



# Beyond the Minimum

Australian Council of Trade Unions response to the draft  
Department of Finance Supplier Code of Conduct

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## Contents

Introduction .....	1
Union views on the Draft Code.....	2
Compliance with legal minimums .....	2
Expanding the code to achieve meaningful outcomes.....	3
Health and Safety .....	3
Industrial Relations.....	3
Gender .....	4
Aboriginal and Torres Strait Islanders. ....	4
Climate and environment.....	5
Supply Chains.....	5
Tax.....	5
Australian content and local jobs.....	5
In summary.....	6

## Introduction

The Australian Council of Trade Unions (ACTU) is the peak trade union body in Australia, with 43 affiliated unions and states and regional trades and labour councils, representing approximately 2 million workers across the country who are engaged across a broad spectrum of industries and occupations in the public and private sectors. We welcome the opportunity to provide feedback on the draft Supplier Code of Conduct as presented by the Department of Finance.

As the submission below outlines, unions are concerned that the draft Code indicates what we believe is a lack of ambition for procurement policy. It simply outlines a procurement system that requires all the suppliers within it are law-abiding. Working people expect more – both from suppliers to Government and from Government's purchasing power. Below are a series of recommendations regarding areas which the code could be expanded to realise greater value from every dollar spent.

To implement the Code as drafted would represent a significant missed opportunity to ensure there are broader and more tangible benefits to society and the economy and realise Australian values through every dollar spent by Government.

## Union views on the Draft Code

### Compliance with legal minimums

The current draft of the Code is limited to what appears to be its main objective: to require that suppliers to the Government, who are receiving public money, meet the minimum standards which they are largely already legally required to meet. For example, the expectations under the draft Code with regard to health, safety and employee welfare are:

- Manage workplace health, safety and security Suppliers must comply with all applicable workplace health and safety laws and ensure they are providing healthy safe and secure work environments for their personnel.
- Act to prevent involuntary labour and human rights abuse - Suppliers must take all reasonable efforts to ensure that they, and organisations in their supply chain, are not engaged in, benefitting from or complicit with, human rights abuses such as coercion, involuntary and underage labour or modern slavery practice as defined in the Modern Slavery Act 2018. This includes undertaking risk assessments to identify the risk of human rights breaches, particularly in vulnerable industries.
- Act to prevent discrimination and harassment - Suppliers must not discriminate based on age, disability, ethnicity, gender, marital status, political affiliation, race, religion, sexual orientation, gender identity, union membership, or any other status protected by law, in hiring and other employment practices. Suppliers must also ensure their workplace is free from bullying and harassment and have processes in place to support the disclosure and management of such practices. Suppliers are expected to improve gender equality in the workplace and support a progressive and diverse work force.
- Respect employee rights - Suppliers are expected to respect the rights and entitlements of their personnel and comply with all relevant workplace legislation. This includes:
  - ensuring that their personnel receive their entitlements on time including, but not limited to, wages, minimum wages, overtime, benefits, superannuation, leave, working hours and compensation; and
  - allowing their personnel to form, join (or elect not to join) unions, industrial organisations and other worker collective associations of their choice, bargain collectively and engage in lawful industrial activity without hindrance or threat of retaliation.
- Respect Aboriginal and Torres Strait Islander peoples' rights - Suppliers are expected to respect the rights of Aboriginal and Torres Strait Islander peoples and engage with them where their business activities may impact them. Suppliers are also encouraged to

consider using Aboriginal and Torres Strait Islander businesses when subcontracting to help stimulate Aboriginal and Torres Strait Islander entrepreneurship, business and economic development.

These requirements can be broadly summed up as mandating that suppliers to government should obey workplace health and safety law, uphold modern slavery conventions, obey anti-discrimination law, adhere to freedom of association laws and support Indigenous Australians. With the exception of the last point, each of these is merely an expectation that the supplier should meet minimum legislated standards they are already obliged to meet. There appears to be no requirement or criteria about how suppliers demonstrate their compliance with the law nor is there substantive and transparent auditing provisions to ensure continued compliance.

More importantly, this represents a lack of ambition – both for the behaviour of suppliers to Government and for what can be achieved through a more strategic and values-based approach to procurement. Fundamentally, the Australian government should be setting best practice standards and expectations for businesses receiving public money. It should focus on encouraging the best Australian businesses who have shown a commitment to excellence in their products and services, but also in their commitment to their employees, the environment and the broader society. Even more than that, the Code should not be a simple tick-box exercise but should provide public servants with information relevant to their procurement decision.

