

Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry

Bendigo Regional Information Session

Tuesday 4 December 2012

Nigel Hadgkiss
Director
Construction Code Compliance

OVERVIEW

WHY did Victoria need new Guidelines?

WHO is affected by the new Guidelines?

WHERE do the Guidelines apply?

WHAT is building and construction work?

WHEN do the Guidelines impact upon contractors?

HOW do the Guidelines impact contractors?

WHY did Victoria need new Guidelines?

Achieve behavioural change on Victorian building sites

Prompt ending of unlawful industrial action

Reflect Government's commitment to greater flexibility and productivity

Ensure Government maximises value for money on infrastructure projects

Directed to supporting:

1. **COMPLIANCE** with the law, without exception
2. **PRODUCTIVITY** – projects should be delivered on time and within budget
3. **SAFETY** – parties should achieve & maintain high standards in OHS&R
4. **FREEDOM OF ASSOCIATION** – parties must recognise the right of individuals to be or not be involved in lawful industrial activity and to be free from harassment in relation to workplace relations

WHO is affected by the Guidelines?

CONTRACTOR

- person who provides building and construction work and services
- includes a principal contractor and a subcontractor

PARTY

includes but not limited to clients, contractors, subcontractors, suppliers, consultants, employees, unions – their officials, employees and members and industry associations while undertaking representative role

PRINCIPAL CONTRACTOR

party who enters into contract with the client agency (Victorian department or public body)

RELATED ENTITIES

of any party that first expresses interest for, tenders for, or enters into contract

INDEPENDENT CONTRACTORS

Genuine independent contractors undertake a legitimate form of work on Victorian Government building and construction sites and must not be discriminated against

Arrangements that constrain or restrict use of independent contractors and terms of engagement are inconsistent with Guidelines

Role of Construction Code Compliance Unit

What is compliance and monitoring?

- Education; working cooperatively with FWBC, WorkSafe etc
- Review provisions in project contracts and tender documentation
- Review industrial instruments
- Investigate tenderer's current workplace compliance
- Site visits, inspections, audits, voluntary advisory audits
- Receive reports of alleged breaches & investigate
- Report proven breaches to Minister for Finance

WHERE do the Guidelines apply?

All public building & construction work subject of an Expression of Interest or Request for Tender on or after 1 July

Public private partnerships (PPPs), alliance contracts, design and construct (D&C) procurement method and any other project funding arrangements

On-site includes primary construction site(s) or any auxiliary or holding sites, where work performed

WHAT is building and construction work

Includes:

- all organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering
- building refurbishment or fit out, installation of building security systems, fire protection systems, air conditioning systems, computer and communication cabling, building and construction of landscapes

but excludes

- mining operations, the maintenance of building systems, landscaping such as lawn moving, pruning and other horticultural activities and cleaning buildings

WHEN do the Guidelines impact upon contractors?

Where a party tenders for public work called for after 1 July 2012, the party is required to comply on any subsequent privately funded work

Contractors and consultants must notify CCCU and client of alleged breaches of the guidelines and of voluntary remedial action within 24 hours of becoming aware

Principal contractor must report to CCCU & client within 24 hours of becoming aware any grievance or dispute relating to workplace relations or OHS&R matters that may impact on project costs, related contracts or timelines

HOW do the Guidelines impact contractors?

More detailed information from tenderers about their industrial relations and safety approach

Reflected in contractual obligations

Guidelines apply to all projects
irrespective of value

Obligations of contractors and subcontractors

Contractor must ensure that subcontractors and consultants agree to:

comply with Guidelines

cooperate with CCCU during tender and during project

Industrial instruments

Government laid down following conditions:

- if contractor has existing agreement, in that already registered with Fair Work Australia prior to 1 July 2012, then that agreement continues to apply
- in negotiating future agreements, contractors expected to adhere to Guidelines and not include prohibited items specified in Guidelines
- extent to which contractors can lawfully and consistently comply with Guidelines and with existing agreement, expectation is to comply with both
- tenderers who comply with the particular arrangements of the Vic Guidelines will also be compliant with Commonwealth Guidelines

