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New Start

Freedom of Association Policy & Procedure

Purpose

The purpose of this Policy is to outline New Start Australia's commitment to comply with legislative obligations related to Freedom of Association protections in the Fair Work Act 2009.

Commencement

This Freedom of Association Policy and Procedure will commence on 28 April 2017 and replaces all other Policies (whether written or not).

Scope

This Policy applies to **Workforce Participants** defined as:

- Managing Director
- Managers
- Workers (Permanent Staff, Part-time and Casual)
- Contractors
- Subcontractors
- Job Seekers (Applicants)
- Clients and their Agents/Representatives

This Policy does not form part of any contract between an employee and the organisation, nor does it form part of any other Workplace Participant's Contract for Services.

Organisation refers to New Start Australia Pty Ltd.

Policy Statement

New Start respects the right of employees to join, or not join associations or unions of their choice.

New Start does not interfere in an employee's decision to associate or not associate, and we do not discriminate against the employee or a representative of the employee.

These commitments are upheld in this Policy. Employees of New Start have the right to freely hold and express opinions provided they do not infringe on the fundamental human rights of other people. No distinction is made by New Start between employees based on their membership of a representative organisation.

New Start recognises the right of employees to bargain collectively and to take industrial action, provided these actions confirm to the industrial laws of Australia.

New Start respects that under relevant industrial legislation unions have certain rights of entry into the workplace and access to relevant information.

What is Freedom of Association Protections?

Freedom of association protections give employees and contractors the right to choose whether or not to join a union or industrial association. Freedom of association is protected by the Fair Work Act 2009, which applies to all employers and employees.

Freedom of association gives employers, employees and independent contractors:

- Freedom to choose whether or not to join a union or employer association

- Reinstatement of a person
- Protection from discrimination or victimisation due to membership or non-membership of a union or employer association
- Entitlements to compensation when freedom of association rights are infringed

Penalties and deterrents can be imposed for infringements of a person's freedom of association rights.

Conduct that Breaches the Right of Freedom of Association

The Fair Work Act 2009 prohibits several types of conduct that infringes freedom of association rights. Additionally, it is often unlawful to simply threaten to engage in prohibited conduct. Likewise, it is unlawful to encourage or incite another person to engage in prohibited conduct.

Fair Work Act – Protections and Penalties

Under the Fair Work Act 2009 it is unlawful for a person to take or threaten to take adverse action against another person because they engaged in or proposed to engage in an industrial activity. Industrial activities include:

- Becoming or not becoming a member of an industrial association (such as union or employer association)
- Representing or advancing the views, claims or interests of an industrial association
- Taking part in industrial action
- Refusing to take part in industrial action
- Refusing to pay strike pay

It is also unlawful for a person to take adverse action against another person because they have a workplace right or propose to exercise or not to exercise a workplace right.

Workplace Rights include:

- Entitlements under an award or enterprise agreement, or an industrial law
- Commencing or participating in court proceedings
- Making an inquiry in relation to employment or complaining to a workplace body

Adverse action includes activities such as dismissal, terminating a contract, refusing to employ or engage a person, discrimination and organising or taking industrial action.

For contraventions of the Fair Work Act, the Federal Court or the Federal Circuit Court can make appropriate orders, including:

- Penalties of up to \$12,600 for an individual and up to \$63,000 for a body corporate
- Awards of compensation for damages suffered by an employee or independent contractor
- Injunctions to stop or prevent the conduct



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Freedom of Association – Building Code 2016: Objectives and Prohibitions

Managers and staff of New Start must ensure they comply with the Objectives and Prohibitions related to Freedom of Association outlined in the table below.

