



Victoria Government Gazette

No. S 311 Monday 29 June 2020
By Authority of Victorian Government Printer

Building Act 1993

NOTICE OF APPROVAL OF A CODE OF CONDUCT FOR BUILDING SURVEYORS

The Victorian Building Authority (the Authority) in accordance with section 177B of the **Building Act 1993**:

1. publishes the Code of Conduct for Building Surveyors approved by the Authority, a copy of which is set out below; and
 2. gives notice that –
 - a. the date of commencement of the Code of Conduct for Building Surveyors is 1 January 2021; and
 - b. a copy of the Code of Conduct for Building Surveyors may be viewed on the Authority website at www.vba.vic.gov.au.
-

SPECIAL

CODE OF CONDUCT FOR BUILDING SURVEYORS

June 2020

Table of Contents

INTRODUCTION

Purpose

Principles of conduct

Rules and examples

Application of the Code

Contraventions of the Code

Commencement

Definitions

Acronyms

CODE OF CONDUCT FOR BUILDING SURVEYORS

- 1 Act in accordance with the law and in the public interest
- 2 Act with integrity, honesty, objectivity and impartiality
- 3 Perform competently and within the required level of expertise and experience
- 4 Act independently
- 5 Avoid conflicts of interest
- 6 Document and maintain records
- 7 Communicate promptly and effectively
- 8 Provide a complaint handling process and address issues of non-compliance

INTRODUCTION

The Building Act 1993 (Building Act) enables the Victorian Building Authority (**VBA**) to make and approve codes of conduct for building practitioners.

Under Division 2, Part 11 of the Building Act, the VBA may prepare codes of conduct for different categories or classes of building practitioners registered under the Building Act. The definition of building practitioner in section 3(1) of the Building Act includes a building surveyor.

The VBA has prepared this *Code of Conduct for Building Surveyors (Code)* under section 177A(1)(a) of the Building Act.

The Code supports the VBA's functions and objectives as outlined in the Building Act and the Building Regulations 2018 (**Regulations**).

Purpose

The Code establishes principles and rules for professional conduct and outlines the standards building surveyors in Victoria must, as a minimum, adhere to when providing building surveying services.

The principles and rules in the Code are based on conduct that promotes public safety and competence in the building and construction industry. Adherence to the principles and rules provides a framework to promote public trust and confidence in the building surveying profession.

The Code is also an important document to assist owners, developers and builders understand and respect the duties and obligations of building surveyors.

The VBA or any member of the Victorian community is entitled to expect that registered building surveyors will conduct themselves in a way that meets or exceeds these principles and rules.

Principles of conduct

The Code contains eight (8) core principles that building surveyors must adhere to when providing building surveying services:

1. Act in accordance with the law and in the public interest
2. Act with integrity, honesty, objectivity and impartiality
3. Perform competently and within the required level of expertise and experience
4. Act independently
5. Avoid conflicts of interest
6. Document and maintain records
7. Communicate promptly and effectively
8. Provide a complaint handling process and address issues of non-compliance.

Rules and examples

Each core principle has rules of conduct that elaborate on each principle to help building surveyors understand their obligations and apply the Code.

Where applicable, guidance is provided by way of practical examples or notes. These examples and notes are not exhaustive and are not intended to provide guidance on every circumstance or situation.

Application of the Code

The Code applies to all registered building surveyors in Victoria, including (but not limited to) relevant building surveyors, municipal building surveyors, private building surveyors and bodies corporate registered as building surveyors.

Building surveyors may perform statutory functions by administering various provisions under the Building Act and Regulations. Building surveyors may also act as a consultant building surveyor for parties who rely on their expertise and registration as a building surveyor.

The Code applies to a registered building surveyor when providing building surveying services including when they are:

- appointed as a municipal building surveyor
- acting as a delegate of a municipal building surveyor
- appointed as a relevant building surveyor
- assisting a relevant building surveyor to perform their functions
- employed by the VBA or other government body as a building surveyor, and
- providing services or undertaking work relying on their registration as a building surveyor or because they are registered as a building surveyor.

Unless otherwise expressly stated, each principle or rule of conduct in the Code applies to all registered building surveyors in Victoria.

The Code does not limit a building surveyor's functions, responsibilities and liabilities under the Building Act, Regulations or any other legislation, regulation, code or standards applicable to building surveyors, including the National Construction Code (NCC), referenced Australian Standards and other documents.

The Code should be read in conjunction with the Building Act and Regulations and any other code of conduct approved by the VBA. If there is any inconsistency between the Code and the legislation, the legislation prevails.

Contraventions of the Code

Section 177D of the Building Act provides that building surveyors must comply with an approved Code.

Disciplinary action may be taken by the VBA against a registered building surveyor who fails to comply with the Code. Disciplinary action is defined in section 178 of the Building Act. A range of actions and penalties may apply to a registered building surveyor for contraventions of the Code.

Commencement

The Code comes into effect on **1 January 2021**.

Definitions

All terms in the Building Act apply to this Code. For the purposes of this Code, the following terms are defined:

<i>applicant</i>	means the owner or agent of an owner who has applied for a building permit under section 17 of the Building Act.
<i>building surveyor</i>	means a building surveyor registered in Victoria and includes a municipal building surveyor or delegate, private building surveyor, relevant building surveyor, body corporate registered building surveyor as defined in section 3(1) of the Building Act, consultant building surveyor, employee building surveyor, or nominee director of a registered body corporate building surveyor [section 171B(3) of the Building Act].
<i>building surveying services</i>	includes services or work of a building surveyor in performing functions as the relevant building surveyor or municipal building surveyor, or other services or work undertaken as a building surveyor including when acting as a consultant building surveyor.
<i>client</i>	when a building surveyor performs functions or provides services as the relevant building surveyor, means the applicant. when providing any other services as a building surveyor, means the person to whom a building surveyor gives advice or provides services but does not include an employer.