Prohibited clauses in future agreements

Parties shall not negotiate or implement arrangements or agreements that restrict efficient performance of work or productivity improvements

As a result, instruments that contain the following will be non-compliant:

- prescribing number of casual, temporary or permanent employees on particular site/area/within company
- one-in-all-in arrangements, eg overtime
- clauses that ignore employer's operational requirements, eg last on, first off, or redundancy by seniority
- restrictions on employer's short/long-term labour requirements
- stipulate terms and conditions for labour of any person not party to instrument
- employer to consult/seek approval of union over number, source, type (eg casual/contract) or payment of labour
- prohibition on all-in payments
- arrangements intended to avoid employer/employee obligations
- project agreements except major projects

Sanctions on contractors

Proven breach may include:

Formal warning

Referral to relevant industry association for assessment against code of conduct and action

Reduction in tendering opportunities

Reporting to appropriate statutory body, eg ASX

Publicising breach and identity of contractor

Reputational risk

Construction Code Compliance Unit

Victorian Government funded sites



CCCU has identified 89 projects where the cost is greater than \$10m

The total cost of these projects alone is approximately \$10.9 billion

35 of these projects are subject to the new Guidelines

These 35 projects have resulted in 73 organisations and their related entities being required to comply with the Guidelines

Construction Code Compliance Unit

Providing assistance and advice

on 63 occasions
provided detailed advice
to contractors and
departments

in addition, received 140
requests for assistance

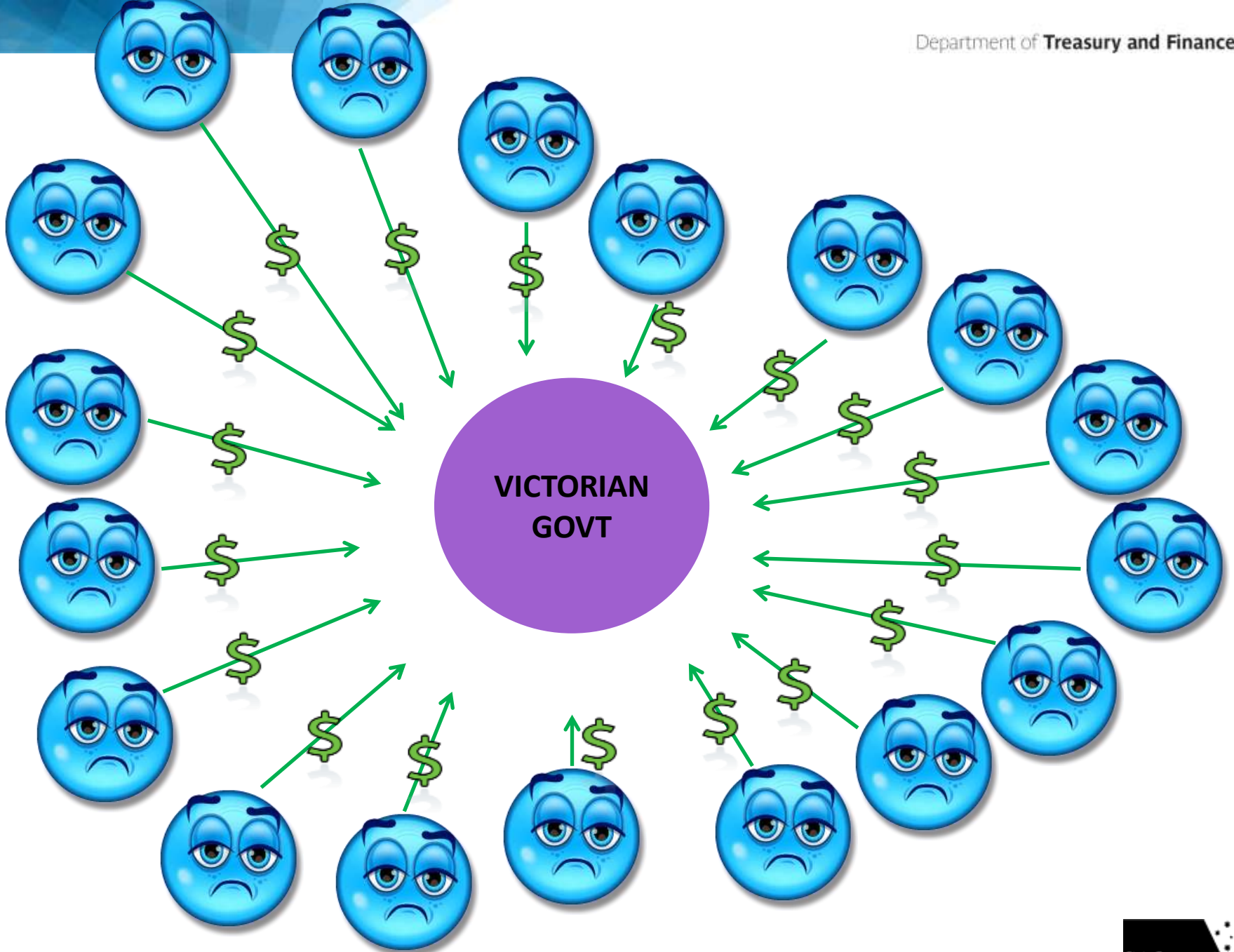
received up to 8 calls a
day on its Hotline

