

# Code of Practice

for the South  
Australian  
Construction  
Industry

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

September 2008



Supported by  
**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 in developing codes of practice is acknowledged. In particular the contribution made by the Australian Procurement and Construction Council and the Commonwealth Government in developing the National Code of Practice for the Construction Industry.

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

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# INTRODUCTION

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

The first is part of an economic development objective to keep the State competitive with other Australian States 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 is a statement of the principles that support best practice.

Adoption of the Code will provide a base for change and encourage continuous improvement and reform, which can lead to significant gains in productivity.

The Code of Practice aims to:

- 
- establish standards of behaviour 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 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 the Department for Transport, Energy and Infrastructure. It is consistent with the prequalification procedures implemented under those policies for selecting contractors and consultants for any Government of South Australia funded construction projects.

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## DEFINITIONS

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### 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 Transport, Energy and Infrastructure.)

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### Building terms

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

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### 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 this Code the *Appropriate Minister* is the Minister for Infrastructure.

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# OBJECTIVES OF THE CODE OF PRACTICE

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∂ Promote *action to improve efficiency and productivity*. Eliminate unacceptable practices *including those that result from short term and expedient decision making*.

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∂ Establish standards *which the industry requires to be observed*.

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∂ Improve performance and maintain good practice *of all participants in the South Australian construction industry*.

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∂ 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*.

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∂ Promote the application of sensible and proper practices *for the long term benefit of the industry and all parties involved*.

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∂ Seek to secure improvements in practice *that have been achieved so far*.

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∂ Seek to promote goodwill in the industry and prevent disputes *by observing agreements, statutory requirements and obligations of employment*.

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## APPLICATION

This Code must be observed by all parties engaged in the construction industry for projects that are managed or fully or partly funded by the Government of South Australia.

It applies to clients, consultants (professional service contractors), sub-consultants, contractors, sub-contractors, suppliers, professional organisations and other associations.

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

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## SCOPE

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

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### Contract administration

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

- 
- 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 employees 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 fair
- ensure the timely processing and payment of contractual entitlements
- 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.

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## 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). This standard is based on the following principles.

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∂ The conditions of inviting proposals are the same for each consultant.

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∂ The consultant selection process is conducted honestly and fairly.

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∂ 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.

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∂ The Principal will have regard to the costs of preparing proposals with a view to minimising the overall cost of selection.

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∂ Briefing documents will specify the Principal's requirements as clearly and precisely as possible.

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∂ The Principal will specify what information in the proposal documents is to be treated as confidential.

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∂ Consultants often provide professional services without payment but the Principal shall not require work without payment.

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∂ Consultants will not respond to an invitation unless they genuinely believe they have the competence and capacity to undertake that project.

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∂ Parties shall be prepared to attest to their probity, if necessary by statutory declaration or other reasonable means.

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∂ Parties will comply with all legislative obligations including those required by trade practices and consumer affairs legislation.

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∂ Parties will seek and submit proposals with the firm intention to proceed.

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∂ Parties will not engage in any practices which give one party an improper advantage over another.

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∂ Parties will not engage in practices such as collusion, secret commissions, or any other such improper arrangements.

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∂ Any party with a conflict of interest will immediately disclose that conflict of interest.

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## 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). 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, incentives, 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.

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## 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.

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- ∂ Participants have the right to receive full payment as and when due.

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  - ∂ All cash security and retention monies should be secured for the benefit of the party entitled to receive them.

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  - ∂ Payment periods lower in the contractual chain should be compatible with those in the head contract.

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  - ∂ Outstanding payments to the participants, to the extent consistent with Commonwealth and State legislation, should receive priority over payments to other unsecured creditors.

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  - ∂ All construction contracts should provide for non payment to be a substantial breach.

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  - ∂ All construction contracts should make provision for alternative dispute resolution mechanisms.

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  - ∂ 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.

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  - ∂ 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 the contract is satisfactorily completed
  - the safeguard and return of all retention monies held during the course 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 claims and disputes, particularly those affecting the amount or timing of payments.

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## Occupational health and safety (OHS)

OHS obligations must be actively addressed by all industry participants. Unequivocal commitment to OHS 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 OHS outcomes.

The highest priority has been given by all jurisdictions to improvement in the management of OHS in the construction industry. Participants must meet their OHS 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 OHS management system operating within their individual enterprise.

There may be a requirement to establish a site specific OHS 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 OHS issues leads to superior safety and less costly outcomes than reliance on the lowest common denominator approach typified by simple regulatory compliance.

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## 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.

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## 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.

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∂ 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.

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∂ 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.

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∂ 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 Commonwealth or State legislation, award, ruling of an industrial tribunal or court, or industrial agreement.

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∂ 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.

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## 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.

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∂ Employees should be encouraged to acquire those skills which match industry needs and assist them to rapidly understand new technology.

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∂ Current job roles and contract practices should be continually tested against existing and emerging industry operational requirements.

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∂ Changes to work systems and practices should be aimed at improving industry productivity.

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∂ Employees should be employed in their most productive capacity.

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∂ Work should be organised to encourage the development and introduction of best practice in skill development and training activity.

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∂ All relevant parties should participate in skill development and training.

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∂ Active management of OHS policies and procedures.

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## 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
  - quality in all aspects of service, delivery and product
  - training, research and development
  - occupational health, safety and rehabilitation (including the return to work of injured employees)
  - environmental management
  - equal opportunity for employment.

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## 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.

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### 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.

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### 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 State Government (or subcontracts where the State 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 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.

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## Review

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.

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## FURTHER INFORMATION

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

[www.constructionsa.com.au](http://www.constructionsa.com.au) or contact:

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