

# Occupational Licensing (Building Surveyors) Code of Practice 2018

March 2018

I, Dale Edward Webster, Administrator of Occupational Licensing, establish the following Code of Practice under section 53 of the *Occupational Licensing Act 2005*.

## **1. Title**

This Code of Practice may be cited as the *Occupational Licensing (Building Surveyors) Code of Practice 2018*.

## **2. Commencement**

This Code of Practice takes effect on the date of its publication in the Gazette.

*(Web publication note:*

*As required by s.53(1) of the Occupational Licensing Act 2005, this Code was published in the Gazette on 21/03/2018.*

## **3. Application of Acts Interpretation Act 1931**

The *Acts Interpretation Act 1931* applies to this Code of Practice.

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## 1 . Purpose

The purpose of the code is to:

- set standards of conduct and professionalism expected from building surveyors in the performance of statutory building surveying functions
- inform the community of the standards of conduct and professionalism expected from a building surveyor
- provide consumer, regulatory, employing and professional bodies, with a basis for making decisions regarding standards of conduct and professionalism expected from building surveyors.

## 2 . Code of Practice

A building surveyor in undertaking their role within the scope of their licence must:

1. Perform building surveying functions in the public interest.
2. Abide by ethical standards expected by the community for legislative conformity and reputable conduct.
3. Not perform building surveying functions where there is the potential for a conflict of interest.
4. Maintain satisfactory levels of competence.
5. Ensure that their engagement to undertake their functions is valid and in accordance with the *Building Act 2016*.
6. Comply with legislative requirements.
7. Not perform building surveying functions beyond their level of competence or outside their area of expertise.
8. Maintain confidentiality.
9. Take all reasonable steps to obtain all relevant facts when performing building surveying functions.
10. Ensure that all aspects of design are adequately documented and in accordance with the *Building Act 2016* prior to issuing a certificate of likely compliance.
11. Ensure that performance solutions pursuant to the National Construction Code (previously known as the Building Code of Australia) are developed in accordance with the Code.
12. Ensure building owners are adequately informed of performance solutions prior to issuing a certificate of likely compliance.
13. Clearly document reasons for building surveying decisions.

14. Ensure that sufficient and adequate inspections are carried out to be reasonably satisfied that building work complies with the *Building Act 2016* and any relevant approvals.
15. Be accountable for the supervision, competence and conduct of staff and contractors whom they employ or contract with to assist them in fulfilling their functions as a building surveyor.

### 3 . Scope

This code of conduct applies to all building surveyors who are licensed building service providers under the *Occupational Licensing Act 2005*, and is issued in accordance with Section 53 of that Act.

Subsection 4(c) of Section 53 includes this provision:

A code of practice may contain requirements to be observed for –  
building services providers, in relation to –

- (i) professional conduct, competence, diligence and integrity; and
- (ii) professional responsibilities of each occupation and class of building services providers; and
- (iii) compliance with legislation related to building services work; and
- (iv) communication with all parties involved in building services work; and
- (v) performance management of holders of a building services licence; and
- (vi) conduct and behaviour of the holder of a building services licence.

### 4 . Key Legislation and Documents (as amended from time to time)

- *Occupational Licensing Act 2005*
- *Occupational Licensing (Building Services Work) Regulations 2016*
- *Occupational Licensing (Building Services Work) Determination 2017*
- *Building Act 2016*
- *Building Regulations 2016*
- Director's Specified List
- Director's Determination - Categories of Building and Demolition Work

## 5 . Explanatory Statements

Although the code of practice does not give detailed professional advice on specific issues and areas of practice, the explanatory statements may be used to clarify the meaning and scope of the code. The explanatory statements do not in any way limit the extent of the standards.

### 1. A building surveyor must perform building surveying functions in the public interest.

A building surveyor must perform building surveying functions in the public interest and must not take action that would compromise the health and safety of any person, or the amenity of any person's property, or significantly conflict with a local planning scheme. The interests of a building surveyor's client must be placed after the interests of the community wherever there is a conflict of interest.