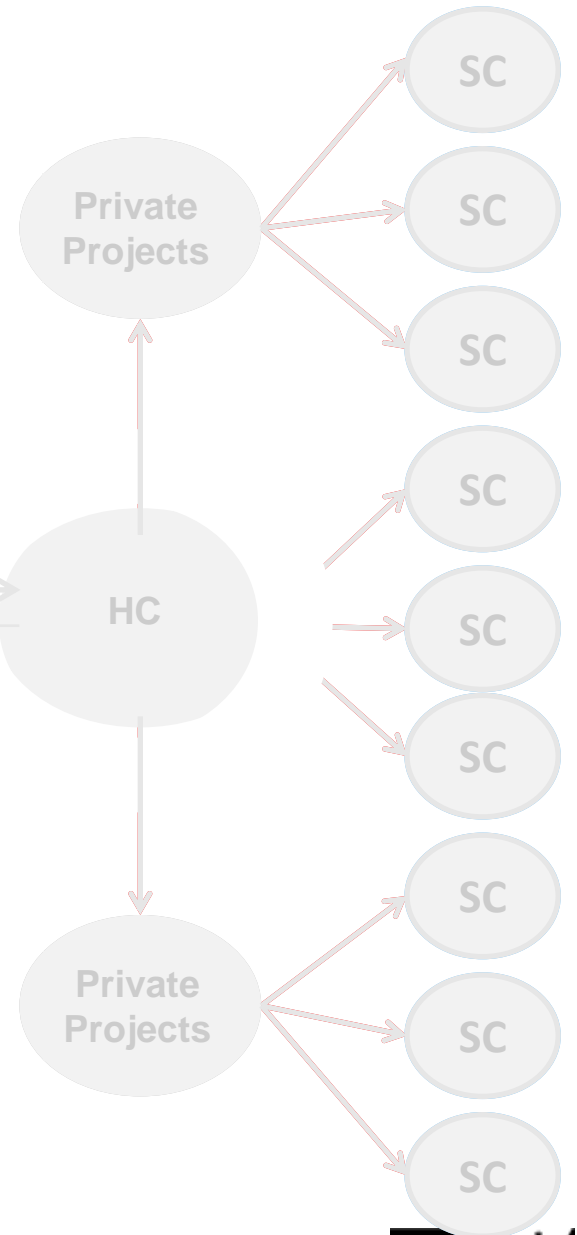
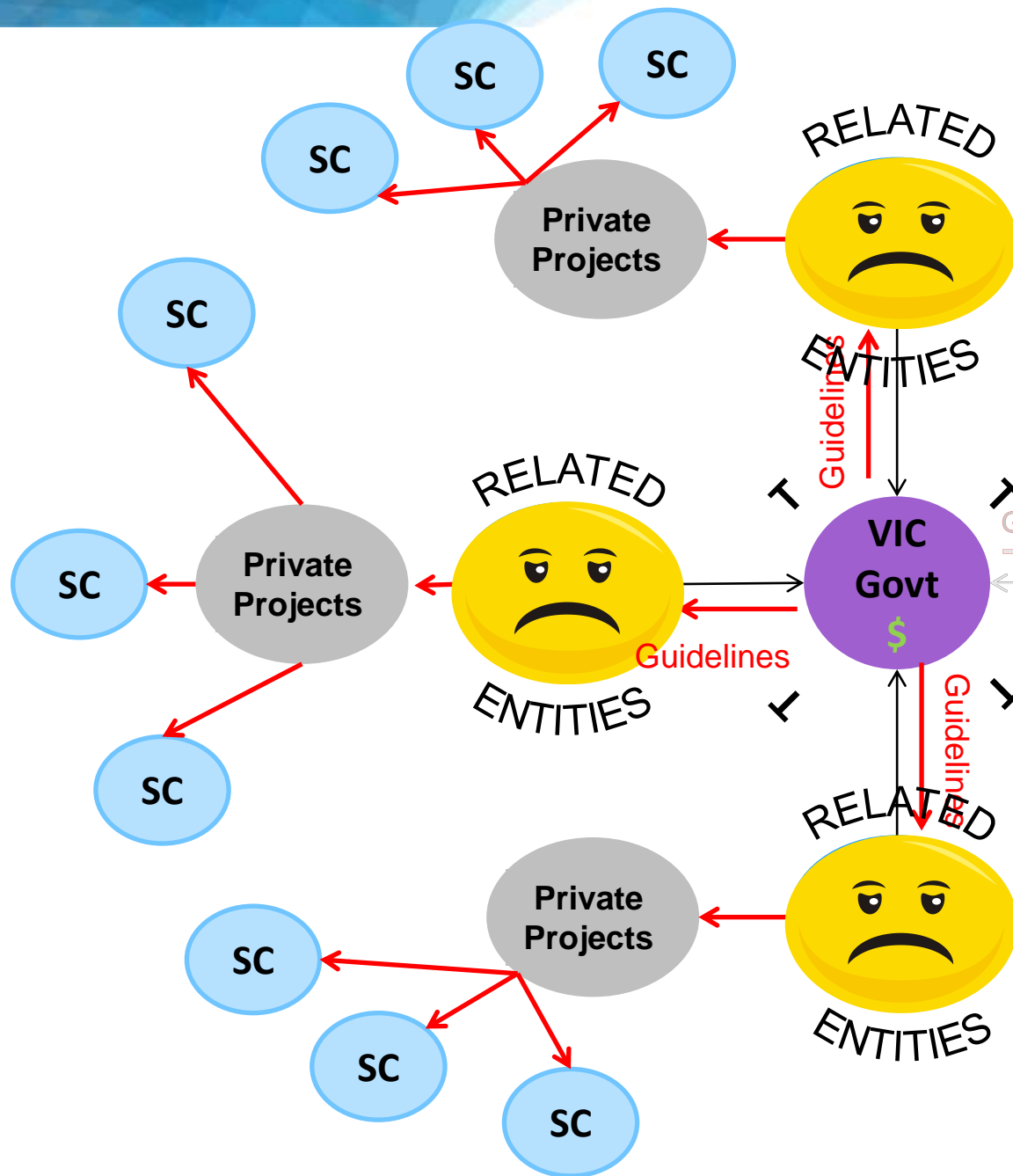
received 121 emails via
the CCCU's mailbox