<i>conflict of interest</i>	includes circumstances where a building surveyor could be influenced or could reasonably be perceived to be influenced by a private or business interest when carrying out a statutory function or when required to act in the public interest. A conflict of interest may be actual, potential or perceived.
<i>confidential information</i>	includes any information identified as, or that could reasonably be expected to be considered as, confidential that is acquired by a building surveyor in the course of providing building surveying services.
<i>consultant building surveyor</i>	means a building surveyor that provides an expert report, opinion or assessment about a design, building work or a building for which they are not the relevant building surveyor whether or not that report, opinion or assessment may be used in legal proceedings and includes work done by building surveyors as employees.
<i>informed consent</i>	means consent given willingly by a party who may be affected by a conflict of interest, having shown the party understands the facts and implications of the conflict of interest including that the conflict of interest may affect the ability of the building surveyor to act fully in the public interest or the party affected by the conflict of interest.
<i>public interest</i>	includes, in the context of building work and buildings, public confidence in the built environment, occupant health, safety and amenity, and economic benefits associated with innovative, compliant and safe buildings. Acting in the public interest requires putting the public interest ahead of private interests and the interests of clients, colleagues and other practitioners.
<i>relevant parties</i>	include adjoining owners, emergency services, relevant authorities, local councils, reporting authorities, consultants, other building surveyors and building practitioners.

Acronyms

In this Code the following acronyms apply:

<i>NCC</i>	National Construction Code
<i>VBA</i>	Victorian Building Authority

CODE OF CONDUCT FOR BUILDING SURVEYORS

1 Act in accordance with the law and in the public interest

A building surveyor must act in accordance with the Building Act, Regulations and any other relevant laws, codes or standards operating in Victoria and the Commonwealth as applicable and in the public interest.

To meet this principle, you must:

1.1 Act in the public interest when providing building surveying services.

This includes:

- 1.1.1 Acting in ways that are consistent with the purposes and objectives of the Building Act and Regulations and the public interest.
- 1.1.2 Ensuring that when in doubt as to the possible interpretation of legislation, the NCC or standards, you prefer the interpretation that best serves the objectives of the legislation and the public interest, rather than your interests or that of an applicant, client or other practitioners.

Example of acting in the public interest:

When in doubt, for example, when assessing the rise in storey of a multi-storey residential building for the purposes of determining if domestic building insurance is required, you should always favour an interpretation that is in the public interest – in this case, the need for domestic building insurance to protect the rights of consumers who purchase sole occupancy units in that residential building.

Example of not acting in the public interest:

As a consultant building surveyor you propose a performance solution which will enable cost savings during construction but will cause increasing maintenance costs for future owners who are not involved at the construction stage. You do not raise these issues in your advice about the performance solution.

1.2 Act in a manner that engenders confidence in, and respect, for the building surveying profession.

This includes:

- 1.2.1 Acting within the context of the legislative framework and complying with relevant laws as applicable to you in your role as a building surveyor including, for example, the **Occupational Health and Safety Act 2004**, the Australian Consumer Law, planning laws and the **Local Government Act 1989**.
- 1.2.2 When acting as a relevant building surveyor or a municipal building surveyor, understanding and complying with the requirements of the **Independent Broad-based Anti-corruption Commission Act 2011**.
- 1.2.3 Ensuring you are aware of legislative and regulatory changes, reforms or other directions or decisions (for example, a Ministerial Guideline or Order) that could affect your statutory functions and how you provide building surveying services.

Note: This includes compliance with prescribed insurance under the Building Act and Regulations (including any Ministerial Order) when carrying out your statutory functions.

Examples of engendering confidence in and respect for the building surveying profession:

- *You are engaged by an owners' corporation as a consultant building surveyor to inspect and report on alleged defects in a five storey, 35 apartment building. You form the opinion that 80 per cent of the building is clad in aluminium composite panelling which you suspect has a 100 per cent polyethylene core. The fire indicator panel shows unresolved faults, the building has a single staircase which is not fire isolated and when inspecting inside sole occupancy units you observe that smoke detectors have*

been disconnected by occupants. The building is not sprinkler protected. You prepare an interim report as quickly as possible and advise your client that you have concerns for the safety of occupants and that if they do not provide your report to the VBA and the relevant municipal building surveyor without delay, you will be obliged to do so.

- *You have issued a building permit for a new single dwelling. The owner later tells you that the roof has been constructed to a greater height than shown on the building permit approved plans and they have applied for amended endorsed plans to the planning permit. It will take several months for the application for an amended planning permit to be determined and the roof has already been tiled but the on-site stormwater drainage system has yet to be connected to the legal point of discharge. You tell the owner the work contravenes the Building Act and issue them with a building order to stop work. However, you exempt the drainage work from the order to allow connection to the legal point of discharge as it is in the interests of safety and will prevent deterioration of the building or nuisance to nearby properties.*

1.3 Not engage in conduct that might bring the building surveying profession or the building and construction industry into disrepute.

This includes:

- 1.3.1 Supporting and upholding the reputation of building surveyors and the industry in general.
- 1.3.2 Not acting in a way that falls short of the standard of professional conduct expected by the profession.

