Model Clauses for Grants

1 September 2024

**What is the Fair Jobs Code?**

The Fair Jobs Code aims to encourage and reward businesses and suppliers that comply with industrial relations and occupational health and safety laws, and to promote Fair Jobs Code Standards including:

* secure employment and job security;
* cooperative and constructive relationships between employers, employees and their representatives;
* workplace equity and diversity; and
* supply chain compliance

All Victorian Government departments, agencies and public bodies with applicable procurement contracts have responsibilities in relation to implementing the code.

**What grants are affected?**

The code applies to all Victorian Government grants with a value of $500,000 or more exclusive of GST, where a key milestone under the grant agreement specifies that the business will direct the funding towards direct employment costs of the business and will, as a result of the funding increase the number of employees engaged by the business (significant business expansion grants). This includes competitive grants delivered through grants programs, direct allocation grants and negotiated grants.

**Background**

The code came into operation on 1 December 2022 and revisions to the code will become operative on 1 September 2024. These guidelines apply to the revised code.

**What do agencies need to do?**

Agencies are required to ensure that grants documents and agreements include model clauses that give effect to the code.

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**For more information**

For more information about the code, visit [buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**Model Clauses:**

**Approach to Market Clauses for Grant Applications**

Fair Jobs Code

* 1. **Overview**

1.1 The Fair Jobs Code (**FJC**) aims to improve employment outcomes for persons employed by businesses that receive funding from the Victorian Government. The FJC is implemented by Victorian Government departments, agencies and public bodies to support and promote fair labour standards and ensure compliance with employment law.

* + 1. The FJC applies to significant business expansion grants valued at $500,0000 or more (exclusive of GST) where the grant is to be used by the grant recipient to create new jobs in Victoria.
    2. For further information, grant applicants should refer to the FJC and FJC Guidelines which can be found at [buyingfor.vic.gov.au/fair-jobs-code-suppliers-and-businesses.](https://www.buyingfor.vic.gov.au/fair-jobs-code-suppliers-and-businesses)
  1. **Definitions**

**Agency** means [insert the name of the department, agency or public body issuing this approach to market document].

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**FJC Guidelines** means the Fair Jobs Code guidelines, available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).

**FJC Model Clauses** means the model clauses issued by DJSIR as part of the FJC which must be included in the agreements for all significant business expansion grants.

**FJC Plan** means the Fair Jobs Code Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC.

**FJC Plan Template** means the template grant recipients must use when submitting a FJC Plan. The FJC Plan Template is available at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](../../../Policy/1.%20Election%20commitment%20+%2012-month%20review/Legal%20advice/Drafted%20FJC%20resources%20-%202022%20Election%20Commitment/Drafted%20FJC%20documents%20-%202024%20(clean%20copy)/buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).

**FJC** means the Fair Jobs Code, available at [buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**Significant business expansion grant** means a grant from a Victorian Government agency with a value of $500,000 or more (exclusive of GST) and where the key milestones under the grant agreement specify that the business will deliver new jobs.

* 1. **Fair Jobs Code Pre-Assessment Certificate** 
     1. All applicants for significant business expansion grants must hold a valid Pre-Assessment Certificate issued by the FJC Unit in accordance with the FJC and FJC Guidelines.
     2. A copy of the grant applicant's Pre-Assessment Certificate number must be included in the grant application.
     3. Grant applicants that do not hold a valid Pre-Assessment Certificate may not be considered for the grant.

***Drafting Note***

*The Agency needs to satisfy itself that (where required) a grant applicant holds a Pre-Assessment Certificate. The Agency may request a copy of the Pre-Assessment Certificate be attached to grant applications, or that grant applicants provide the Pre-Assessment Certificate number.*

* + 1. If a grant applicant is unable to secure a Pre-Assessment Certificate, it must notify the Agency contact officer as soon as possible and prior to submitting its application.
    2. An Agency may use its discretion to enter into an agreement with a grant applicant that does not have a valid Pre-Assessment Certificate subject to section 4.5 of the FJC.
  1. **Fair Jobs Code Plan** 
     1. In addition to the Pre-Assessment Certificate, grant recipients will be required to submit a FJC Plan, using the FJC Plan Template, at a date to be determined by the Agency but within twelve (12) months of entering into a grant agreement.
     2. Commitments made under the FJC Plan are binding and will form part of the agreement entered into between a successful bidder and the Agency. The Agency will monitor the delivery of the FJC Plan to ensure that the commitments are fulfilled.
  2. **Agreement and continuing FJC obligations**
     1. Grant recipients will be required to maintain a valid Pre-Assessment Certificate throughout the agreement entered into between that grant recipient and the Agency.
     2. Any grant agreement between a grant recipient and the Agency will include the FJC Model Clauses.
  3. **Changes to Pre-Assessment Certificate Status** 
     1. If a grant applicant's Pre-Assessment Certificate is revoked or lapses after the application is submitted, but before grants are awarded or funds paid pursuant to the grant, the grant applicant must notify the Agency as soon as practicable but not later than ten (10) business days after the revocation or expiry date.
     2. A grant applicant will not be awarded an agreement if they do not have a valid Pre-Assessment Certificate unless an exception applies.
  4. **Further information and assistance**
     1. The FJC Guidelines provide guidance on the application of the FJC and are available at buyingfor.vic.gov.au/fair-jobs-code-and-guides.
     2. The FJC Unit provides information to assist grant applicants regarding Pre-Assessment Certificates and FJC Plans. For further information or assistance, grant applicants can contact the FJC Unit:

