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Reporting criminal and unlawful conduct on public construction projects

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1. Context

The Victorian Government has zero tolerance for criminal or unlawful conduct on Government construction projects.

This policy provides an opportunity for a sector-wide approach, where everyone works to create lasting change to ensure workplaces are safe, respectful, inclusive and free from criminal and unlawful conduct.

In July 2024 the Victorian Government undertook a *Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions* (Wilson Review) in response to allegations of misconduct within the construction sector. This policy forms part of the Victorian Government's response to the recommendations made in the Wilson Review. Further details of the Wilson Review are set out in **Attachment A**.

2. Victorian Government requirements

The purpose of this policy is to make clear the Victorian Government's requirements in relation to the reporting of and responding to criminal or unlawful conduct in connection with public construction projects.

The Victorian Government requires departments, public bodies, contractors and subcontractors to take all reasonably practicable steps to ensure that workplaces connected with public construction projects:

- are safe, respectful, inclusive and free from criminal and unlawful conduct
- comply with criminal and civil laws, including those related to occupational health and safety (OHS) and workplace relations
- proactively report, and where appropriate provide evidence of criminal or unlawful conduct to the Workforce Inspectorate Victoria (WIV).

Victorian Government Departments or public bodies can seek advice on the implementation of this policy from Construction.Procurement@dtf.vic.gov.au.

3. What is public construction?

Public construction means works for the construction, maintenance, rehabilitation, alteration, extension or demolition of any improvements on land by, or on behalf of, departments or public bodies¹ (also known as delivery agencies) and includes:

- design and construction practices
- tendering processes
- project delivery
- contract administration.

Refer to **Attachment B** for a summary of public construction requirements and resources for construction projects in Victoria.

¹ This policy applies to all entities defined as either a department or public body under section 3 of the *Financial Management Act 1994*. For the purposes of this policy a department includes any Administrative Office in relation to the relevant department.

4. Policy commencement date

The policy comes into effect on 1 January 2026.

5. Who does this policy apply to?

The policy applies to public construction projects undertaken by:

- (a) departments or public bodies, involved in public construction projects
- (b) contractors who submit a bid for work on public construction projects² (including an Expression of Interest (EOI), Request for Proposal (RFP) or Request for Tender (RFT) or equivalent documents)
- (c) contractors and subcontractors who perform work on, or in connection with, public construction projects.³

For the purpose of section 9 of the policy, projects valued at less than \$20 million are required to apply only Action 1 and Action 3 of section 9 and projects valued at \$20 million or more are required to apply Actions 1, 2, 3 and 4 of section 9.⁴

The Policy applies to public construction projects where either procurement and tendering activities have commenced and/or contracts have been executed on or after 1 January 2026 (Commencement Date).

The Policy also applies to existing projects that have commenced construction but not reached Practical Completion prior to the Commencement Date with a transition period for compliance up until 30 June 2026.

² This includes work associated with design and construction practices, RFT, EOI and RFP.

³ This includes project delivery and contract administration.

⁴ The value of the project refers to the total budget allocated over the life of the project excluding GST and not the value of individual contracts.

6. Policy requirements

6.1 Key contractual obligations for departments and public bodies

Departments and public bodies must ensure that contractors to which this policy applies have a contractual requirement to comply with their obligations under this policy including in EOI, RFP and RFT documents as applicable.

These contractual obligations will be supported through the Ministerial Directions and Instructions for Public Construction Procurement in Victoria (Ministerial Directions and Instructions).

6.2 Key obligations for contractors

Contractors must ensure that terms and conditions of subcontracts are compatible with those of the head contract to ensure all subcontractors comply with the requirements of this policy.

This policy has four actions which create obligations for contractors and subcontractors on, or associated with, public construction projects to⁵:

- **Action 1:** report any allegations or instances of criminal and unlawful conduct in accordance with the reporting framework in **Part 8** below.
- **Action 2:** take appropriate action to address criminal and unlawful conduct
- **Action 3:** promote, support and work with the WIV
- **Action 4:** have systems and processes in place to ensure they and their subcontractors fulfil their obligations under this policy.

Information relevant to each of these actions is set out in **Part 9** of this policy.

This policy does not supersede, alter or diminish a contractor's or subcontractor's legislative, regulatory or other contractual obligations, including specific obligations to report or take action directly with a law enforcement or regulatory body.

⁵ Contractors and subcontractors of projects valued at less than \$20 million are required to apply only Action 1 and Action 3. These contractors are strongly encouraged to work towards full compliance with the policy.

7. What is criminal and unlawful conduct?

For the purposes of this policy, criminal and unlawful conduct includes behaviour that could result in a criminal penalty, a civil penalty or some other regulatory sanction.