## **Expanding the code to achieve meaningful outcomes.**

The future of Australian industry requires government procurement that supports local content and local jobs. The Government must use their procurement decisions to achieve broader policy objectives and support local industry and employment. Government spending should make a clear statement that commits the use public economic resources and spending power to reinforce rising wages, safe, secure jobs and stronger labour standards across Australia's economy. The Supplier Code of Conduct is an opportunity to achieve these objectives – it merely needs to be expanded to a wider range of considerations and to expect more from suppliers.

### **Health and Safety**

Government suppliers should be required to demonstrate a strong commitment and good health and safety record, including a lack of adverse findings in investigations. They should also be required to demonstrate that their organisation supports and respects the independence of Health and Safety Representatives and works with their HSRs to resolve health and safety matters.

### **Industrial Relations**

The Code should require much more than basic adherence to industrial law from suppliers of goods or services to the Government. Under an expanded Code, suppliers should be required to prove that they are delivering a best-in-class commitment to their employees. That would include, at the very least:

- Proving that they have a current registered union-negotiated or properly established workplace representatives negotiated Enterprise Bargaining Agreement.
- Agreements contain clauses for job security, contracting out, strong consultation and disputes clauses (beyond the FWC model clauses), worker committees and regular site meetings.
- A commitment to secure jobs and a low reliance on casual or fixed-term contracts. A complete lack of sham contracting.
- Payment of a living wage and decent working conditions.
- Correct payment of superannuation.
- No utilization of unpaid internships (which are not part of a course of study).
- No records relating to adverse findings or industrial investigations into the business.

There are a number of other elements which should be included as part of the information provided by all suppliers for government which should factor into procurement decisions. The *Secure Australian Jobs Code*, developed by a group of affiliated unions and aimed primarily at Government capital purchases, contains a comprehensive list which would form a solid foundation for this section of an expanded code which would apply to all purchases of good and services by Government.

### **Gender**

Achieving gender pay parity requires a commitment from government to solid measures that will reduce the disparity in pay between male and female workers. An expanded Code can contribute to this commitment by requiring prospective supplier to disclose:

- Information regarding the gender pay gap in their organisation.
- Any actions being taken to address the gap.

### **Aboriginal and Torres Strait Islanders.**

Suppliers to the Government should be able to demonstrate their commitment to racial equity – not just non-discrimination. This would include:

- Numbers and proportions of Aboriginal and Torres Strait Islander employees.
- Details of any Indigenous ownership of their organisation.

## Climate and environment

Australia is undergoing a clean energy transition and has an opportunity to ensure that this new sector is vibrant, productive and provides secure jobs. In addition to providing secure jobs, information regarding a supplier's climate impact should be provided and considered as part of any procurement. Information that should be provided would include:

- The business's climate outcomes and any steps taken to ameliorate negative environmental effects.
- The contribution (if any) the business is making to the energy transition.
- How the supplier is ensuring a just transition for its workers and in their supply chain.

## Supply Chains

Organisations with long and opaque supply chains can represent an increased risk of undesirable labour practices, such as exploitation and modern slavery, occurring undetected. This can result in a situation in which taxpayer dollars are indirectly supporting these activities – an outcome which can never be considered to be acceptable. Tenderers should be required to provide to government information regarding the length, transparency, accountability and auditing practices of their supply chain. Where applicable, suppliers should also indicate that they meet the requirements of the Cleaning Accountability Framework or that they are members of Ethical Clothing Australia.

## Tax

Suppliers to Government should do more than comply with our bare minimum tax requirements. They should be required to show that they, and their subsidiaries have paid their required tax in Australia (and overseas if applicable) and have not engaged in cost-shifting or other base-eroding activities. Of course, as appears in the current draft Code, they should also demonstrate a lack of tax owing and a high level of cooperation with ATO requests.

## Australian content and local jobs

Procurement can be used to not only encourage best-practice behaviour in a range of fields, but can be used proactively to build Australian jobs and help ensure Australia maintains a critical mass of local skills along industry supply chains. Australia needs to take full advantage of exemptions in trade agreements to preference local suppliers, particularly Small and Medium Enterprises, in government procurement decisions and an expanded Code can be part of how that is achieved. This would include having suppliers provide local content information which would be considered as part of the procurement process, including:

- Percentage of local content to be used (for goods) or proportion of work hours to be completed locally.

- Information about the proportion of the organisation's workers who are employed within Australia (and in the case of ships, whether the ships employ national or non-national seafarers).
- Information about the potential benefits to regional Australia provided by the business.

## In summary

Unions believe that we can expect far more from suppliers to Government than is expressed in the current draft of the code and that an expanded code can deliver tangible benefits to workers, the economy and society. The expanded requirements are no more so than those already imposed by leading private companies (including retail, mining, and security firms) through their own supply chain regulations. Creating a more robust and ambitious Supplier Code of Conduct can be a first step in reimagining how procurement is used by Australian governments and signal an end of the obsessive focus on lowest cost with no other value being considered.



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