Examples of when a building surveyor must perform building surveying functions in the public interest include:

- Enforcement action<sup>1</sup> – where engaged so that a power exists and it is appropriate to do so, a building surveyor must take suitable enforcement action as an authorised person in respect of building work that does not comply with legislative requirements.
- Discretion – a building surveyor when exercising any discretion in performing building surveying functions must ensure the health and safety of any person, or the amenity of any person's property is not compromised.
- Performance – a building surveyor should ensure that all performance solutions are developed and documented in accordance with the National Construction Code and the Australian Building Code Board's Evidence of Suitability Handbook<sup>2</sup>

### 2. A building surveyor must abide by ethical standards expected by the community.

A building surveyor, must when performing building surveying functions:

- apply all relevant building laws, regulations, relevant standards and guidelines reasonably without favour;
- perform the functions with honesty, integrity and impartiality;
- not knowingly enter into any conduct that could bring, or tend to bring, the profession of building surveyors into disrepute; and

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<sup>1</sup> See Appendix I for a guide to compliance and enforcement under the *Building Act 2016*

<sup>2</sup> Document available on the ABCB website: <https://www.abcb.gov.au/>

- maintain financial viability, including ensuring fees taken in advance are held against the relevant project.

### 3. A building surveyor must not perform building surveying functions where there is the potential for a conflict of interest.

A building surveyor must not perform building surveying functions where there is the potential for a conflict of interest between their duty to their clients, profession, peers and the public with their personal and business interests.

Section 28 of the *Building Act 2016* specifically states:

- (2) A person must not accept an engagement to perform the functions or exercise the powers of a building surveyor, in respect of work performed on premises, if the person –
- (a) does not hold a licence under the *Occupational Licensing Act 2005* that authorises him or her to perform those functions, or exercise those powers, of a building surveyor; or
  - (b) has performed, or is required under the Act to perform, the functions or powers of a permit authority in respect of the work; or
  - (c) has provided professional advice in respect of the work in accordance with section 33 ; or
  - (d) is the owner of the premises where the work is to be performed; or
  - (e) was an employee of the owner of the premises immediately before he or she was engaged as a building surveyor for the premises; or
  - (f) is named, or is to be named, on a permit in relation to the work as the licensed builder or building services provider, or is an employee of the licensed builder or building services provider so named; or
  - (g) is a private consultant of a person referred to in paragraph (d) or (f) in respect of the work; or
  - (h) is the employer of a person referred to in paragraph (f) or of persons performing building contracts generally; or
  - (i) has prepared, or reviewed, the design for the building work or a performance solution proposed as part of the work; or
  - (j) was employed in the immediately preceding 12-month period by a designer of the work; or
  - (k) has a direct, or indirect, pecuniary interest in –
    - (i) the designer of the work; or
    - (ii) the work or premises where the work is to be performed; or

(iii) any other person associated with the work or premises where the work is to be performed; or

(l) has a potential conflict of interest between his or her functions as a building surveyor and his or her personal or business interests.

#### 4. A building surveyor must maintain a satisfactory level of competence.

A building surveyor must commit to a process of continuing professional development to ensure they constantly keep informed of developments in building design and practice, business management principles, and the law relevant to performing building surveying functions.

#### 5. Ensure that their engagement to undertake their functions is valid and in accordance with the *Building Act 2016*.

The *Building Act 2016* contains very specific provisions related to the engagement of a building surveyor including that:

- a building surveyor must not perform any of the functions, or exercise any of the powers, of a building surveyor in respect of work unless he or she is engaged, by the owner of premises where the work is being performed, to perform the functions, or exercise the powers, of a building surveyor in respect of the work.
- a person engaged as a building surveyor must not perform any of the functions, or exercise any of the powers, of a building surveyor that he or she is not authorised to perform or exercise under the *Building Act 2016*
- a person must not accept an engagement as a building surveyor unless the prospective building surveyor has provided, to the person engaging the person as a building surveyor, a complete schedule of fees that may be charged by the building surveyor in the course of the engagement; and the person engaging the building surveyor has agreed to that schedule of fees.

