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New Start

Workplace Relations Policy

Purpose

The purpose of this Policy is to provide a framework for the organisation to achieve compliance with its legislative obligations relating to industrial relations and employee relations matters, including but not limited to the Fair Work Act 2009 and the Building Code 2016.

Commencement

This Workplace Relations Policy will commence on 5 April 2017 and replaces all other Policies (whether written or not).

Scope

This Policy applies to Workforce Participants defined as:

- Managing Director
- Managers
- Staff (Permanent, Part-time and Casual)
- Contractors
- Subcontractors
- Clients and their representatives

This Policy and Procedure 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

This Policy applies to Workforce Participants and aims to achieve the following workplace relations objectives:

- Establish and maintain effective business management frameworks including systems, policies, procedures and work instructions that support legislative compliance obligations to:
  - Fair Work Act 2009
  - Building Code 2016
  - Modern Awards and agreements compliant to the Building Code 2016
  - Freedom of Association protections
  - Subcontractor Management and compliance to relevant legislation
  - Reporting Requirements
  - Right of Entry provisions and requirements
  - Unlawful coercion provisions
  - Industrial Action provisions
  - Prohibition on payment of Strike Pay
  - Security of Payment Disputes
  - Fitness for Work requirements including Drug and Alcohol Testing

- Commitment to and support of measures and strategies to eliminate or reduce lost time, or lost productivity due to industrial relations disputes and/or grievances including but not limited to effective communication, consultation and cooperation protocols with all interested stakeholders

- Maintaining high standards of social, economic and regulatory responsibility

- Attract and retain a skilled and competent workforce

- Prevent protected Industrial Action

- Responding to and resolving all issues and grievances including employee relations and industrial relations issues on site in a fair, equitable and timely manner supported by effective communication protocols

- Prevent any workplace relations issues from impacting other Contractors or workforce participants on site

Workplace Relations Management Plan (WRMP)

New Start will maintain a Workplace Relations Management Plan (WRMP) that complies with the legislative obligations contained in the Building Code 2016 and Fair Work Act 2009.

New Start's HSEQ Department will be accountable and responsible for ensuring:

- WRMP is compliant to legislative obligations
- WRMP is updated as required by changes to legislative obligations
- WRMP is updated in line with continuous improvement objectives
- WRMP is updated as a result of audit findings (internal and external audits)
- Internal audits of the WRMP to appropriate audit schedule, and annually as a minimum
- Monitor, Evaluation, Review and continuous improvement of WRMP components and elements

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Workplace Relations Risk Assessment

The HSEQ Department will be accountable and responsible for ensuring that Workplace Relations Risk Assessments are completed prior to commencement of supply/contract for each new Client, Site or Project where New Start will have an involvement.

The Workplace Relations Risk Assessment must:

- Identify hazards/aspects, and risks/impacts associated with:
    - People (Industrial Relations and Employment Relations)
    - Productivity (including Time)
    - Building Code 2016 compliance
- Determining and implementing Suitable Control Measures to eliminate or reduce the risk score
- Provide appropriate resources to implement action plan to implement control measures.

New Start's approved Risk Assessment (RA) Form is to be used to conduct comprehensive Risk Assessments and all parts of the Risk Assessment Form must be completed.

Industrial Action

What is Industrial Action?

Industrial Action is primarily regulated under the Fair Work Act 2009. Industrial Action in relation to building work is subject to additional rules under the Building and Construction Industry (Improving Productivity) Act 2016 (BCIIP Act).

Under the BCIIP Act, industrial action that is not protected is considered unlawful industrial action.

Protected Industrial Action?

Industrial action is protected when it meets certain conditions including:

- A new agreement (that is not a greenfields or multi-enterprise agreement) is being negotiated, and
- The nominal expiry date of any existing agreement has passed, and
- For actions by employees, a protection action ballot order has been approved by the Fair Work Commission (FWC) and the industrial action has been authorised by a secret ballot of employees, and
- The bargaining representatives are genuinely trying to reach agreement, and are not taking action in relation to unlawful terms or
- as part of pattern bargaining, and
- All relevant notices and FWC orders relating to industrial action or bargaining for the agreement have been complied with

If industrial action does not meet these requirements, it is considered unlawful industrial action.

Additional restrictions apply to building work, which would normally be considered protected industrial action under the Fair Work Act, will no longer be protected (unlawful) if:

- It is engaged in concert with any person who is not a protected person
- The organisers include one or more persons who are not protected persons for the action

A "protected person" is limited to an employee or organisation that is a bargaining representative for the proposed agreement, a member of such an organisation employed by the employer who will be covered by the proposed agreement, an officer or employee of such an organisation acting in that capacity, and an employee who is a bargaining representative for the proposed agreement.

Unlawful Industrial Action

Employers, employers and industrial associations that participate in unlawful industrial action may face the following penalties:

- Up to $42,000 for an individual
- Up to $210,000 for a body corporate
- Liability to pay compensation for damages suffered as a result of the action

Action that is not Industrial Action

Under the BCIIP Act, action in relation to building work is not industrial action if:

- The actions by the employees is authorised or agreed to, in advance and in writing, by their employer
- The action by an employer is authorised or agreed, in advance and in writing, by or on behalf of its employees, or
- The action by an employee is based on a reasonable concern of the employee about an imminent risk to his or her health or safety, and the employee has not unreasonably failed to comply with a direction to comply with a direction to perform other available work, whether at the same or another workplace, that was safe and appropriate to perform

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How Industrial Action is Recorded

Industrial Action is recorded using New Start's ER Risk Management process, including a record of the Incident by way of Incident Report, ER Risk Assessment, and Incident Investigation process to ensure that all aspects of the incident are captured including:

- Who was involved
- Issues underlying the action (using root cause analysis)
- Affidavits and Witness Statements

How New Start will respond to notifications of a rally or other protest activity involving workers on site

New Start will seek specialist Employment Law advice from its Employment Law Specialist to ensure that appropriate and prompt legal avenues are taken towards eliminating, minimising and controlling the ER Risks.