A list of criminal and unlawful conduct, as well as unacceptable behaviour can be found at: www.vic.gov.au/construction-complaints-referral-service.

Criminal and unlawful conduct in this policy includes conduct where a person or body:

- (a) engages in the criminal or unlawful conduct
- (b) facilitates another person engaging in the criminal or unlawful conduct
- (c) engages in conduct that is reasonably likely to facilitate another person engaging in criminal or unlawful conduct.

7.1 Criminal conduct

Criminal conduct means any action or inaction that violates a law and can result in a criminal penalty or sanction. Many criminal offences in Victoria are contained in *the Crimes Act 1958*.

Criminal offences also exist in regulatory schemes. For example, the *Occupational Health and Safety Act 2004* (OHS Act) creates criminal offences for a range of OHS breaches. Regulatory agencies like WorkSafe can investigate and prosecute criminal offences within their remit.

This policy is not intended to require reporting of minor or non-related matters such as road traffic offences or fare evasion unless the offence involves conduct which is inconsistent with maintaining a safe and respectful public construction site or occurred in connection with criminal conduct described below.

Examples of conduct that may be criminal conduct and must be reported under this policy include, but are not limited to:

- assault / threats of bodily harm
- sexual assault or rape
- producing, distributing or threatening to distribute intimate images without consent
- stalking
- possession of firearms or prohibited weapons
- kidnapping or false imprisonment
- intentional damage to property
- intentionally or recklessly inflicting bodily harm (of any kind)
- robbery, burglary or theft
- importing, manufacturing, dealing or possessing drugs or other illegal substances
- fraud
- blackmail
- extortion
- bribery
- money laundering
- coercion, intimidation or threatening behaviour
- family and domestic violence
- wilful damage
- trespass.

7.2 Unlawful conduct

Unlawful conduct includes actions prohibited by law that attract any kind of penalty, sanction or remedy including, but not limited to, pecuniary penalties, injunctions, damages, restitution and rectification.

Examples of conduct that may be unlawful conduct and must be reported under this policy include, but are not limited to:

- bullying
- discrimination
- harassment
- sexual harassment
- victimisation
- corruption
- direction, coercion or threats regarding engaging specified suppliers or contractors
- failure to report an incident where required under OHS laws
- entry without the required permit or entry permit notice under OHS or other laws
- failure to report a notifiable incident.

A report can be made even if it is not certain whether that conduct falls within one or more of the categories of criminal or unlawful conduct.

Some conduct may fall into more than one of the categories listed.

7.3 Other unacceptable behaviour

While Recommendation 7 of the Wilson Review referenced criminal and unlawful conduct, everyone associated with public construction projects should strive to ensure that all types of unacceptable behaviours are eliminated.

Unacceptable behaviour may pose a risk to maintaining a safe, respectful and productive environment or otherwise have an adverse effect on public confidence in the integrity of the project.

Examples of unacceptable behaviour may include but are not limited to:

- behaviour or language (verbal or written) that may cause workers to feel offended, afraid, threatened or abused
- insulting or degrading language or personal grudges toward certain workers
- behaviours that pose a risk to the psychological health and safety of workers.

8. Reporting framework

Contractors and subcontractors are required to report any allegation or instance of criminal or unlawful conduct in accordance with the following process:

- Contractors or subcontractors must report allegations or instances of criminal or unlawful conduct as required by this policy to WIV and/or a regulatory or law enforcement body. In determining whether to report to WIV or a regulatory or law enforcement body, contractors and subcontractors must consider obligations in Part 10.3 of this policy below, as well as any mandatory notification obligations they may have to report incidents, conduct or behaviour
- If a contractor or subcontractor reports a matter directly to a regulatory or law enforcement body, unless directed otherwise by that body, they should also inform WIV of the report (noting confidentiality or privacy may limit the sharing of some information). WIV will use that information for data collection and reporting purposes
- Subcontractors who report criminal or unlawful conduct directly to WIV or a law enforcement body may also notify the contractor of the report (noting confidentiality or privacy may limit the sharing of some information). WIV will use that information for data collection and reporting purposes
- The head contractor must inform its contractual counterparty (the department or public body), unless prohibited by law, noting confidentiality or privacy obligations may apply.

In relation to reports made by contractors or subcontractors to WIV, it is noted that:

- WIV will be responsible for receiving and referring the matter to another regulatory or law enforcement body as appropriate (where one exists).
- WIV may refer any information or reports received to the relevant department or public body.