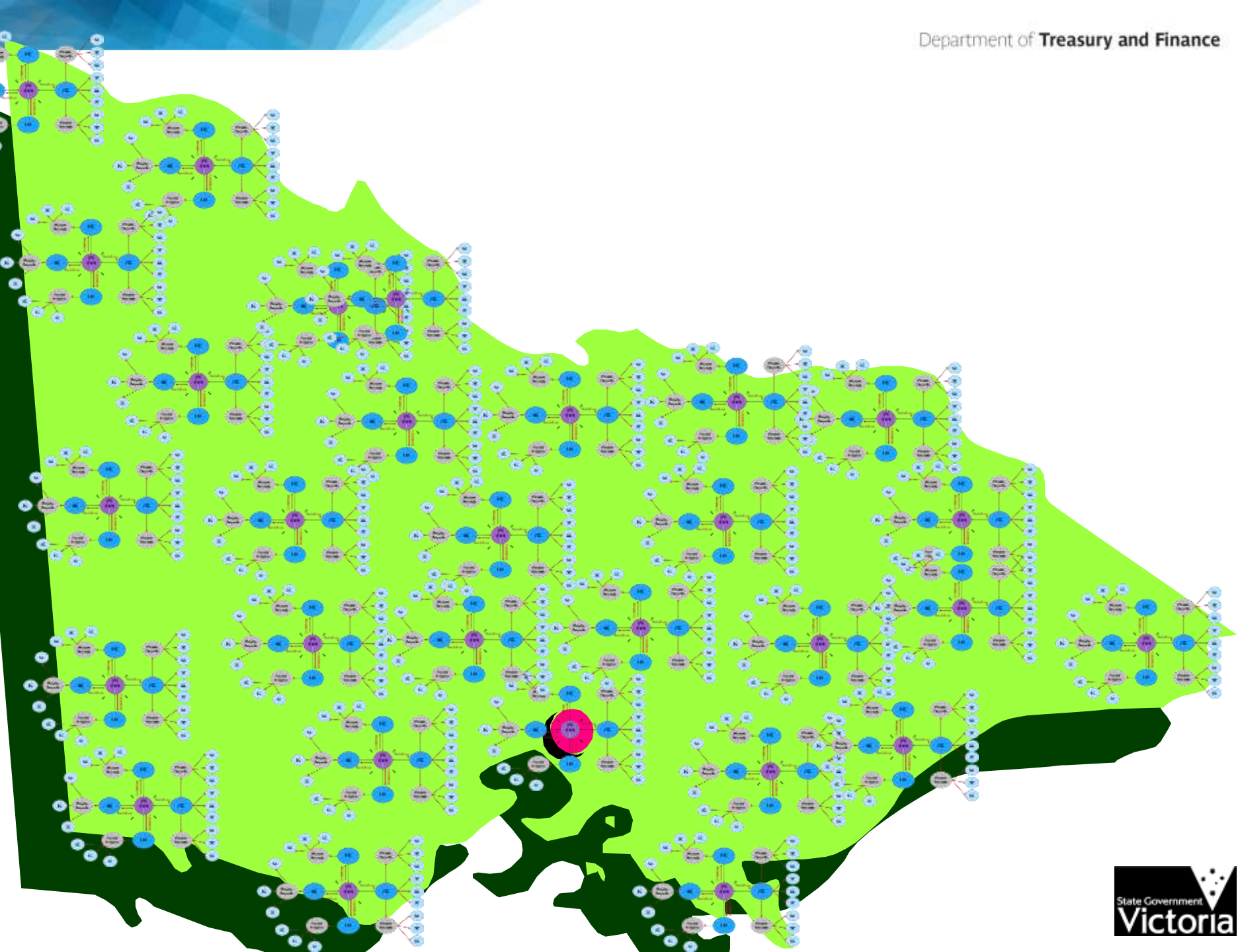
made 29 formal
presentations to
industry stakeholders

