Y	N
6.7	Does your business have in place a comprehensive Work Health Safety & Rehabilitation Management Plan?	Y	N

### SECTION SEVEN: REPORTING PRACTICES

7.1	Is your business aware of the obligation to provide the Commonwealth or any person authorised by the Commonwealth with access to sites, documents and personnel to monitor compliance?	Y	N
7.2	Does your business have systems in place to report to John Holland and any relevant authority:		
	Alleged or suspected breaches of the Code, Guidelines and <i>FW Act</i> within 21 days?	Y	N
	Industrial and Workplace Health and Safety disputes at the earliest opportunity?	Y	N
	Right of entry by union officials including unlawful entry or attempted unlawful entry?	Y	N
	Freedom of association breaches within 21 days?	Y	N
	Details of any court applications under the <i>Building and Construction Industry Improvement Act 2005</i> , <i>FW Act</i> or section 34 of the <i>Independent Contractors Act 2006</i> and of the outcome?	Y	N
7.3	Is your business aware that the Commonwealth may impose sanctions on a business that does not comply with the Code and Guidelines?	Y	N
7.4	Has your business ever had a sanction applied to it by the Commonwealth or any other State or Territory Government, which precludes your business from tendering for or otherwise performing government funded work?	Y	N
	If <b>YES</b> please supply details of the sanction as requested below.		
	Enactment date: _____ / _____ / 20_____ Removal date: _____ / _____ / 20_____		
	Sanction Description:		
7.5	Have any of your related entities had sanctions applied to them which preclude them from tendering for or otherwise performing government funded work?	Y	N
	If <b>YES</b> please supply details of the sanction as requested below.		
	Enactment date: _____ / _____ / 20_____ Removal date: _____ / _____ / 20_____		

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	Sanction Description:		
7.6	Are there any other reasons that may result in your business being non-compliant with the Code?  If <b>YES</b> please indicate what arrangements are proposed and the process / strategy your business will adopt to become compliant.	Y	N
	Process / Strategy Description:		

### SECTION EIGHT: FAIR WORK PRINCIPLES

8.1	Is your business compliant with all relevant workplace laws, which include the <i>FW Act</i> or any applicable workplace relations laws (including obligations under awards, industrial instruments and employee superannuation entitlements, etc.), workplace health and safety laws, and workers compensation laws?  If <b>NO</b> please provide reasons as to your non-compliance.	Y	N
	Reasons:		
8.2	Has your business had an adverse Court or Tribunal decision for a breach of workplace relations law, workplace health and safety law, or workers' compensation law in the previous two (2) years?  If <b>NO</b> please proceed to SECTION 8.4 If <b>YES</b> please provide a description of the decision.	Y	N
	Decision Description:		
8.3	Has your business or is your business fully complying with the order?	Y	N
8.4	Is your business operating under an enterprise agreement made under the <i>FW Act</i> on or after 1 January 2010?  If <b>NO</b> please proceed to SECTION 8.6	Y	N
8.5	Does the enterprise agreement include "genuine dispute resolution" procedures?  Note: A "genuine dispute resolution procedure" must include as a minimum: <ul style="list-style-type: none"> <li>The ability for employees to appoint a representative in relation to the dispute;</li> <li>In the first instance procedures to resolve the dispute at the workplace level;</li> <li>If a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and</li> <li>If the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.</li> </ul>	Y	N
8.6	Does your business undertake to comply with the dispute settlement procedures as set out in the applicable enterprise agreement or award?	Y	N
8.7	Does your business have in place consultation arrangements which encourage cooperation and discussion between of employees and management?	Y	N
8.8	Does your business undertake to <b>ONLY</b> engage subcontractors who comply with the Fair Work Principles?	Y	N

### SECTION NINE: GENERAL DECLARATION

In making this declaration, the business confirms that:

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- The business complies with the National Code of Practice and Implementation Guidelines for the Building and Construction Industry, issued August 2009, in preparing this Tender;
- The business undertakes to comply with the Code and Guidelines in performing the Contract, should it be the successful Tenderer;
- The business undertakes to ensure compliance from all subcontractors, consultants and related entities engaged on this project, should it be the successful Tenderer;
- The business acknowledges that all contracts must expressly require compliance with the Code and Guidelines;
- The business acknowledges that the consents provided in this undertaking are not limited to this Tender process;
- The business acknowledges that any false or misleading information or undertakings with regards to this declaration may constitute a breach of the Code and Guidelines and may result in the tender being rejected from consideration;
- The business confirms that it will comply with John Holland's policies and procedures pertaining to Industrial Relations, including Code compliance.

I hereby acknowledge that this information is true and accurate to the best of my knowledge.