9. Requirements for contractors and subcontractors

9.1 Action 1: Contractors and subcontractors must report any allegations or instances of criminal and unlawful conduct to the WIV in accordance with this policy

To support the implementation of this action contractors and subcontractors must:

- comply with the reporting framework in **Part 8** of this policy
- ensure any allegations, information obtained in relation to, or instances of criminal and unlawful conduct are managed confidentially and in accordance with privacy and confidentiality obligations (if any)
- ensure any evidence, relating to an allegation or instance of criminal or unlawful conduct is immediately and confidentially secured (for example, logbooks, Closed-Circuit Television, Global Positioning Systems data). Noting that regulatory and law enforcement bodies will need to exercise their own powers for the collection of evidence. The WIV does not have a legal power to collect or gather evidence and cannot advise on this process.

9.2 Action 2: Contractors and subcontractors must take appropriate action to address criminal or unlawful conduct

To support the implementation of this action, contractors and subcontractors must have both proactive and reactive measures in place to:

- ensure contract terms allow the contractor to have appropriate visibility of subcontracting arrangements including a right to reject any subcontracting arrangements, to ensure subcontractors are complying with the requirements of this policy to prevent and address criminal and unlawful conduct
- ensure terms and conditions of subcontracts are consistent with those of the head contract to ensure all subcontracting complies with the obligations under the head contract that relate to this policy
- take appropriate action in response to criminal and unlawful conduct, having regard to advice or guidance from any regulatory or law enforcement body (if any)
- for data collection purposes and as part of the reporting of any incidents, contractors should notify the WIV of rectification actions taken in relation to any report that has been made (to the extent applicable)
- undertake corrective or proactive actions to stop and prevent the recurrence of criminal and unlawful conduct.

9.3 Action 3: Contractors and subcontractors must promote, support and work with the WIV

To support the implementation of this action contractors and subcontractors must work with the WIV to:

- distribute communications and training material to their workforce that promotes the role of the WIV, including the procedures for reporting criminal and unlawful conduct and other conduct in respect of which the WIV has jurisdiction to receive notifications or reports
- display agreed or approved education and awareness materials and tools, at prominent locations onsite including worksite entry and exit points, rest areas and facilities
- cooperate with requests for information and assistance from the WIV.

9.4 Action 4: Contractors and subcontractors must have systems and processes in place to ensure they fulfil their obligations under this policy

To support the implementation of this action contractors and subcontractors must:

- in the case of contractors, ensure that the terms of their subcontracts require subcontractors to comply with this policy
- educate their workers about obligations under this policy and what constitutes criminal and unlawful conduct
- develop systems and processes, or use existing systems and processes to actively monitor and support compliance with this policy, noting also that a department or public body may require specific systems and processes to be adopted
- work collaboratively with departments and public bodies to ensure compliance with this policy
- maintain records to demonstrate compliance with the requirements of this policy and provide documentation to the department or public body as required under the relevant contract.

10. Information about WIV and other relevant bodies for reporting

10.1 WIV functions in relation to this policy

Through its Construction Complaints Referral Service (CCRS), the WIV can receive reports relating to criminal and unlawful behaviour on Victorian public construction projects from any person. The WIV has the authority to refer reports to the relevant law enforcement/regulatory bodies.

It is important to recognise that the WIV does not have investigative powers or an oversight role in relation to the reported conduct. Rather, it will identify the appropriate body (if applicable) and ensure reports are referred in a timely manner. The WIV may also determine that the relevant department or public body, or contracting party, is appropriate to receive a report. The receiving body/bodies will determine how they respond to the report.

Once matters are referred, the primary engagement in relation to each matter is anticipated to occur directly between the contractor and the relevant law enforcement or regulatory body.

In addition to receiving and referring reports, the WIV will also analyse reports to identify trends and emerging issues and will report to the Victorian Government about identified trends.

10.2 Reporting to other bodies

In addition to the WIV, there are a range of law enforcement and regulatory bodies that criminal or unlawful conduct can be reported to directly. They include:

- **Victoria Police or Australian Federal Police** – for reports of criminal conduct
- **Independent Broad-based Anti-corruption Commission (Vic)** – for reports relating to corrupt conduct or improper conduct involving, or affecting public officers or public bodies (including local councils)
- **Victorian Ombudsman** – for matters relating to improper conduct or maladministration by, or affecting, Victorian public organisations, employees and local government
- **WorkSafe (Vic)** – for matters relating to occupational health and safety
- **ComCare** – for matters relating to Commonwealth work health and safety
- **Fair Work Commission and Fair Work Ombudsman** – for matters relating to employment or industrial relations, including rights or obligations of employees, employers, unions, representatives that may arise under the *Fair Work Act 2009*, other legislation or existing awards or enterprise agreements
- **Victorian Labour Hire Authority** – for matters relating to labour hire services
- **Australian Competition and Consumer Commission** for matters relating to Australian competition and consumer protection laws – in particular the *Competition and Consumer Act 2010*

- **Victoria Auditor General's Office** – for matters relating to the financial and operational performance of public sector bodies
- **Victorian Equal Opportunity and Human Rights Commission** – for matters relating to discrimination, sexual harassment, racial and religious vilification, and victimisation
- **Office of the Victorian Information Commissioner** or **Office of the Australian Information Commissioner** – for matters relating to privacy and the collection, use or disclosure of information.