Examples of conduct that would bring the building surveying profession into disrepute:

- *You allow another person to use your building surveying registration without carrying out the building surveying services yourself or adequately supervising these services to a professional standard.*
- *You are appointed to issue a building permit for a dwelling extension and on conducting a mandatory inspection you observe an existing swimming pool at the site with no barrier. You fail to make enquiries as to whether there is another relevant building surveyor appointed for the construction of a swimming pool barrier, or bring the matter to the attention of the municipal building surveyor or the VBA so that enforcement action can be considered.*
- *You become aware that building work for which you are appointed as the relevant building surveyor does not comply with the deemed to satisfy requirements of the NCC as documented in the building permit. You agree with the builder that you will treat the non-compliance as a performance solution and no rectification or amended design documents will be required. You take no steps to determine whether the owner is aware of the non-compliance or the decision not to require rectification or amended design documentation.*

2 Act with integrity, honesty, objectivity and impartiality

A building surveyor must act with integrity, honesty, objectivity and impartiality in all professional and business relationships and activities.

To meet this principle, you must:

2.1 Be open, fair and transparent in all your dealings as a building surveyor.

This includes:

- 2.1.1 Respecting others and acting appropriately and professionally in the course of providing building surveying services.
- 2.1.2 Providing applicants or clients to whom you charge fees, with unambiguous information about your terms for engagement, the fees for the engagement and the circumstances when additional fees may be charged. Where requested, also providing an itemised list of fees and charges.

***Note:** Schedule 2 of the Building Act provides that an application for a building or occupancy permit to a private building surveyor must be accompanied by the fees determined by the private building surveyor. This enables the private building surveyor to collect payment before assessing the building permit application and to collect any outstanding fees for additional services allowable under their fee arrangement before assessing the application for an occupancy permit. This is intended to enable independent decision making without fear of not getting paid. It also distinguishes the independent role of the relevant building surveyor from the role that other professionals might have on a project.*

Example of ensuring you are open, fair and transparent in your dealings with others:

An owner appoints you as the relevant building surveyor for the construction of a second storey on their Class 1a dwelling. They provide plans for three (3) bedrooms, a living area, two (2) bathrooms and a separate kitchen and entry with no connection to the existing ground floor dwelling part. You query the intended use and are told by the owner they plan to rent it out to students. You advise the owner that they must speak to their Council about the need for a planning permit and that a Class 1 building cannot be located above or below another dwelling or another Class of building, other than a private garage. The owner asks if they can add a lockable door to connect the existing ground and proposed first floor parts and have the work approved as an addition to the Class 1a dwelling and that they will sort out the rest later. You say no as the plans will need to show the building is to be used as a single Class 1a dwelling and also advise an occupancy permit can then only be issued for a single Class 1a dwelling. The owner applies to the VBA to have your appointment terminated. You provide the VBA with information about what has occurred and recommend that your appointment is not terminated.

2.2 Be polite, courteous, appropriate and professional in all your dealings as a building surveyor.

This includes:

- 2.2.1 Responding courteously and professionally to the VBA, clients and relevant parties including during a dispute and providing other parties with a fair opportunity to respond.
- 2.2.2 Informing other building surveyors of any matters that may affect them including if:
 - a dual appointment has occurred, or
 - a different building surveyor is appointed to issue a permit for building work at the site (for example, fit out work), when there is another building surveyor who issued the permit for the base building.

2.3 Not engage in fraudulent, misleading, dishonest, corrupt, criminal or improper conduct.

This includes:

2.3.1 Ensuring you act with honesty, integrity and promote adherence to strong ethical principles.

Example of failing to act with honesty and integrity:

You are investigated by the VBA about a building for which you were the relevant building surveyor. It is alleged that you approved the use of a product without considering evidence of suitability as required by the NCC. You present the VBA with a CodeMark certificate for the product that was current at the time the product was installed and say or imply that you relied on the certificate at the time when in fact you were not aware of the certificate and you had not had any regard to it at the relevant time.

2.3.2 Notifying the VBA within 14 days of any of the probity matters set out in the Building Act or Regulations, occurring.

Note: Sections 171D and 171E of the Building Act and regulation 263A of the Regulations set out personal and financial probity matters that require disclosure within 14 days of occurrence. These include, for example:

- a conviction or a finding of guilt (whether in Victoria or elsewhere) for fraud, dishonesty, drug trafficking or violence punishable by imprisonment for six months or more
- conviction or a finding of guilt of an offence under any law regulating building work or building practitioners
- suspension or cancellation of a registration or licence or other authorisation for any reason other than a failure to renew the same, and
- an insurer declines, cancels or imposes special conditions on professional indemnity insurance (or other indemnity insurance) for work as a building practitioner in Victoria or other state or territory.

2.3.3 Notifying the VBA where you have a reasonable suspicion that fraudulent practices or a significant departure from approved documentation has occurred.

Note: A significant departure from approved documentation would be one that could endanger the safety of occupants or the general public. For example, the use of a lower quality concrete which is not rated to sustain the required load.

Note: A suspicion would be reasonable when it is supported by evidence, even if the evidence is not conclusive. For example, falsified product data test sheets, unapproved changes to a building's structural design or product substitution could support a reasonable suspicion. Where a client or other building practitioner rectifies non-compliance raised by the building surveyor, this is not required to be reported to the regulator.

2.3.4 Ensuring you do not:

- (a) disclose confidential information obtained while providing building surveying services except where consent has been obtained for disclosure or there is a legal or professional duty to disclose the confidential information, or
- (b) use confidential information for your own, or someone else's advantage.

