

Supplier Wage Audit – Example clauses each contract in the Subcontract chain

1. Purpose – Subcontracts and Supplier Contracts under State Construction Contracts

The following provides an example of the types of terms that may be necessary in subcontracts and supplier contracts to enable the contractor to fulfil its obligations under the "Employment Information Audit" clause of the State Agency construction contract. This document provides examples only and is not legal advice, contractors and subcontractors should seek their own legal advice prior to finalising subcontract terms.

2. Defined terms and records

- The example clauses rely on the contract defining the concepts of Contract, Contractor and Works/Services/Goods and Government Agency in a manner consistent with the following.

Contract, Subcontractor and **[Works/Goods/Services]**: as applicable to the particular contract.

Government Agency: includes any government or governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, Ministerial Body, agency or entity.

- Ensure that the contract includes an appropriate obligation on the Subcontractor to maintain records and information.

3. Compliance with Industrial Relations Law – Example clause for construction subcontracts and supplier contracts

X.1 Awards and Workplace Agreements

- (a) In this clause, the terms "Subcontractor Personnel", "Supplier Contract" and "Supplier" have the meaning given in clause [X.2].
- (b) The Contractor must:
 - (i) ensure, and must procure that its Suppliers (in respect of each Supplier's officers, employees or agents) ensure, that the remuneration and terms of employment of all Subcontractor Personnel for the duration of the Contract are consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry; and
 - (ii) comply with, and ensure that the Subcontractor Personnel comply with, all laws relating to employment or industrial matters and relations (including the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1979* (WA)).
- (c) The Subcontractor must ensure that each Supplier Contract contains provisions equivalent to this clause.
- (d) Failure by the Subcontractor to comply with paragraph (b) above is [*insert appropriate link to the Contract's default provisions, for example "a substantial breach of the Contract"*].

4. Supplier Wage Audit – Example clause for construction subcontracts and supplier contracts

X.2 Employment Information Audit

(a) In this clause:

Employment Auditor means any person or Government Agency authorised by the ultimate recipient of the [Works/Goods/Services] to audit employment or industrial relations practices (including terms of employment).

Employment Information means records and information of any kind and in any form (including verbal) pertaining to employees or the terms and conditions of their employment, or payroll, but excluding any sensitive information (as that term is defined in the *Privacy Act 1988* (Cth)).

Subcontractor Personnel means all officers, employees and agents of the Subcontractor, all Suppliers and all officers, employees and agents of Suppliers, engaged in relation to the Contract or the [Works/Goods/Services].

Supplier means a supplier or subcontractor (at any tier) of the Subcontractor in connection with this Contract or the [Works/Goods/Services].

Supplier Contract means a contract with a Supplier.

(b) Subject to paragraph (c), the Subcontractor:

(i) must on request (at its cost), and must ensure that its Suppliers, give every assistance to, and make the Employment Information available to, an Employment Auditor for the audit of the Subcontractor's or any Supplier's employment and industrial relations practices (including terms of employment); and

(ii) acknowledges and agrees, and shall ensure that each Supplier acknowledges and agrees, that an Employment Auditor may:

(A) inspect, audit, use and copy the Employment Information for the purposes of such audit;

(B) maintain, reproduce, destroy or transfer the Employment Information for the purpose of complying with the Employment Auditor's obligations at law; and

(C) refer any failure by the Subcontractor or any Supplier to comply with the requirements in clause [X.1] (or the equivalent Supplier Contract clause) to any Government Agency having an oversight role in respect to employment, payroll tax or industrial relations matters,

and the Subcontractor must, and must ensure that Suppliers, provide each Employment Auditor with proper access to the Employment Information, Subcontractor Personnel and facilities to facilitate such an audit, including allowing the person to communicate directly with (and provide Employment Information to) Subcontractor Personnel.

(c) The Subcontractor's obligations under paragraph (b) apply to the extent permitted by law. The Subcontractor must, if subject to the *Privacy Act 1988* (Cth), use (and must ensure that each Supplier uses) all reasonable endeavours to provide Subcontractor Personnel with prior notice of the use and disclosure of personal information contemplated by paragraph (b) and to seek the consent of Subcontractor Personnel to such use and disclosure.

(d) Without limiting the [Company's/Principal's] rights under [insert reference to default clause], the Subcontractor must, and must ensure that each Supplier, promptly rectifies any failure to comply with the requirements of clause [X.1] (or the equivalent Supplier Contract clause) notified to the Subcontractor.

(e) The Subcontractor must ensure that each Supplier Contract contains provisions reasonably necessary to enable the Subcontractor to fulfil its obligations under this clause, including a requirement for each Supplier to, on request from the ultimate recipient of the Works, give every assistance to and make Employment Information available to the Employment Auditor.

(f) This clause survives expiry or termination of the Contract.