Item	Prohibition and/or Requirement
General Prohibition	A code covered entity must not engage in conduct, or implement a procedure or practice (howsoever described) in respect of building work which has, or is likely to have, any of the effects described in subsections 11(1) or (3) if the conduct, practice or procedure was contained in an enterprise agreement. This includes arrangements or practices that are inconsistent with freedom of association requirements set out in section 13. Note exception in section 11(5) which clarifies that this general prohibition does not apply if the conduct etc is expressly permitted or required by a Commonwealth industrial instrument (enterprise agreement). See section 11 for prohibited content in enterprise agreements made on or after 2 December 2016.
Policies	Contractors must adopt and implement policies and practices that: ensure that persons are: (i) free to become, or not become, members of a building association; and (ii) free to be represented, or not represented, by building associations; and (iii) free to participate in, or not participate in, lawful industrial activities; and (iv) not discriminated against in respect of benefits in the workplace because they are, or are not, members of a building association.
Personal Information	Contractors must ensure that personal information is dealt with in accordance with the <i>Privacy Act 1988</i> and the <i>Fair Work Act 2009</i> . Contractors may not provide the names and details of those that they propose to engage or employ to third parties, other than in strict compliance with the law (or relevant enterprise agreement).
Union Membership	Contractors must ensure that 'no ticket, no start' signage or similar, is not displayed, that 'show card' days do not occur, and that no other conduct occurs which implies that union membership is anything other than a matter for individual choice, including encouraging or discouraging a person from becoming, or remaining, a member of a building association. Contractors must ensure that practices that are not authorised by law which require, directly or indirectly, a person to disclose whether or not they are a member of a building association, are not engaged in.
Induction	Contractors must ensure that officials, delegates or other representatives of a building association do not undertake or administer induction processes. Site management is responsible for undertaking inductions processes which are a non-delegable duty. Contractors must also ensure 'secondary' inductions are not conducted by representatives of building associations.
Discrimination	Contractors must ensure persons are not discriminated against or disadvantaged in respect of benefits in the workplace because they are, or are not, members of a building association. Contractors must ensure that elected employee representatives are not discriminated against or disadvantaged.
Signs	Contractors must ensure that signs that seek to vilify or harass employees who participate, or do not participate, in industrial activities are not displayed.
Freedom of Choice	Employees must be provided freedom of choice in deciding whether to be represented in grievance or dispute procedures (whether or not pursuant to an enterprise agreement), and, if so, by whom.
Forms	Contractors must not use any form which requires an employee to identify their union status, nor should they require that subcontractors identify the union status of their employees or subcontractors.
Refusal to employ or terminate	Contractors must not refuse to employ or engage an individual or terminate an employee or subcontractor because of their union status.
Reasonable request by delegate to represent	Contractors must not refuse a reasonable request from a workplace delegate to represent employees in relation to grievances and disputes or discussions with a member of a building association.
Non-working shop steward	Contractors must not employ a non-working shop steward or job delegate. Contractors must not permit the imposition, or attempted imposition, of a requirement for any employer on site to employ a non-working shop steward or delegate or to hire an individual nominated by a union.
Logos and indicia	Contractors must ensure that building association logos, mottos or other indicia are not applied to the employer's property or equipment, or to clothing supplied or provided for by the employer.
Gaining Fee	Contractors must ensure that individuals are not required to pay a 'bargaining fee' (howsoever described) to a building association of which the individual is not a member, in respect of services provided by the association.



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Policy Disseminated to Stakeholders

Recruitment Consultants must ensure that all workers, including stakeholders receive a copy of New Start's Fitness for Work Policy.

Managers are responsible for ensuring that all new Clients and their representatives receive a copy of New Start's Fitness for Work Policy.

Managers and Staff must ensure that interested stakeholders receive a copy of this Policy.

Policy Information

Accountable Officer: Managing Director
Policy Type: Human Resources
Related Policies:

Daniel Phillips
Managing Director
New Start Australia Pty Ltd
Dated February 2018

Variations

The Organisation reserves the right to vary, replace or terminate this Policy from time to time.

Failure to Comply with the Policy

Where it is established that a Workforce Participant has breached this Policy, they be subject to disciplinary action, up to and including termination of employment or Contract.

Questions about this Policy

Should you have any questions about this Policy, please contact the Human Resources Department.

Workforce Participant Declaration

I have read this Policy and Procedure. Any questions I have raised, have been answered to my satisfaction. I thereby agree to adhere to this Policy at all times during my employment with the Company.

Print Name	
Signature	
Date	