A building surveyor who has a limited licence must not accept engagement for work which is the work of a building surveyor with an open licence. The building surveyor limited is unable to subcontract the work which is out of scope of their licence.

Where a building surveyor engagement is referred or transferred to another building surveyor, it must be in accordance with the *Building Act 2016*. All files, including notes must be referred to the new building surveyor. There must be full disclosure of information relevant to the building work.

## 6. A building surveyor must comply with legislative requirements.

A building surveyor must comply with the legislative requirements that regulate or govern building surveyors in the performance of building surveying functions.

## 7. A building surveyor must not perform building surveying functions beyond their level of competence or outside their area of expertise.

A building surveyor, when performing building surveying functions, must have:

- the appropriate level of licensing – limitations are placed on the number of storeys and the floor area of buildings that may be assessed according to the level of licensing of the building surveyor. These limitations also apply to existing buildings where new building work is intended to be carried out.

For example, a practitioner licensed at the level of building surveyor (limited) cannot issue a certificate of likely compliance for a minor addition to an existing building with a rise of more than three storeys or a floor area of more than 2000m<sup>2</sup><sup>3</sup>.

- the appropriate level of competence, and expertise for the building surveying functions performed.

For example, an application before a building surveyor may require assessment of a complex performance solution, or interpretation of requirements of an interim planning scheme. If a building surveyor is not experienced in the particular area then written advice from a suitably qualified or experienced person must be obtained before issuing the certificate of likely compliance.

## 8. A building surveyor must maintain confidentiality.

A building surveyor must not divulge confidential or commercially sensitive information in the performance of their building surveying functions unless:

- directed to do so in writing by the appropriate authority following National Privacy Principles under the *Privacy Act 1988* (Cwlth)<sup>4</sup>
- the disclosure of the information is authorised by legislation

As examples, the *Building Act 2016* specifically requires a building surveyor to provide information to the permit authority for the purposes of a permit application, and to the Director of Building Control for the purpose of an audit.

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<sup>3</sup> See the scheme of accreditation at :  
[https://www.justice.tas.gov.au/\\_\\_data/assets/pdf\\_file/0003/278193/GB186.pdf](https://www.justice.tas.gov.au/__data/assets/pdf_file/0003/278193/GB186.pdf)

<sup>4</sup> See Privacy Commissioners website [www.privacy.gov.au](http://www.privacy.gov.au)



## 9. A building surveyor must take all reasonable steps to obtain all relevant facts when performing building surveying functions.

A building surveyor must:

- keep themselves informed and consider all relevant and available information when performing building surveying functions
- demonstrate that all reasonable steps have been taken to obtain and document all available facts relevant to performing building surveying functions.

For example, a building surveyor should undertake a site investigation where possible to make themselves aware of any site conditions that may influence a decision on the likely compliance of the design they are considering.

For instance:

- the contours of an allotment that may influence the installation of site drainage,
- the presence of a disused cellar would be detected, or
- the presence of a spring may significantly alter the design.

## 10. Ensure that all aspects of design are adequately documented and in accordance with the *Building Act 2016* prior to issuing a certificate of likely compliance.

The Director of Building Control has issued a minimum standard for aspects of the design documentation as part of the Director's Specified List. Building surveyors must ensure that these minimum standards are adhered to prior to issuing a certificate of likely compliance.

The design documentation must be both adequate to show compliance with the National Construction Code and sufficient to allow for the building to be constructed in accordance with the National Construction Code. For instance:

- It is insufficient to specify cladding on a building over three storeys as Aluminium Composite Panel (ACP) on the basis that the builder will choose the right one. The Panel must be specified as an actual compliant product (e.g ACP with a mineral core containing less than x % PE).