Examples of dishonest, misleading or improper conduct:

- You approve a mandatory stage of inspection when work that did not comply with the Building Act or Regulations was identified and that work has not been re-inspected or confirmed as having been completed after issuing a direction to fix to the builder.
- You receive a phone message from an adjoining owner complaining about overlooking and overshadowing to their property from a building under construction for which you have issued a building permit. You do not respond as you have a certificate from the

draftsperson saying that all siting requirements have been met. Two (2) weeks later the municipal building surveyor writes to you passing on a complaint from the same adjoining owner and later calls you to follow up on his letter. You tell the municipal building surveyor that you have reviewed the plans and they are compliant with siting requirements, and that you have spoken to the adjoining owner. You have not done either of these things because you choose to rely on the certificate that says the plans are compliant.

- *An owner applies to you for a building permit to construct a four (4) storey, fifteen (15) unit development with a basement carpark. The designer calls you asking whether he needs to include sprinklers in the basement. You send the designer a copy of a fire engineering report for a performance solution you approved on another job which provided for a basement not to have sprinklers.*

2.4 Not exert undue influence, intimidate, bully, harass or pressure any person.

This includes:

- 2.4.1 Not using your position to obtain an improper advantage in the exercise of your functions or when providing building surveying services.

Examples of using undue influence and improper conduct:

- *You are the relevant building surveyor for a three (3) storey, twelve (12) unit development. You have required protection work notices to be issued to adjoining owners. As part of the proposed protection work the builder intends to use a crane to bring building materials onto the site. An adjoining owner calls your office to ask about the proposed use of the crane over their home. The owner is worried about the safety of their family if building materials are dropped onto the home. You tell the adjoining owner that they have no choice but to accept the use of the crane and you do not advise them to seek their own advice on the matter.*
- *You refuse to issue an occupancy permit for a site that has met all requirements until you are paid fees not previously explained or agreed with the applicant.*

2.5 When performing statutory functions, ensure all decisions and resulting enforcement and actions are reasonable, fair and appropriate.

This includes:

- 2.5.1 Always taking action where non-compliance is found on a building site by considering whether it is appropriate to issue a direction to fix, notice or order, or referring a matter of danger to life or property to the municipal building surveyor to consider the issue of an emergency order.
- 2.5.2 As the municipal building surveyor, making sure you are proactive and take prompt enforcement action when you consider there is a danger to life or property in your local council area.
- 2.5.3 Making every effort to ensure that both the contents and service of, emergency orders, building notices, building orders, building orders to stop work and building orders for minor work are correct.

***Note:** Errors can cause the order to be unenforceable should the matter come before the courts or be referred to the VBA for further action.*

Examples of reasonable, fair and appropriate decisions:

- *You set a realistic amount for guarantees or bonds under section 22 of the Building Act (up to the maximum set in regulation 48 of the Regulations), to cover the cost of completing the work.*

***Note:** If you set an unrealistically low amount, the VBA may commence an investigation.*

- *You carry out a final inspection on a three (3) storey, eight (8) unit development and find various problems including that the smoke detection system failed the commissioning test done that morning. The developer is desperate to get the occupancy permit as settlements for the units are pending. The builder is desperate for the occupancy permit so that he can get paid. They ask you to issue the occupancy permit and promise to fix the smoke detection system in the next couple of weeks. You refuse. You determine that the building is not suitable for occupation. You issue a written direction to fix the non-compliances within seven (7) days.*
- *You are called to carry out a frame inspection for a new dwelling and discover that you were not called to inspect before the concrete pour for the slab. The builder offers to provide you with a statutory declaration saying that the steel and form work were compliant. You refuse the offer and instead issue a building order to stop work and require testing and x-rays of the slab to confirm compliance before allowing the work to continue.*
- *As the municipal building surveyor, you receive information about unsafe building work on a property in your local council area. You check council records and discover no building permit has been lodged. You immediately drive out to the property and find deep excavations along the boundary that pose a safety risk to the adjoining dwelling and its occupants. You issue an emergency order to the owner of the property to cease all excavations and to make safe the adjoining dwelling within 48 hours. You commence prosecution and/or refer the builder responsible for the excavations to the VBA for carrying out building work without a building permit.*

3 Perform competently and within the required level of expertise and experience

A building surveyor must have suitable skills, knowledge, experience and competence to provide building surveying services to a professional standard.

To meet this principle, you must:

3.1 Ensure that you do not perform any work that is outside your area of expertise or experience unless under the direct supervision of a building surveyor who holds the required expertise or experience.

This includes:

- 3.1.1 Providing building surveying services competently and within the requirements or conditions of your registration and capacity.
Note: If you are unclear as to whether you can carry out a function you should seek guidance from the VBA or your professional body.
- 3.1.2 Maintaining a level of competency that is commensurate with your level of registration and experience. Even if inexperienced, an appropriate level of competency is required.
- 3.1.3 Not misleading relevant parties or giving incorrect information about your skills, qualifications, and experience. This includes ensuring that you only advertise your services that are within the scope of your registration, skills, qualifications and experience.
- 3.1.4 Requiring that aspects of a design or performance solution that are complex and beyond your ability to substantively assess, are the subject of independent technical expertise or advice.
- 3.1.5 Where required, seeking technical expertise from appropriately qualified persons to assist you with your work.

Example of performing work outside your area of expertise or experience:

You have an unlimited building surveying registration and have only undertaken building surveying work for Class 1 and Class 10 buildings over the last ten (10) years. You have been approached to undertake work for a high-rise Class 2 building. While this may be within your registration, you have inadequate experience in more recent construction methods and complexity involved in a high-rise Class 2 building. You should refuse the engagement and undertake professional studies and training to upskill and increase your expertise in more complex constructions before accepting such an engagement.