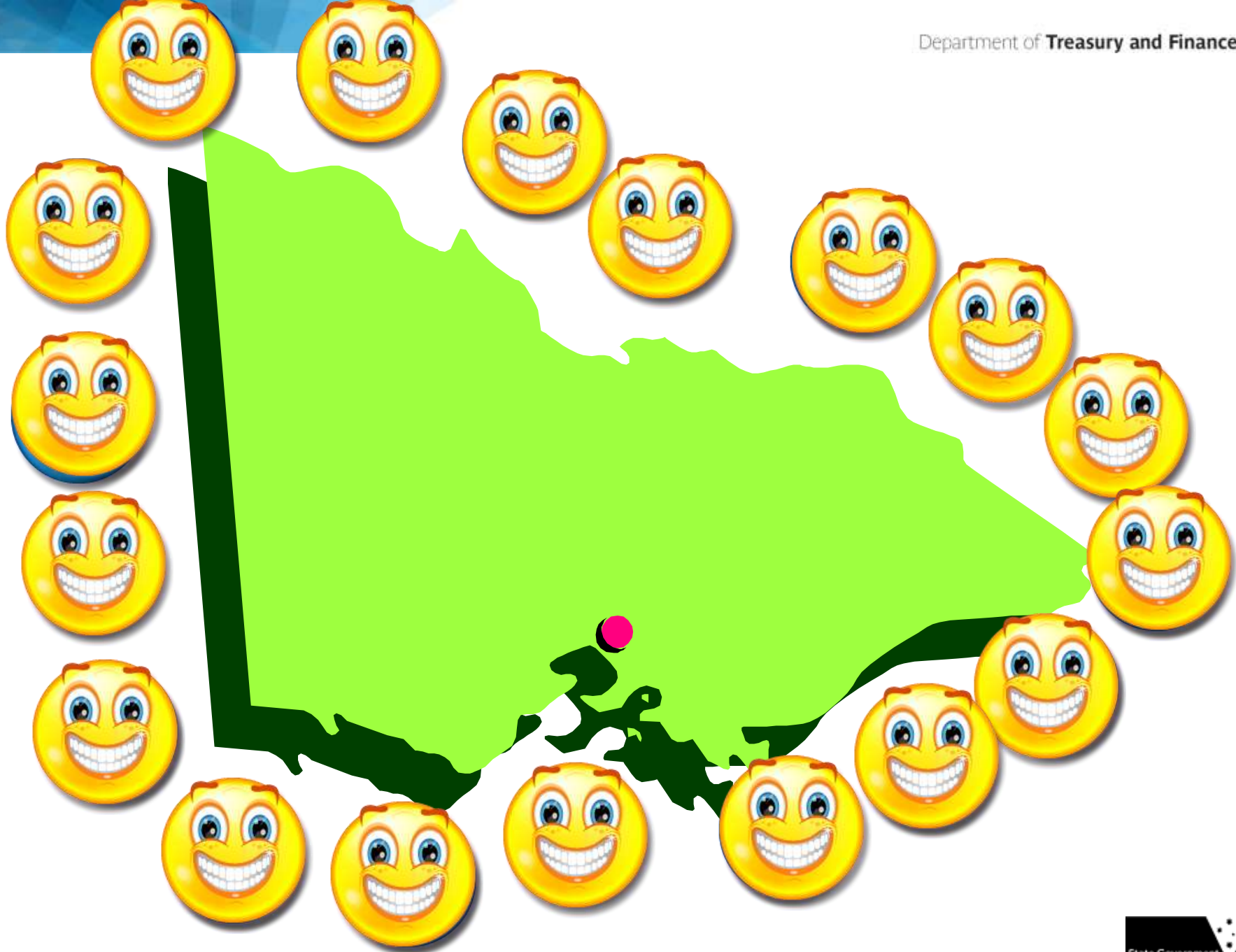












Contact CCCU

Hotline

1800 VIC CCC
(1800 842 222)

Website

www.dtf.vic.gov.au/viccode