Authorised Representative:	
Position:	
Signature:	
Date:	

I have completed and returned the Declaration of Compliance	YES	NO
I have provided details of the industrial instrument that applies to my business	YES	NO
I have provided a copy of the DEEWR assessment of my industrial instrument	YES	NO
I have provided a copy of the Approval Decision from Fair Work Australia or Workplace Authority which applies to my enterprise agreement (if applicable)	YES	NO

#### FOR MORE INFORMATION CONTACT:

Fair Work Building and Construction	1800 003 338	<a href="http://www.fwbc.gov.au">www.fwbc.gov.au</a>
Department of Education Employment and Workplace Relations	1300 363 079	<a href="http://www.deewr.gov.au">www.deewr.gov.au</a>
Fair Work Australia	1300 799 675	<a href="http://www.fwa.gov.au">www.fwa.gov.au</a>
Fair Work Ombudsman	13 13 94	<a href="http://www.fairwork.gov.au">www.fairwork.gov.au</a>

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### SECTION TEN: RELATED ENTITY / SUBCONTRACTOR INFORMATION

Note: This form must be completed for each business as required. Please attach additional forms as necessary to complete the Declaration.

Please CIRCLE:

RELATED ENTITY	SUBCONTRACTOR	MATERIAL SUPPLIER	CONSULTANT
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<b>Project Name</b>			
<b>Project Pack Name / Number</b>			
<b>Business Name</b>			
<b>Trading Name</b>			
<b>Australian Business Number (ABN)</b>			
<b>Business Type</b>	SOLE TRADER	PARTNERSHIP	COMPANY
<b>Business Address</b>			
<b>Postal Address</b>			
<b>Phone Number</b>		<b>Fax Number</b>	
<b>Email Address</b>			
<b>Contact Name</b>			
<b>Position</b>			
<b>Work Category / Trade</b>			

If this business will be engaged on the Project please identify what services the business will be providing to your business:

LABOUR <b>ONLY</b>	PLANT / EQUIPMENT / MATERIALS <b>ONLY</b> (DRY HIRE)	LABOUR <b>AND</b> PLANT / EQUIPMENT / MATERIALS (WET HIRE)
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### SECTION ELEVEN: TO BE COMPLETED IF YOU ARE UNDERTAKING WORK IN VICTORIA ONLY

Businesses undertaking work in the state of Victoria are required to demonstrate compliance with the Victorian Code of Practice for the Building and Construction Industry (the Victorian Code) and the Implementation Guidelines for the Victorian Code of Practice for the Building and Construction Industry (the Victorian Guidelines). If you are undertaking work in Victoria you are required to complete SECTION ELEVEN as set out below.

<b>11.1</b>	<b>General Obligations</b>		
11.1.1	Are you aware of the obligation to comply with the Victorian Code and Victorian Guidelines whilst undertaking building and construction work for or on behalf of a Victorian Government department or public sector body?	Y	N
<b>11.2</b>	<b>Code Compliance History</b>		
11.2.1	Has your business completed an assessment for compliance with the Victorian Code and the Victorian Guidelines through JHG within the last three (3) months?  IF <b>NO</b> please proceed to Section 11.3 IF <b>YES</b> please complete the section below	Y	N
	Report Number:		
	Report Date:		
	Project:		
	Assessor Name:		
11.2.2	Have there been any changes to your industrial or business arrangements in the past three (3) months that would change the answers you provided in your previous Code Declaration of Compliance?  If <b>NO</b> please proceed to Section 11.8 If <b>YES</b> please proceed to Section 11.3	Y	N
<b>11.3</b>	<b>Industrial Arrangements</b>		
11.3.1	Do the industrial instruments include provisions that require the approval of a union over the number, source, type or payment of labour required by your business?	Y	N
<b>11.4</b>	<b>Freedom of Association</b>		
11.4.1	Do you undertake not to enter into, participate in, or facilitate arrangements or practices designed to avoid your legal obligations, or the legal obligations of others with regards to freedom of association?	Y	N
<b>11.5</b>	<b>Subcontractors, Material Suppliers and Consultants</b>		
11.5.1	Does your business engage subcontractors, material suppliers or consultants?  If <b>YES</b> you must also complete SECTION TEN of this Declaration as well as the rest of this Declaration. If <b>NO</b> please proceed to Section 11.5.5.	Y	N
11.5.2	Do the contracts used to engage subcontractors, material suppliers and consultants incorporate the requirement to comply with all aspects of the Victorian Code and Guidelines?	Y	N
11.5.3	Do the contracts used to engage subcontractors, material suppliers and consultants incorporate the Model Contract Clauses (if required)?  <i>Note: Model contract clauses are available at <a href="http://www.dtf.vic.gov.au">www.dtf.vic.gov.au</a></i>	Y	N



