

Record of interview with Nigel Hadgkiss
Head Victorian Treasury Construction Code Compliance Unit
on
Implementation Guidelines to the Victorian Code of Practice for the Building and
Construction Industry
September 2012



ICA's Executive Director Ken Phillips interviewed Nigel Hadgkiss in the first week of September 2012 discussing the Victorian construction code. Below is a summary of the discussion and points. Key points are highlighted.

Overview

In recent years, the levels of cost blowouts and delays on large construction projects in Victoria has increased to an extent that is unsustainable if the state is to have any hope of being able to deliver future infrastructure projects on time and on budget.

To ensure that value for its money is maximised for infrastructure projects, the Victorian Government has introduced new *Implementation Guidelines to the Code of Practice for the Victorian Building and Construction Industry (the Guidelines)*. [http://dtf.vic.gov.au/CA25713E0002EF43/WebObj/ImplementationGuidelinestotheVicCodeofPracticefortheBuildingandConstructionInd/\\$File/ImplementationGuidelinestotheVicCodeofPracticefortheBuildingandConstructionInd.pdf](http://dtf.vic.gov.au/CA25713E0002EF43/WebObj/ImplementationGuidelinestotheVicCodeofPracticefortheBuildingandConstructionInd/$File/ImplementationGuidelinestotheVicCodeofPracticefortheBuildingandConstructionInd.pdf) Compliance with the Guidelines (that came into **effect from 1 July 2012** and apply to all public building and construction work).

The Guidelines will be administered by a new Construction Code Compliance Unit (CCCU) in the Department of Treasury and Finance. The Guidelines enable the Government to use its purchasing power to promote compliance, safety and productivity across the industry. By ensuring that all contractors are accountable to the rigorous set of standards contained in the Guidelines, the risks of delays and cost blowouts to the Victorian taxpayer will be reduced significantly.

In Hadgkiss' words, *"The more productive the industry, the higher the demand for its services and the more opportunity for workers."*

The Guidelines require tenderers for public sector work in Victoria to commit to meeting the objectives of the Guidelines which are: achieving legal compliance without exception; productivity; safety; and freedom of association.

Different to National Code; Protecting the client (Victoria)

Unlike the National Code of Practice, **Victoria requires that tenderers for major projects to develop and submit detailed plans** identifying their approach to various matters including workplace safety, dispute resolution, response to industrial action, right of entry, management of subcontractors and communication and consultation with the workforce. These Workplace Relations Management Plans (WRMP) and Health and Safety Management Plans (HSMP) become part of the tender.

Hadgkiss comes from a law enforcement background. However, he (**Hadgkiss**) **sees his new role** no longer as an enforcer or regulator, but rather **as a representative of the client**, which is the State Government, and hence a representative of the taxpayers of Victoria. It is

fundamental to the Director that the CCCU ensures the taxpayer obtains value for money in the State's construction spend.

How it works

The Unit will be safeguarding the interests of the State Government through an *audit and review process, including confirmation that the conditions in individual project WRMPs and HSMPs are being complied with*. Hadgkiss distinguishes this approach from a regulator, who generally awaits a serious incident before acting. In this fashion, the CCCU can proactively identify and act on failures in management and systems beforehand.

Proven breaches of the Guidelines will be reported to the Minister for Finance, who is empowered to sanction both Government agencies and contractors. The *sanctions* are set out in the Guidelines, and *include being excluded from future Government tenders*, but Hadgkiss sees them as a last resort. He would prefer to see cultural change. Sanctions also include being reported to an appropriate statutory body such as the ASX in the case of publicly listed companies.

The CCCU's role includes the ability to conduct a *detailed due diligence of tenderers' claims* in tender documents and WRMPs in relation to their workplace relations practices and compliance history. The CCCU will also be *visiting worksites* to ascertain whether those obligations set out in a tenderer's WRMP are being adhered to on their current sites. Hadgkiss distinguishes this approach from the Fair Work Building Construction Inspectorate, which is confined to the conduct of audits only after the Commonwealth project has commenced.

The issues to be addressed in each WRMP include a requirement that the tenderer explain the systems and processes it already has in place or will implement to achieve the objectives of the Guidelines and deliver the project on time and on budget. In practice, this will mean demonstrating that the employer has taken appropriate action when proscribed conduct such as unlawful stoppages have taken place. The tenderer must also demonstrate a track record of adopting efficient and productive work practices.

A contractor telling a government department that it will prepare a more detailed WRMP at the next tender stage, or if it is shortlisted, will not suffice.