3.2 Take reasonable steps to ensure that any reports or advice you rely on for work outside of your area of expertise or experience have been completed honestly, independently (as required), competently and to a professional standard by an appropriately qualified person.

This includes:

- 3.2.1 Assuring yourself that any report or advice you intend to rely on is prepared by an appropriately registered and qualified person and that it is independent (if required), reliable and accurate.
- 3.2.2 Where you are told by an applicant or client that a product has been tested or certified to an applicable standard, obtaining a copy of the test report or certification and confirming that the product was tested to, and passed, the standard relevant to the intended use of the product.
- 3.2.3 As the relevant building surveyor:
 - (a) keeping records of qualifications or otherwise documenting how you have determined that the person you will rely on is competent to issue the certificate or undertake the design or inspection
 - (b) ensuring the building permit clearly stipulates that any conditions or limitations included on a test, report or certificate for a product must be met and that due regard will be had to confirming compliance with conditions or limitations during the inspection of the work, and
 - (c) reviewing any certificate of compliance received to ensure it is accurate, applies to the appropriate inspection(s) or purpose for which it has been issued, and is signed by a prescribed person with relevant expertise.

Examples of inappropriate conduct:

- *You ask a structural engineer for a certificate for their inspection of steel framing. The certificate is received and filed without review. It is later found that the certificate is signed by a graduate engineer and refers to an inspection of footings only, and the certificate referenced a superseded standard.*
- *You allow the builder and engineer to organise inspections on structural matters between themselves and leave it to them to notify you at a later stage. You do not require all notifications at the completion of a mandatory stage to be made to you nor cause an inspection to be done in accordance with the Building Act. You do not ask about details of any inspections, if any problems were identified by the engineer, if the builder and engineer agreed to variations to the building work, or if any re-inspections were conducted. Instead you just ask for and accept a certificate of compliance from the engineer just prior to issuing the occupancy permit.*
- *You do not check that the Nationwide Housing Energy Rating Scheme (NatHERS) certificate for energy assessment provided for a single Class 1a or Class 2 building has been carried out by an energy assessor with suitable qualifications and experience in the use of the NatHERS software or that the current approved software is being used.*

3.3 Exercise due care, skill and diligence at all times.**This includes:**

- 3.3.1 Only accepting appointments to be the relevant building surveyor for as many projects as you can properly review and apply the required attention.
- 3.3.2 Considering all relevant facts, evidence and circumstances before making any decisions and basing your decisions on reasonable judgment.

Example of exercising due care, skill and diligence:

Where non-compliance is found on a building site you must determine as the relevant building surveyor whether it is appropriate to issue a direction to fix, notice or order, or referring a matter of danger to life or property to the local municipal building surveyor to consider the issuance of an emergency order.

3.4 Continue to maintain and update your professional competencies, including keeping your knowledge of current legislation, best practices and effective processes and procedures updated.**This includes:**

- 3.4.1 Undertaking education or continuing professional development activities to keep informed of all relevant developments in building design, legislative changes and industry practices.

3.5 When performing statutory functions, ensure any person you engage or employ to assist you has the necessary skills, knowledge and experience and is appropriately qualified and performs their work competently and to a professional standard including meeting requirements of this Code as applicable.**This includes:**

- 3.5.1 Making sure your employees or other persons engaged to assist in undertaking statutory functions have the necessary skills, knowledge and experience and hold appropriate qualifications for the work they undertake on your behalf.
- 3.5.2 Having systems of audit and quality control in place to ensure all work is performed to a professional standard and meets the requirements of this Code as applicable.

***Note:** Under section 128 of the Building Act, a municipal or private building surveyor is not liable for anything done or omitted to be done in 'good faith' in reliance on a certificate given by a registered building practitioner under section 238 of the Building Act. Good faith does not mean blind acceptance. The building surveyor must review the certificate and consider whether the person providing it had the skills and experience to do so.*

Examples of inappropriate conduct:

- *Not adequately or appropriately supervising unregistered staff who may work for you.*
- *Not adequately ascertaining the qualifications, registration and experience of a building inspector who is inspecting building work on your behalf.*
- *Accepting a statutory declaration in lieu of a mandatory inspection.*

3.6 Have effective procedures in place to ensure your business or if in a Council, the building section you manage, are run competently including:

- (a) **effective and appropriate supervision of your employees or contractors**
- (b) **for body corporate building surveyors, appropriate delegations to the designated building surveyor relative to their experience, expertise, qualifications and registration, or**
- (c) **adequate resources to enable proper performance of your functions.**

This includes:

- 3.6.1 If managing a Council's building section, a company, partnership or firm you should have effective processes in place to manage relevant parties, your workload and priorities, and any enforcement action.
- 3.6.2 As a municipal building surveyor, where applicable for clause 3.6(a), effectively supervising and approving the work of your delegates, or raising concerns to Council management as appropriate about any lack of resources in a timely manner.

3.7 Have effective procedures in place to ensure the completion of your work in case of an inability to practice due to reasons such as absence, incapacity, registration lapsing, suspension or retirement.

This includes:

- 3.7.1 As a private building surveyor, having arrangements in place to allow an applicant to seamlessly transfer their building permit to another building surveyor in case of your inability to practice for example, because you have a prolonged illness or you are due to retire or any other reason.

4 Act independently

A building surveyor must act independently when providing building surveying services.