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11.5.4	Do you ensure subcontractors, material suppliers and consultants are aware of and consent to provide the Victorian Government or any person authorised by the Victorian Government, with access to: <ul style="list-style-type: none"> <li>inspect any work, material, machinery, appliance, article or facility;</li> <li>inspect and copy any record relevant to the Project;</li> <li>interview any person, in order to monitor compliance?</li> </ul>	Y	N
11.5.5	Do you, in the normal course of your business engage material suppliers?  If <b>YES</b> you must also complete SECTION TEN of this Declaration as well as the rest of this Declaration. If <b>NO</b> please proceed to Section 11.6	Y	N
11.5.6	Are there any requirements or practices that encourage, suggest or pressure material suppliers to have a specific form of industrial instrument or to adopt any particular terms and conditions of employment?	Y	N
11.5.7	Does your business require material suppliers to make payments to, or on behalf of, their employees in excess of award or legislative requirements?	Y	N
11.5.8	Does your business use induction forms that require material suppliers to identify the union status of employees?	Y	N
11.5.9	Does your business ensure that material suppliers are aware of the requirement to change their business practices in order to comply with the Code and Guidelines when non-compliant practices are drawn to their attention?	Y	N

<b>11.6</b>	<b>Onsite Practices</b>		
11.6.1	Does your business undertake to remain compliant with the Victorian Code and Victorian Guidelines on privately funded work?	Y	N
11.6.2	Does your business have policies (whether written or verbal) in place that ensure there is no requirement to display union logos on clothing and property?	Y	N
11.6.3	Does your business intend to have union delegates administer any part of the site induction process, or be given access to the names of staff, job applicants, subcontractors or suppliers?	Y	N

<b>11.7</b>	<b>Reporting Practices</b>		
11.7.1	Do you agree to provide the Victorian Government or any person authorised by the Victorian Government, with access to: <ul style="list-style-type: none"> <li>inspect any work, material, machinery, appliance, article or facility;</li> <li>inspect and copy any record relevant to the Project;</li> <li>interview any person; in order to monitor compliance?</li> </ul>	Y	N
11.7.2	Does your business have systems in place to report to John Holland and any relevant authority:		
	Alleged or suspected breaches of the Victorian Code, Victorian Guidelines and FW Act within 24 hours?	Y	N
	Industrial and Workplace Health and Safety disputes at the earliest opportunity?	Y	N
	Right of entry by union officials including unlawful entry or attempted unlawful entry?	Y	N
	Freedom of association breaches?	Y	N
11.7.3	Are you aware that the Victorian government may impose sanctions on a business that does not comply with the Victorian Code and Victorian Guidelines?	Y	N
11.7.4	Are there any other reasons that may result in your business being non-compliant with the Victorian Code or Victorian Guidelines?  If <b>YES</b> please indicate what arrangements are proposed and the process/ strategy your	Y	N

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	business will adopt to become compliant.		
	Process / Strategy Description:		

### 11.8 General Declaration

In making this declaration, the business confirms that:

- The business complies with the Victorian Code of Practice for the Building and Construction Industry (the Victorian Code) and the Implementation Guidelines for the Victorian Code of Practice for the Building and Construction Industry (the Victorian Guidelines), in preparing this Tender;
- The business undertakes to comply with the Victorian Code and Victorian Guidelines in performing the Contract, should it be the successful Tenderer;
- The business undertakes to ensure compliance from all subcontractors, consultants and material suppliers and related entities engaged on this project, should it be the successful Tenderer;
- The business acknowledges that all contracts must expressly require compliance with the Victorian Code and Victorian Guidelines;
- The business acknowledges that the consents provided in this undertaking are not limited to this Tender process;
- The business acknowledges that any false or misleading information or undertakings with regards to this declaration may constitute a breach of the Victorian Code and Victorian Guidelines and may result in the tender being rejected from consideration;

I hereby acknowledge that this information is true and accurate to the best of my knowledge.

Authorised Representative:	
Position:	
Signature:	
Date:	

I have completed and returned the Declaration of Compliance YES NO

I have provided details of the industrial instrument that applies to my business YES NO

I have provided a copy of the Approval Decision from Fair Work Australia or Workplace Authority which applies to my enterprise agreement (if applicable) YES NO

#### FOR MORE INFORMATION CONTACT:

Department of Treasury and Finance	(03) 9651 5111	<a href="http://www.dtf.vic.gov.au">www.dtf.vic.gov.au</a>
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