The WRMP also provides for a project-specific risk assessment. Its purpose is to *identify and address the key industrial relations risks and issues associated with the project*, rather than an assessment comprising mere generic provisions or material 'cut and pasted' from previous unrelated projects. The WRMP is designed to ensure that project-specific risks can be identified. This in turn allows management strategies to be developed and implemented. The adoption of a *pro-forma risk assessment will not suffice*. It is Hadgkiss' view that such a practice is effectively a statement from a tenderer that no risk assessment has been carried out.

Tenderers can make use of a Model WRMP published by the CCCU on its website. The approach set out in the WRMP need not be slavishly followed, says Hadgkiss. He is very much of the view that the CCCU needed to make model as non-prescriptive and as open as possible. Were the CCCU to produce a series of pro-forma responses, the Director feels the contractors would simply regurgitate them back to client departments and the CCCU. As a result, the CCCU has been at pains to ensure that contractors not be permitted to adopt a box-ticking approach to their WRMP.

Early implementation experiences

Hadgkiss is adamant that contractors need to think for themselves, and to analyse each tender and project on its own. The CCCU considers it is essential that tenderers bring their minds to the issues the Unit seeks to be addressed in the model WRMP. This means providing considered project-specific information. This was recently brought into sharp focus when *a tenderer submitted a WRMP that clearly cut and pasted its risk assessment word for word from an unrelated project*. The WRMP paid no attention to the particular risks of the project being tendered for, and was assessed as *unacceptable* by the CCCU.

Regrettably, a number of the WRMPs examined to date by the CCCU have either been generic in nature or have sought to address only OHS issues (the latter are required to be addressed in a separate document called a Health and Safety Management Plan or HSMP). The experience of the CCCU is that a number of WRMPs could have been significantly enhanced had they been developed specifically for the project. *On a number of occasions, the CCCU has recommended to departments that some shortlisted tenderers be required to submit a new* WRMP that fulfils the requirements of the Guidelines as a condition of their tenders being accepted.

The CCCU has also reviewed the industrial agreements under which the employees of each tenderer are engaged. To date, employees of each tenderer have largely been engaged under *industry pattern agreements*. There are clauses in these agreements that *are not fully compliant with the Guidelines*. However, as each agreement was registered prior to 1 July 2012, the agreements are deemed to be compliant with the Guidelines.

Where a party *tenders for public work called for after 1 July 2012, the party is required to comply with the Guidelines (ie: no pattern agreements)* on the public projects and on any subsequent privately funded work, even if the contractor fails to win the tender. This includes ensuring all expressions of interest, tender and contractual documents which they instigate comply with the new Guidelines. The Guidelines' requirements permeate down from the principal contractor, to contractors, sub-contractors, and so on, on both private and public projects.

In recent days, Hadgkiss has had cause to write to a number of companies which are on the Victorian Government's Construction Supplier Register who may tender for future Victorian Government construction work which will be subject to the Guidelines. *Some employees of the companies concerned appeared to be associated with picketing at Grocon sites in Melbourne in recent days. On 22 August, the Supreme Court first issued orders prohibiting various individuals from hindering or interfering with access to these sites. Any conduct in breach of these orders is unlawful and inconsistent with the Guidelines*. The Director has made it clear that a company's previous approach to unlawful workplace practices is a relevant factor in assessing compliance with the Guidelines when tendering for Victorian Government work.

The bulk of the CCCU's time is currently being spent educating and motivating the industry and government departments. The Unit is also finalising an audit tool to assist contractors conduct a self-assessment and an appraisal of their adherence to the new Guidelines.

The Guidelines also demonstrate that the State of Victoria wants to ensure that its construction projects are benchmarks in *safety performance*. Hadgkiss notes that construction safety outcomes are dramatically improved when the client makes safety a priority, and when contractors and clients work together at the earliest stages of a project to

engineer out fatal risks. The CCCU will accept contractors' existing safety and risk management systems, however it will be providing a 'fall back' HSMP where contractors do not have an existing system. The Unit will conduct audits against submitted HSMPs, and as with the WRMPs, it will behave as an informed and demanding client rather than as a regulator. The Director is hopeful that this greater flexibility will drive industry wide improvement in safety, particularly fatal and disabling injuries.

Hadgkiss has indicated that he is happy to make the CCCU available to discuss how companies can ensure that the objectives of the Guidelines are adhered to. He concludes, "*I sincerely believe that these Guidelines will help to deliver safer and more cost effective projects in our State, eliminate unlawful activity on constructions sites and promote a healthier culture across the industry*".

The CCCU's Hotline number is 1800 VIC CCC (1800 842 222) and email address is vicccc@dtf.vic.gov.au