To meet this principle, you must:

4.1 Avoid situations that a reasonable person may conclude has or could compromise your impartiality or professional judgement.

This includes:

- 4.1.1 Ensuring you are free from bias and without prejudice or favour due to an affiliation, disposition or any material interest.
- 4.1.2 Not being influenced or controlled by others in matters of opinion or conduct other than where you act on the expert opinion of suitably qualified building practitioners.
- 4.1.3 When acting as an expert in a court or tribunal, complying with the obligations imposed by law on expert witnesses including providing impartial advice to the decision maker to assist them to understand technical matters on which you hold expertise.
- 4.1.4 Not being involved in the issuing of protection work notices or disputes between parties about protection work other than to perform your statutory functions as the relevant building surveyor during the process. If your decision is the subject of an appeal, you should attend the appeal if required and represent yourself, and not appear on behalf of the applicant or any relevant parties.
- 4.1.5 Only participating in applications for report and consent to the extent required to perform your functions as the relevant building surveyor. You should not advocate on behalf of or promote a particular position of the applicant directly with the reporting authority or if the matter is the subject of an appeal, appear on behalf of the applicant at the appeal.
- 4.1.6 Not entering into consultancy or service agreements that would impose obligations inconsistent with your functions as the relevant building surveyor or that would compromise your ability to act independently.
- 4.1.7 Not agreeing to novation of your contract with the owner or developer to a builder or other party before or during construction. The contract for the building surveying services provided by the relevant building surveyor must be between the applicant and the relevant building surveyor.

Examples of what may be, or perceived to compromise independence:

- *Having an office in the premises of a builder or developer for which you are performing work is likely to compromise your independence both in fact and appearance.*
- *Where you are the relevant building surveyor, if an adjoining owner agrees to protection work to their property, you must not assume that the proposed protection work is appropriate. You must review the proposed protection work and:*
 - o *be satisfied the work is actually protection work*
 - o *be satisfied the work is appropriate to protect the adjoining property, and*
 - o *decide on whether to approve or refuse the building permit.*
- *Wearing shirts or caps with the logo of a building company that is the builder on projects for which you or your company are the relevant building surveyor.*
- *Accepting gifts or hospitality (other than token gifts or hospitality valued at less than \$50) from builders, designers or suppliers who are often engaged on projects for which you are the relevant building surveyor. As best practice, you may wish to keep a register of gifts or hospitality so that you can record all gifts or hospitality offered to you, your firm or any of your employees.*

Note: The above example is based on the Victorian Public Service Code of Conduct which sets a monetary threshold for reporting gifts and benefits at \$50 and provides for the keeping of a gifts and hospitality register.

4.2 Not participate in or give advice on the development of designs or performance solutions for proposed building work before or after accepting an engagement to be the relevant building surveyor for that building work.

This includes:

- 4.2.1 Maintaining a high degree of separation and objectivity from the design process and the development of design or performance solutions, and not suggesting design or performance solutions.
- 4.2.2 Determining through open and frank discussions about your role when you are first contacted, whether the potential client wishes to engage you to:
 - (a) provide consultancy services about compliance with the NCC in which case you or anyone from your firm cannot be appointed as the relevant building surveyor, or
 - (b) be the relevant building surveyor in which case the potential client becomes the applicant and will need to seek design advice from another building surveying firm.

Note: If you have been or are likely to be appointed the relevant building surveyor you can provide advice on requirements in the Building Act, the Regulations or the NCC only, leaving the design team to make decisions about how their design will achieve compliance. Advice on deemed to satisfy solutions can be given and the concept of performance solutions can be discussed but the actual preparation of a performance solution and any supporting documents, including choosing who undertakes that task, must be independent of the relevant building surveyor.

- 4.2.3 If you have already been involved in the design process or provided advice on design solutions on a project, you must not accept appointment as the relevant building surveyor for that project.

Note: Section 79(1) of the Building Act makes it an offence to carry out any functions set out in sections 76 or 77 if the private building surveyor or a related person:

- (a) prepared the design of the building or building work, or
 - (b) is, or within the prescribed period was (which is 12 months), employed or engaged by the person or body which prepared the design of the building or building work other than the appointment to carry out a function under section 76, or
 - (c) has a direct or indirect pecuniary interest in the body which prepared the design of the building or building work.
- 4.2.4 Only assessing and approving performance solutions prepared by others in accordance with the NCC, and where you hold the appropriate qualifications for the assessment and approval of performance solutions.
- 4.2.5 Advertising or promoting your services clearly:
 - (a) You should state clearly in any promotional or advertising material that building surveyors from your office cannot act as a consultant building surveyor and a relevant building surveyor on the same project or for the same developer on different projects.
 - (b) If you or your business intends to act as a consultant building surveyor and as a relevant building surveyor on different projects, you should clearly distinguish between the services you can provide as a consultant building surveyor and those that you can provide if appointed as the relevant building surveyor.

- 4.2.6 Not providing a third-party review of a design for building work (for example, a compliance certificate under section 238 of the Building Act) for which another building surveyor in your office is the relevant building surveyor.
- 4.2.7 When acting as the relevant building surveyor, not arranging for design services to be performed on behalf of the applicant. If an applicant requires advice from a specialist designer such as a fire safety engineer, you should not arrange for the design to be prepared in your office or sub-contract the services of a designer.