New Start will ensure that all available steps to prevent or end industrial action that is not protected, will be taken in a timely manner.

New Start will ensure that rallies, protests and other activities that result in lost time, are managed in accordance with the Building Code 2016, together with notification to the ABCC and seeking advice from the ABCC when required.

Legal Options available in response to Industrial Action or Proposed Industrial Action

New Start will seek specialist Employment Law advice from its Employment Law Specialist to ensure that appropriate and prompt legal avenues are taken towards eliminating, minimising and controlling the ER Risks including Industrial Action or proposed Industrial Action.

Identifying losses and costs associated with unlawful Industrial Action

New Start will identify losses and costs associated with unlawful Industrial Action and New Start's Human Resources Manager and CFO will be responsible for collection and collation of this information with assistance from the Site Manager and Payroll Department to obtain data inputs.

What is a Secondary Boycott?

A Secondary Boycott refers to a form of work ban effected by a group of people (usually trade union members) coercing a third party (an employer) to cease trading with a fourth person (the target, usually another employer), with the object of pressuring the target into conceding some demand of the instigators. A sympathy strike is one of the more common forms of secondary boycott. These are generally a rare occurrence due to laws related to unprotected industrial action, and are usually dealt with under the Competition and Consumer Act 2010.

Managing Secondary Boycotts

New Start will manage secondary boycotts in the same way as industrial action, and follow the same protocols including ensuring that the incident is recorded, reported and investigated.

Managing Industrial Impacts

Pursuant to the Building Code 2016, New Start is required to meet the following requirements in relation to industrial impacts. The table below outlines the requirements and control measure New Start has or will put in place to control the impacts identified.

Industrial Impact	Building Code 2016 requirement
Reasonable Steps	Contractors must, to the extent reasonably practicable, take steps to prevent or bring to an end industrial action that is not protected action taken by the employees of the Contractor. Note: reasonably practicable steps may include, depending on the circumstances, the taking of legal action in the Fair Work Commission or a court where remedies are available. This does not require the entity to accede to a demand, claim or threat that is being advanced by industrial action that is not protected.
Reporting Industrial Actions	Contractors must, in relation to Commonwealth funded building work, report actual or threatened industrial action (whether protected industrial action under Section 8 of the *Building and Construction Industry (Improving Productivity) Act 2016* or industrial action that is not protected) by employees of the Contractor to the ABCC as soon as practicable, but no later than 24 hours after becoming aware of the threat or action. Contractors must, in relation to other building work, report actual or threatened industrial action that is not protected action by employees of the Contractor to the ABCC as soon as practicable, but no later than 24 hours, after becoming aware of the threat or action.
Secondary Boycotts	Contractors must, in relation to all building work, report any request or demand by a building association, whether made directly or indirectly, that the contractor engage in conduct that appears to be for the purposes of a secondary boycott within the meaning of the *Competition and Consumer Act 2010* to the ABCC as soon as practicable, but no later than 24 hours, after the request or demand is made. Contractors must comply with the *Competition and Consumer Act 2010.*
Reporting Secondary Boycotts	Contractors must report any request or demand to engage in conduct that appears to be for the purposes of a secondary boycott to the ABCC as soon as practicable, but no later than 24 hours, after the relevant request or demand is made.

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Compliance with the Building Code 2016

New Start will ensure compliance to the Building Code 2016 through the following systems and mechanisms:

- Maintenance of a Legislative Compliance Register
- Audited Business Management Systems together with Policies, Manuals, Procedures, documents and forms
- GRC and Enterprise Risk Management Framework including Risk Assessment, Inspections and Audit/Audit Schedules (internal and external) to identify, assess, control, monitor, evaluate and treat risk to ensure compliance obligations are met
- Consultation, cooperation and coordination mechanisms to monitor compliance
  - Freedom of Association in the Building and Construction Industry
  - Right of Entry – What to do when a Union Official enters your site
  - Unlawful Coercion
  - Industrial Action
  - Going on Strike – Be Informed of the Risks
  - Strike Pay in the Building and Construction Industry
  - New Start's Drug and Alcohol Policy
  - New Start's Fitness for Work Policy
  - New Start's Hazard and Incident Reporting Policy & Procedure
  - New Start's Issue and Grievance Management Policy & Procedure
- Site Induction that includes compliance to the Building Code 2016 including dissemination of New Start and ABCC Factsheets on:
- Site Visits and Toolbox Talks to ensure continued compliance
- Effective Incident Reporting, ER Assessment, Incident Investigation, Reporting and notifications to ABCC for breaches or suspected breaches
- Specialist advice from Employment Law Specialist (Partner level)
- Clarification and advice from relevant external regulatory authorities (eg. Fair Work Ombudsman, ABCC, WorkSafe)

Policy Information

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

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.

Daniel Phillips
Managing Director
Dated February 2018