

Agency guidance for the Supplier Code of Conduct

These guidance notes:

- describe how agencies can apply the Supplier Code of Conduct (**Code**); and
- set out ways agencies monitor and enforce Supplier conduct.

The guidance should be read in conjunction with the Code.

How agencies apply this Code

Each agency is responsible for implementing the Code within their procurement and contract management activities.

Agencies can apply the Code in the way that relates to their enabling legislation and procurement activity. For example, agencies may:

- use this Code without change, as presented at <https://www.buyingfor.vic.gov.au/supplier-code-conduct>; or
- insert further requirements in addition to the Code's minimum standards in their individual procurement documents and contracts to manage the agency's procurement risk.

All Suppliers commit to this Code to do business with Government

Suppliers supplying or wanting to supply their goods, works or services to the Victorian Government must agree to meet the standards set out in the Code.

This includes adopting appropriate business practices that support compliance with the Code. These are practices that would be reasonably expected when considering the Supplier's:

- size and scale of business;
- location; and
- industry.

The Code is supported by clauses in government contracts and/or provisions in procurement documentation. Contract clauses will provide contractual options for how agencies address non-compliance and breaches of the Code by Suppliers.

Removal of the Code Commitment Letter

The Supplier Code of Conduct commitment letter is no longer required from 1 April 2025. Suppliers will instead commit to the Code when entering into contracts with the new standard model clauses.

Implementing and enforcing this Code

An agency's approach to implementing and enforcing the Code will depend on:

- the size, scope and risk of the procurement; and
- the type of goods, services or works being procured.

The 'buyer' within an agency must consider the Code across all phases of the procurement lifecycle:

Inviting and selecting offers phase

- include the Code's standard model clauses in invitation documents and contracts where such documents are used
- consider how the reputation and behaviour of tenderers will be factored into the procurement process and how compliance failures of a tenderer with the Code will be taken into account during the evaluation of a procurement. For example, consider a mandatory requirement that is a pass/fail requirement based on whether a potential supplier has previously breached the Code, a weighted criterion, or as part of the assessment of risk during evaluation.
- if relevant, provide early notice to Suppliers of any ethical, social, and business requirements in addition to the Code.
- undertake due diligence of potential Suppliers before selecting a Supplier. This could include actions such as:
 - conducting reference checks with other agencies to discuss the ethical performance of a proposed Supplier
 - including a supplier questionnaire requiring suppliers to provide information about ethical business practices in their supply chains and operations
 - checking for any adverse media coverage of a Supplier
 - checking the Australian Business Register to confirm ABN and ACN details
 - checking the Australian Securities and Investments Commission register for banned and disqualified persons
 - verifying Supplier telephone and address listings
 - checking any information relating to shortlisted Suppliers using Government internal databases
 - checking if a Supplier with prior ethical performance issues is working as a subcontractor or by re-establishing themselves under a different name and ABN
 - reviewing the Modern Slavery register, if applicable, for Suppliers that fulfil reporting requirements (<https://modernslaveryregister.gov.au/>)
 - checking the Fair Jobs Code public register.
- have awareness of supply chains that are at risk. Risks include links to a country or an industry with high levels of corruption, human rights or environmental abuses or evidence of modern slavery practices.
- ensure that you keep records of the Supplier selection process, due diligence, and engagement.

Contract management phase

- assess the Supplier's conduct and performance against the Code throughout the duration of the contract
- periodically perform due diligence checks as required. This includes:

- checking for any adverse media coverage;
 - identifying any material changes to the Supplier’s circumstances such as mergers or acquisitions;
 - checking for changes to subcontracting arrangements or key personnel;
 - routinely engaging with other agencies that are also managing contracts with the same Supplier (this could be the same agencies that assisted with reference checks).
- consider and plan how to complete compliance reviews and how to address any findings
 - if complaints or concerns are raised in relation to a Supplier and their conduct, follow up with the relevant agency to find out more information
 - keep records of the goods, services or works delivered, any compliance concerns, and actions taken.

Managing existing contractual arrangements during and after the transitional period

The existing Code will continue to apply during the transition period, with the revised Code coming into effect from 1 April 2025.

From this date, the revised Code will apply to existing and new contracts, but how suppliers comply with it will be guided by the contract terms and conditions used in their contract.

Impact on existing and new contracts during and after the transition period is summarised in the table below:

Scenario	Nature of contractual obligation for the Code	Transition period – the existing Code applies	1 April 2025 – the revised Code takes effect
1	Existing contracts that require a supplier ‘to aspire to commit’ to the Code, as amended from time to time	No change - Suppliers aspire to commit to the existing Code	Compliance with the revised Code remains aspirational until the existing contract expires or the relevant clause is amended
2	Existing contracts that require mandatory compliance with the Code, as amended from time to time	No change - Suppliers must comply with the existing Code	Compliance with the revised Code is mandatory
3	New contracts that include the new standard model clauses	Suppliers must comply with the existing Code	Compliance with the revised Code is mandatory

Agencies may wish to obtain legal advice for their own arrangements to assist with transitioning them to the revised Code.

Agencies may also wish to adopt the new standard model clauses before 1 April 2025 in their procurement contracts.

Purchases under a state purchase contract (SPC)

The relevant category manager responsible for managing the SPC (including panels and registers) will implement the Supplier Code of Conduct as part of their contract management responsibilities. Suppliers will commit to the Code once when entering the SPC.

Non-compliance with the Code

A Supplier must immediately contact the relevant agency when they become aware of an adverse comment or finding about the Supplier by legal or professional bodies that may impact the State's:

- reputation; and
- compliance with law or policy.

The agency must take appropriate steps to actively address a Supplier's non-compliance with the Code based on the seriousness of the breach.

These steps should be outlined in the standard contractual terms and conditions.

Each case will be assessed on its own facts and circumstances and possible actions can include:

- a remediation plan; and
- suspension or termination.

Remediation plan

If a Supplier's conduct does not meet the required standards set by the Code, the Supplier may be required to develop (or update) a plan to remedy the issues under the relevant contract.

The agency must monitor the progress of the Supplier performance under the plan to remedy the issue or issues, and provide support where required.

Please note that a Supplier that has entered a remediation plan can still be engaged by other agencies.

Suspension or termination for contractual breaches of the Code

In serious cases of non-compliance with the Code, an agency may seek to suspend or terminate the contract in accordance with the terms of the contract.

Before considering suspension or termination, agencies must consult with:

- a senior officer such as the Chief Procurement Officer;
- legal advisors; and
- relevant stakeholders, including the Department of Government Services.

The basis for suspension or termination should be documented.

A lead department is responsible for determining the course of action (including suspension or termination) in response to ethical breaches of Suppliers on a whole of government State Purchase Contract or register.

Additional actions may include:

- an application to a court for an injunction with the support of the purchasing agency; or
- referral of the matter to independent review bodies.

Emergency procurement flexibility

Agencies may, at their own discretion, engage with a potentially non-compliant supplier during an emergency. This decision should be informed by:

- the nature and severity of the potential supplier non-compliance;
- the nature and severity of the emergency;
- risk assessments and legal advice; and
- the agency's emergency procurement plan.

Reporting of non-compliance

Agencies should continue to report on supplier non-compliance with the Code using their existing approaches for reporting contract performance issues identified during contract management.

Supporting documents

The following documents support agencies when they implement the Code:

- Supplier Code of Conduct
- Model clauses for tendering and contracts for Supplier Code of Conduct.

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