<https://www.buyingfor.vic.gov.au/fair-jobs-code>

[fairjobscode@ecodev.vic.gov.au](mailto:fairjobscode@ecodev.vic.gov.au)

END SECTION

**Model Clauses:**

**Significant Business Expansion Grant Agreements**

***Drafting Note***

* 1. *These model clauses are designed to form a separate Schedule to the agreement and the agreement should include a clause to stipulate that the Fair Jobs Code Schedule is operative and forms part of the Agreement.*
  2. *Insert a clause in the grant agreement in the appropriate place.*

***Example:*** *'The Fair Jobs Code applies to this Agreement, Schedule X forms part of the terms and conditions of this Agreement.' The Grant Recipient in performing its obligations under this Agreement must comply with Schedule X.*

*3. The content of this Schedule is drafted in generic language to minimise the need to align it with the language of the grant agreement. Care must still be taken to ensure that any clause of the grant agreement is not inconsistent and which may render a clause of this Schedule inoperative by an order of precedence interpretation clause.*

*4. Remove all drafting notes from the final grant agreement.*

Schedule X - Fair Jobs Code

* 1. **Definitions**

In this Schedule:

**Adverse Ruling** means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Grant Recipient has breached an applicable employment, industrial relations or workplace health and safety law.

**Agency** means the organisation with which the Grant Recipient has entered into this Agreement.

**Agreement** means this grant agreement.

***Drafting Note (optional)***

*If the grant agreement is not referred to as 'Agreement', replace 'Agreement' with the word or phrase used to describe the grant agreement. Ensure that 'Agreement' is then replaced throughout this Schedule.*

**Contract Manager** means the person (however described) appointed by the Agency as its representative for communications and liaison with the Grant Recipient for the purposes of this Agreement.

***Drafting Note (optional)***

*If the term 'Contract Manager' is not appropriate for this agreement, replace 'Contract Manager’ with the term used to describe the Agency's responsible person. Ensure that 'Contract Manager’ is then replaced throughout this Schedule.*

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**Enforceable Undertaking** means a promise or agreement made by the Grant Recipient with a regulator, Court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.

**FJC Guidelines** means Fair Jobs Code Guidelines, available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).

**FJC Plan** means the Grant Recipient's Fair Jobs Code Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC.

**FJC Plan Template** means the template the Grant Recipient must use when submitting a FJC Plan. The FJC Plan Template is available at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).

**FJC** means the Fair Jobs Code issued by the State of Victoria available at [buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**Grant Recipient** means the person or entity (however described) funded by the Agency under this Agreement.

***Drafting Note (optional)***

*Replace with the relevant word or phrase in the Grant Agreement Precedent. Ensure that 'Grant Recipient' is then replaced throughout this Schedule.*

**Notice** means a notice given, delivered or served in accordance with this Agreement.

**Pre-Assessment Certificate** means a certificate issued to the Grant Recipient by the FJC Unit prior to entering into this Agreement, or which is renewed during the term of this Agreement.

* 1. **Fair Jobs Code**
     1. The Grant Recipient warrants that at the time of entering this Agreement it holds a valid Pre-Assessment Certificate.
     2. The Grant Recipient agrees to submit to the Agency an FJC Plan using the FJC Plan Template no later than [insert DATE determined by the Agency but not later than twelve (12) months from the time of entering into this agreement].

***Drafting Note***

*When determining the date for FJC Plan submission, the Agency may take into account: alignment with key milestone grant reporting; whether the Business has an existing presence in Australia (and may need time to become familiar with IR and OHS laws and regulations for the purpose of addressing components of the Prescribed FJC Plan Template); or whether the Business is significantly upscaling their presence in Australia as a result of the Grant.*

2.3 Failure to submit the FJC Plan as specified in this Agreement will constitute a breach of the Agreement which will enable to the Agency to exercise its rights under clause 7 of this Schedule.

2.4 In performing its obligations under this Agreement, the Grant Recipient acknowledges and agrees that it shall:

* + - * 1. continue to hold a valid Pre-Assessment Certificate;
        2. submit the FJC Plan;
        3. comply with its FJC Plan;
        4. perform all obligations required to be performed under the FJC Plan by the due date; and
        5. comply with the FJC.