***Note:** However, you may provide the applicant with the names and details of a range of people not employed by your office that you are aware could provide them with the required design services.*

Examples of inappropriate conduct:

- *You are involved in the initial discussions as a consultant to provide design advice to the design team. You attend design meetings over several months as planning approvals are obtained and tenders for builders are prepared. A building surveyor from your office then accepts an appointment as the relevant building surveyor to issue the building permit for that same project.*
- *A building surveyor from your office is the relevant building surveyor on a project. You are a building surveyor and a registered fire safety engineer. You prepare a fire engineering design with performance solutions relating to fire performance requirements for the project and the developer is charged under a separate contract for your work. The relevant building surveyor approves the performance solution you have prepared.*
- *Your website says 'as the relevant building surveyor we can provide you with advice about cost saving design, negotiating with fire authorities and councils and managing protection work disputes'.*

5 Avoid conflicts of interest

In addition to statutory obligations, a building surveyor must take reasonable steps to avoid situations that could be an actual, perceived or potential conflict of interest.

Note: Section 79 of the Building Act and regulation 265(b) of the Regulations also deal with conflicts of interest.

To meet this principle, you must:

5.1 Identify and manage any conflict of interest or significant risk of a conflict of interest.

This includes:

- 5.1.1 Having policies and procedures in place to detect potential conflicts of interest, for example, the ability to search your records to ascertain whether your firm or any employee has been engaged or employed by the person or body preparing the design for the work for which you may be appointed the relevant building surveyor.

Note: A conflict of interest may be actual, potential or perceived. The perception of whether a conflict of interest exists is a fundamental consideration when determining if a conflict exists. A conflict may exist where a reasonable and informed person believes that such a conflict exists. It may be necessary to avoid a conflict of interest even if this is only perceived as a conflict of interest, so as to maintain public confidence in your integrity as a building surveyor.

Examples of conduct that *will* give rise to a conflict of interest:

- *Where you have a family member who is a registered domestic builder and they are appointed to work on a project for which you have been appointed the relevant building surveyor.*
- *Where you are a director of a company that is engaged in building work, such as drafting or engineering, and an application is made to you to be the relevant building surveyor for a project which is designed by that company.*

Examples of conduct that *could* give rise to a conflict of interest:

- *If you offer to be a consultant building surveyor to a developer when you are already acting as the relevant building surveyor for another building project by the same developer.*
- *Where a builder or developer seeks to influence you to make decisions in their favour for example, by threatening to take their business elsewhere if you do not agree.*
- *Where a developer 'promises' to provide you with the next job if you issue an occupancy permit even though the building may not be suitable for occupation.*

- 5.1.2 Having policies and procedures in place to manage and record potential conflicts of interest, and how you have addressed them.

- 5.1.3 As a municipal building surveyor, managing conflict by advising the Chief Executive Officer or other appropriate person, removing yourself from the situation and if possible, arranging for an alternative staff member or contractor to provide the functions.

Examples of conduct where there is a conflict of interest or perceived conflict of interest:

- *Where you attend a corporate box of a builder engaged on a project for which you are the relevant building surveyor to watch the Australian Open tennis without first seeking the informed consent of the applicant on that project.*
- *You issue a building permit for building work for a not-for-profit organisation (such as a charity) when you are an ex-officio member of that organisation.*

5.2 Avoid conflicts of interest and not provide building surveying services where there is a conflict of interest or a significant risk of a conflict of interest.

This includes:

- 5.2.1 Withdrawing from your engagement to provide building surveying services if a reasonable person may conclude there is a real risk your impartiality or professional judgement has been influenced by the conflict of interest.
- 5.2.2 Not accepting the appointment or, if already appointed, not continuing to act as the relevant building surveyor if this is a potential contravention of section 79 of the Building Act.

***Note:** Contraventions of section 79 of the Building Act are an offence and cannot be ignored. Often the persons most affected by the conflict of interest are the public or end users of the building. As they cannot provide informed consent, the conflict must be avoided.*

In limited circumstances, where there is a conflict of interest and section 79 of the Building Act has not been contravened, you must inform your client in writing (regulation 265(b) of the Regulations) and may seek their informed consent to your continued engagement.

- 5.2.3 Immediately informing your client in writing and withdrawing from providing building surveying services if you are in contravention of section 79 of the Building Act or you reasonably believe there is a conflict of interest (not covered by section 79 of the Building Act) that cannot be managed.

6 Document and maintain records

A building surveyor must document and keep a record of all relevant information collected in the course of providing building surveying services and any reasons for a decision made as is reasonably required or expected.

To meet this principle, you must:

6.1 Ensure all advice, opinions, decisions and actions (such as enforcement action) are reasonably supported by appropriate documentation including findings of fact and references to evidence or materials relied on.

This includes:

- 6.1.1 Keeping adequate records, that is, records that are enough to comply with any requests for information as part of a VBA audit or investigation.
- 6.1.2 Considering that some or all records collected in the course of providing building surveying services may need to be provided to third parties as part of future regulatory or legal processes.
- 6.1.3 As a relevant building surveyor, keeping records for ten (10) years after the occupancy permit or certificate of final inspection is issued.
- 6.1.4 As a municipal building surveyor, complying with your council's relevant record keeping policies and procedures and documenting your reasons for decisions.