Professional conduct will also likely see a building surveyor identify issues such as those listed below and raise them with their client:

- Design of plumbing work, to the extent that its proposed location appears consistent with the design of the building work; or that proposed plumbing installations (such as allowing space for an on-site wastewater management system) have been taken into consideration in the building design process

- If required, the design of Protection Work to protect adjoining property or persons using adjoining land
- If required, suitable procedures and methods for the safe demolition of buildings or parts of buildings
- Access to, or accommodation of building services (for example, whether required telecommunication cabling can be installed within a building without an adverse impact on its elements such as on fire-rated walls or ceilings).

### 11. Ensure that performance solutions under the National Construction Code are developed in accordance with the Code.

As the National Construction Code is performance based, one method of meeting the requirements is to follow an accepted construction practice or deemed-to-satisfy solution. However if this method is not used then there is a need to document the building solution adopted and the particular verification method, evidence of suitability and the assessment method used to demonstrate compliance with the performance standards of the code.

### 12. Ensure building owners are adequately informed of performance solutions prior to issuing a certificate of likely compliance.

Performance solutions are usually introduced to enable innovation in design, or to overcome issues that may be created by a deemed-to-satisfy approach. However they often result in the need for ongoing maintenance, which may then become an ongoing cost to the owner. It is important that building surveyors are satisfied that the owner has been adequately informed of the performance solution so they can make an informed decision to include that aspect of the design or have it redesigned. In relation to permit building work this acknowledgement by an owner is a legislative requirement.

### 13. A building surveyor must clearly document reasons for decisions.

A building surveyor must maintain properly documented reasons for building surveying decisions.

Documented reasons must include:

- the findings of fact, for example, reliance on results of tests carried out
- a reference to evidence or other material on which the finding was based, for example, reliance on Standards published by Standards Australia
- the reasons for the decision.

Examples of decisions requiring documented reasons to be maintained by building surveyors:

- when building surveyors obtain expert advice on building matters outside the scope of their qualifications or expertise, the surveyor must retain the documented advice, for example, a performance solution involving complex fire engineering analysis
- when building surveyors obtain advice and decide no other approvals are required under the planning scheme, the surveyor must retain the documented advice, including the source of the advice
- when building surveyors accept a certificate from a competent person the surveyor must document the reasons for considering the person giving the certificate as competent, and retain the documents or information relied on in deciding the person as competent
- when building surveyors inspect building work, the surveyor must document the results of the inspection
- document any decision made in relation to performance solutions where the building surveyor has concluded that a performance solution complies with the performance requirements of the National Construction Code.

#### 14. A building surveyor must ensure that sufficient and adequate inspections are carried out to be reasonably satisfied that building work complies with the *Building Act 2016* and any other relevant approvals.

A building surveyor must ensure that sufficient and adequate inspections are carried out during the construction of building work to reasonably satisfy themselves the work complies with the *Building Act 2016* and the relevant approval for the work.

These inspections are to be carried out in accordance with best industry practice for the inspection of building work by building surveyors. However, the role of a building surveyor is not intended to be that of supervisor to the builder nor to ascertain compliance with contract documents.

The use of photographs, video or the like provided by the owner or builder are not considered adequate replacements for physical inspection.

A building surveyor, when performing building surveying functions, must ensure any building work that does not comply with the Act is promptly notified to the responsible builder who is to be directed to bring the building work into compliance with the Act and the approval for that work.

The builder must notify the building surveyor when relevant stages of the work are ready for inspection so that the building surveyor can undertake their responsibilities. (A building surveyor cannot be expected to be able to satisfy themselves of compliance where a builder

has failed to notify in time for critical work to be inspected and a building surveyor cannot be expected to keep watch on all sites they have responsibility for at all times.)

### 15. Be accountable for the supervision, competence and conduct of staff and contractors whom they employ, or contract with, to assist them in fulfilling their role as a building surveyor.