2.5 If at any time during the term of this Agreement the Grant Recipient's Pre-Assessment Certificate is revoked by the FJC Unit that revocation will constitute a breach in this Schedule which will enable the Agency to exercise its rights under clause 7 of this Schedule.

2.6 The Grant Recipient acknowledges and agrees that the obligations for holding and maintaining a Pre-Assessment Certificate apply during the term of this Agreement and any extensions to the term and until all of its reporting obligations set out in clause 4 of this Schedule are fulfilled.

***Drafting Note***

1. *The FJC Guidelines states that an Agency may determine the consequences that will apply for revocation. Agencies may choose to build into their contracts financial and/or other disincentives that apply if FJC obligations are not met.*

**3.** **Verification of Grant Recipient's compliance with the Fair Jobs Code**

3.1 The Grant Recipient must, on request by the Agency, provide a copy of the Pre-Assessment Certificate or any related correspondence with the FJC Unit.

3.2 If, during the term of this Agreement, the Grant Recipient's Pre-Assessment Certificate expires the Grant Recipient must provide Notice to the Agency of the expiry within 10 Business Days.

3.3 If the Grant Recipient fails to promptly take steps to renew an expired Pre-Assessment Certificate after notifying the Agency of expiration, the expiration will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 7 of this Schedule.

***Drafting Note***

*The FJC Unit maintains a register of Pre-Assessment Certificate holders. Generally, it is sufficient for agencies to confirm with the FJC Unit as to whether a Grant Recipient holds a Pre-Assessment Certificate.*

* 1. **Reporting**
     1. The Grant Recipient must prepare and maintain records to demonstrate its compliance with, and implementation of, the FJC Plan.
     2. The Grant Recipient must provide reports which demonstrate the Grant Recipient’s progress towards implementing the FJC Plan at a time or times to be determined by the Agency.
     3. Within twelve (12) months of this Agreement ending, the Grant Recipient must provide to the Contract Manager:
        1. a final report identifying FJC Plan commitments and actual achievements; and
        2. a statutory declaration to confirm that the information contained in the final FJC Plan report is true and accurate. The statutory declaration must be made by a director of the Grant Recipient or the Grant Recipient's Chief Executive Officer or Chief Financial Officer.
     4. At the request of the Contract Manager, the Grant Recipient must provide further information or explanation of any differences between expected and achieved FJC Plan outcomes.
     5. The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.
  2. **Ongoing duty of disclosure and cooperation and audits**
     1. If during the term of this Agreement, the Grant Recipient is the subject of an Adverse Ruling or Enforceable Undertaking it must provide Notice to the Agency and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
     2. During the term of this Agreement the Grant Recipient must:
        1. cooperate with all reasonable requests from the Agency seeking evidence of the Grant Recipient's compliance with the FJC and the FJC Plan;
        2. permit the Contract Manager, an accountant or auditor on behalf of the Agency, DJSIR or any other person authorised by the Agency or DJSIR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Grant Recipient relating to compliance with the FJC and FJC Plan under this Agreement; and
        3. ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Agency or DJSIR to undertake such audit or inspection.
     3. The Agency will bear all costs for any audit in accordance with clause 5.2(b) of this Schedule.
     4. The Grant Recipient acknowledges and agrees that the Agency, DJSIR, or their duly authorised representatives (including the FJC Unit), are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Grant Recipient's compliance with the FJC.
     5. The obligations set out in this clause 5 are in addition to any other obligation under this Agreement.
     6. A failure to comply with this clause 5 will constitute a breach of this Schedule which will enable the Agency to exercise its rights with respect to clause 7 of the Schedule.

***Drafting Note***

*This clause makes the obligations of ongoing disclosure and audit as set out in the FJC contractually binding. A failure to disclose to the Agency or allow access for audit will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 7 of this Schedule.*

*The reporting requirements for FJC compliance are the responsibility and within the discretion of the Agency. Agencies should consider if the reporting requirements on FJC compliance listed above are appropriate for their needs.*

* 1. **Use of information**

The Grant Recipient acknowledges and agrees that:

* + 1. The FJC Unit will assess the Grant Recipient's compliance with the FJC.
    2. Information regarding the Grant Recipient's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:
       1. will be reported by the Agency to the FJC Unit in compliance with the Agency's obligations under the FJC; and
       2. may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.
    3. Nothing in this provision removes the obligation for the Grant Recipient to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per clause 5.
  1. **Consequences of breach**

Any breach of the provisions of this Schedule will enable the Agency, in its absolute discretion, to do any or all of the following:

* + - 1. suspend the Agreement until such time as the breach has been remedied to the satisfaction of the Agency and within a timeframe acceptable to the Agency;
      2. by written notice immediately terminate the Agreement; or
      3. exercise any rights that it has under this Agreement.

END SECTION