Examples of documents to be retained include (but are not limited to):

- *agreements and records of instructions and meetings*
- *correspondence*
- *notes of any inspections of the building or building work or site visits (with dates and results of inspections)*
- *product specifications, information or data*
- *product testing results*
- *calculations*
- *records of decisions made and reasons (including those about conflicts of interest)*
- *copies of independent reports or advice, and certificates of compliance*
- *any audio or visual recordings, photographs or pictures of inspections*
- *financial transactions*
- *certificates for electrical safety, plumbing compliance etc.*
- *journals, diaries, graphs, plans, drawings or the like.*

Examples of documenting reasons for advice, opinions or decisions include:

- *The findings of fact, for example if there has been a reliance on test results.*
- *Any references to evidence or any other materials that were relied on, for example expert reports, test results, certificates of accreditation, Certificates of Electrical Safety or assessment methods.*
- *As a relevant building surveyor when relying on a certificate of compliance from a competent person, record your justification that the certificate was compliant and that you consider the person providing the certificate to be competent.*
- *The actual reasons to justify the advice, opinion or decision made.*

-
- 6.2 Not destroy or threaten to destroy records except where authorised by law to do so.**
 - 6.3 Ensure all copies of permits and documents required under the Building Act and the Regulations are provided to the relevant council, the VBA or reporting authority (including WorkSafe, Energy Safe Victoria, Consumer Affairs Victoria or the Australian Consumer and Competition Commission) given such materials become public records relevant to the subject property.**
 - 6.4 On transfer of your functions as a private building surveyor under the Building Act or in circumstances where the VBA has consented to the termination of your appointment and a new building surveyor is appointed, ensure all relevant documentation (digital or hard copy) is provided to the new building surveyor within a reasonable time or as otherwise directed by the VBA.**

7 Communicate promptly and effectively

A building surveyor must communicate promptly and effectively with their client, the VBA and relevant parties.

Note: You may need to consider the context of how you communicate promptly and effectively when taking enforcement action.

To meet this principle, you must:

7.1 Comply with a reasonable request of a client, the VBA or relevant parties (including local government, fire authorities, WorkSafe, Energy Safe Victoria, Consumer Affairs Victoria or the Australian Consumer and Competition Commission).

This includes:

- 7.1.1 Having a system for receiving and managing enquiries about projects for which you are the relevant building surveyor, a consultant building surveyor, or municipal building surveyor.
- 7.1.2 Taking reasonable steps to communicate promptly where required.
- 7.1.3 Providing clear and concise information and outlining your expectations or any other expectations (as appropriate) when requested.
- 7.1.4 Ensuring that you state clearly what you require to be provided or what actions you require to be undertaken.
- 7.1.5 Cooperating with the VBA when it seeks documents or information to inform its audits, investigations or enforcement action.

Examples of inappropriate conduct include:

- *Not keeping a client, the VBA or relevant parties updated on the progress or status of an issue that you are dealing with them on.*
- *Not responding to correspondence from a client, the VBA or relevant parties promptly or within a reasonable timeframe.*
- *Failing to re-direct a complainant to another government body or agency if it is appropriate to do so.*
- *Failing to provide the VBA with copies of directions, notices or orders issued by the building surveyor promptly on lawful request.*

7.2 Engage with your clients, the VBA, and relevant parties in a cooperative manner.

This includes:

- 7.2.1 Being responsive to reasonable and lawful requests for information or documents.
- 7.2.2 Avoiding placing unreasonable or unjustifiable demands on others.

7.3 Keep your clients or relevant parties informed of any changes to agreed timeframes that are within your control, your availability to carry out your functions or work and any professional costs associated with changes to scope.

8 Provide a complaint handling process and address issues of non-compliance

A building surveyor must take reasonable steps to minimise the potential for complaints and have a process in place to address problems or issues of non-compliance brought to their attention as soon as possible.

To meet this principle, you must:

8.1 Have a complaints management process for the handling of complaints that explains the steps you will take to address and resolve a complaint.

This includes:

- 8.1.1 Considering existing publicly available guidance materials or other material such as the *Australian Standard: Customer satisfaction – Guidelines for complaints handling in organisations* to assist you in developing a complaint handling process.
- 8.1.2 Ensuring that you keep records of any complaints you have received, and your actions taken to resolve the complaint.
- 8.1.3 Responding to complaints within a reasonable time and in a respectful manner.
- 8.1.4 As a relevant building surveyor, providing your complaints management process to potential and current applicants, clients or relevant parties on request and including it on your website.

Note: A municipal building surveyor is required to follow existing Council policies and procedures in place to deal with complaints.

Examples of what to include in your complaints process:

- *Providing details on how a person can make a complaint.*
- *Detailing how you will resolve a complaint, what actions will be taken and the likely timeframe in which the complaint may be considered.*
- *Providing information to relevant parties as to where they may seek additional assistance or information to resolve their complaint.*

8.2 When performing statutory functions, have a process in place to deal with issues of non-compliance raised by applicants, clients or relevant parties.

This includes:

- 8.2.1 Enabling relevant parties (for example, adjoining owners) to raise concerns about non-compliant building work (such as a lack of protection work).

Note: You must not act as an arbiter where there is disagreement between the owner and an adjoining owner about protection work. If there is a dispute between the parties, you should refer the parties to Part 10 of the Building Act regarding their appeal rights and ability to have a dispute considered by the Building Appeals Board.

ive

The *Victoria Government Gazette* is published by IVE Group Limited with the authority of the Government Printer for the State of Victoria

© State of Victoria 2020

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act.

Address all enquiries to the Government Printer for the State of Victoria

Level 2, 1 Macarthur Street

Melbourne 3002

Victoria Australia

How To Order

**Retail &
Mail Sales****Victoria Government Gazette**

Ground Floor, Building 8,
658 Church Street,
Richmond 3121

DX 106 Melbourne

**Telephone**

(03) 8523 4601

**Fax**

(03) 9600 0478

email

gazette@ivegroup.com.au

Price Code B