While the building surveyor is engaged as the responsible party to undertake their functions, it is not always possible to personally attend to all functions or activities, including administrative support functions. When a building surveyor engages or authorises someone else to undertake one of their functions then that building surveyor must ensure that the person also carries out those functions in accordance with this code of practice.

## 6 . Breaches of this Code of Conduct

*The Occupational Licensing Act 2005* gives the Administrator of Occupational Licensing powers to review the performance of licence holders.

A breach of the code may constitute improper conduct under the Act. Alternatively, a breach of some elements of the code may constitute a finding that the building surveyor is guilty of improper conduct or is not a fit and proper person to hold a building services provider licence.

There is a distinction between lesser breaches of a basic administrative nature seen as 'unsatisfactory conduct', and more serious infringements such as significant technical breaches that may compromise the safety of people in buildings, that may be judged to be 'professional misconduct'.

Breaches of the code that may constitute professional misconduct and therefore improper conduct include:

- incompetence, or a lack of adequate knowledge, skill, judgement, integrity, diligence or care in performing building surveying functions
- compromising the health or safety or a person or the amenity of a person's property
- seeking, accepting or agreeing to accept a benefit, whether for the benefit of the building surveyor or another person, as a reward or inducement to act in contravention of the legislation
- assessing building work as complying with the legislation which significantly conflicts with a local planning scheme
- repeated unsatisfactory conduct.

Repeated unsatisfactory conduct that may result in improper conduct includes:

- repeated conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building surveying functions
- repeated conduct that is contrary to a function under the *Building Act 2016*, the *Occupational Licensing Act 2005* or another relevant Act, including, for example, disregarding relevant and appropriate matters, acting outside the scope of the building surveyor's powers, acting beyond the scope of the building surveyor's competence and contravening the code of conduct
- repeated conduct that is of a lesser standard than the standard that might reasonably be expected of the building surveyor by the public or the building surveyor's professional peers.

Breaches of the code of conduct that may lead to a building surveyor not being a fit and proper person include:

- continuing to perform the functions of a building surveyor while having a conflict of interest
- acting against the public interest
- criminal charges or convictions
- behaviour which is not consistent with the ethics expected of a building surveyor.

A person may make a complaint to the Administrator of Occupational Licensing if the person believes the building surveyor has contravened the *Occupational Licensing Act 2005* by:

- engaging in unsatisfactory conduct or professional misconduct; or
- engaging in conduct or behaviour which demonstrates they are not a fit and proper person.

If the Director of Building Control, as part of a performance audit believes that there has been professional misconduct or repeated unprofessional conduct the Director may refer the matter to the Administrator of Occupational Licensing for investigation.

## 7. Interpretation

“**building surveyor**” has the same meaning as in Section 28 of the *Building Act 2016*

“**Director of Building Control**” means the person appointed under Section 15 of the *Building Act 2016*

“**floor area**” means the sum of the sum of the areas of all storeys of a building and includes all the spaces capable of being used, including, but not limited to the roofed area, canopies, verandas and covered walkways.

“**low risk work**” has the same meaning as in the *Building Act 2016*

“**notifiable work**” has the same meaning as in the *Building Act 2016*

“**performance solution**” has the same meaning as in the National Construction Code

“**permit work**” has the same meaning as in the *Building Act 2016*



Dale Edward Webster

**ADMINISTRATOR OF OCCUPATIONAL LICENSING**

21 March 2018

## 8. Explanatory Note

*(This note is not part of the Code)*

Guidance on “**floor area**” is provided in the Guide to Volume One of the National Construction Code in Section A1 (Interpretation). The guide includes a number of explanatory diagrams.

Guidance on “**performance solution**” is provided in the Guide to Volume One of the National Construction Code in Section A0 (Application) and in the Evidence Of Suitability Handbook issued by the Australian Building Codes Board and available in the Resources area of the board’s website (<https://www.abcb.gov.au/Resources>).

## Appendix I – Guide to Compliance and Enforcement