10.3 Election of Health and Safety Representatives (HSRs)

HSRs have an important role under the OHS Act in representing workers and bringing health and safety issues to the attention of the employer. The OHS Act sets out the HSRs role, powers and the election process. Contractors must ensure these processes are properly adhered to and supporting evidence is available on request.

Further information about the election process, role and powers of the HSR's can be found at: www.worksafe.vic.gov.au/powers-health-and-safety-representatives

11. Privacy and confidentiality

11.1 Privacy

Privacy and data collection obligations under applicable State and Commonwealth laws must be considered in the context of reports of criminal or unlawful conduct. All reporting, communication and information sharing must comply with applicable Victorian and Commonwealth privacy, data collection and confidentiality laws.

Parties to which this policy applies may need to seek legal advice on these matters.

11.2 Confidentiality

In some circumstances, confidentiality of information may apply to information received by a department, public body, contractor or subcontractor. Such obligations may arise because of legislative obligations. Departments, public bodies, contractors and subcontractors should seek advice as to whether there are any confidentiality obligations that may apply.

Some obligations may arise because a person seeks confidentiality in relation to their report or information. This may include confidentiality associated with their identity or information that may identify them. Departments, public bodies, contractors and subcontractors should seek advice as to the best approach to ensure confidentiality can be maintained, so far as reasonably practicable.

12. Contract management – Compliance and monitoring

12.1 Compliance and monitoring

Departments and public bodies may use new or existing contract mechanisms to monitor and report on compliance with the requirements of this policy.

Contractors and subcontractors must:

- proactively self-assess compliance with this policy
- keep records or other evidence of how they comply with this policy and provide to a department or public body, upon request, evidence and confirmation of their compliance with the policy
- promote awareness of relevant obligations (including reporting obligations) under this policy and its obligations to their supply chain
- implement remedial action to address breaches of the policy
- report any possible or actual non-compliance or breaches of the policy to the contracting department or public body.

12.2 Responses to non-compliance

Without limiting the rights of departments or public bodies under an applicable contract, non-compliance with the requirements of this policy could lead to one or more of the following actions being taken by the Victorian Government, a department or public body:

- a requirement to implement remedial action to rectify breaches
- suspension or removal from pre-qualification schemes and panel arrangements (subject to the terms of the scheme or arrangement)
- termination of contracts (subject to the terms of the contract)
- sharing of information about supplier performance with other departments, agencies and the Construction Supplier Register
- where appropriate and having regard to relevant employment laws a requirement for the removal of individuals or entities involved in criminal or unlawful conduct and steps that satisfy the Victorian government, department or public body that such person(s) will no longer perform services for the contractor or subcontractor on the public construction site (or associated with it).

Attachment A

Background – Wilson Review

In July 2024, in response to allegations of misconduct within the construction sector, the Victorian Government appointed Mr Greg Wilson to undertake a *Formal Review into Victorian Government Bodies' Engagement with Construction Companies and Construction Unions* (Wilson Review).

The Wilson Review found that a multifaceted approach was needed to improve oversight and accountability. There were eight recommendations aimed at strengthening the Government's power to respond to criminal and unlawful conduct on Government-funded construction projects with specific actions aimed to:

- improve workplace culture
- strengthen regulatory and legal obligations
- strengthen policy and contractual requirements.

The Wilson Review final report and the Government's response is available at:
www.vic.gov.au/formal-review-construction-companies-and-construction-unions

Attachment B

Public construction requirements and resources

In Victoria, the *Project Development and Construction Management Act 1994* (PDCM Act) facilitates government development projects and provides for the responsible Minister to set standards and issue written directions in relation to public construction.

The PDCM Act has prescribed principles and procedures that apply to all departments and public bodies engaged in construction procurement for works and services, including tendering, and contracting procedures as well as mandatory practices for public construction.

The mandatory requirements are presented in the Ministerial Directions and Instructions for Public Construction Procurement in Victoria (Ministerial Directions and Instructions). The Ministerial Directions and Instructions are supported by non-mandatory Guidance for Public Construction Procurement in Victoria.

Public construction requirements, and resources for works and services are available at: www.dtf.vic.gov.au/public-construction-requirements-and-resources