

# Codes of Conduct

VBA Protocol for drafting and approval

DRAFT

## **Acknowledgement**

This document is owned by the Victorian Building Authority (**VBA**) and has been developed by it following consultation with [insert relevant parties consulted]. It was approved by the VBA Board on {date} 2016. The VBA reserves the right to make such amendments or revisions to this document from time to time as it considers appropriate, in its absolute discretion.

## **Disclaimer**

The information provided in this publication should be taken as a guide only and not relied upon. This document does not in any way bind the VBA or limit the matters to which it may have regard in deciding whether it will approve any Code of Conduct (Code) submitted for its approval under Division 2 of Part 11 of the *Building Act 1993* (Vic) (**Building Act**).

## 1. Summary

This Protocol has been designed to assist building industry groups or professional associations and other groups purporting to represent a category or class of building practitioners to draft Codes of Conduct (**Codes**) for approval by the Victorian Building Authority (**VBA**) under section 177(1) of *Building Act 1993 (Act)*.

Where more than one professional association or industry group represents the interests of a category or class of building practitioners, the VBA encourages those groups or associations to work together to ensure a unified approach to the Code is adopted by the relevant category or class of building practitioners.

The document contains guidance for industry groups or professional associations wishing to submit a Code for a class or category of building practitioners for the VBA's approval, by detailing:

- (a) the minimum required content for Codes which the VBA expects to see in any Code;
- (b) the VBA's approvals process for Codes;
- (c) criteria which the VBA will have regard to in determining whether it will approve a Code; and
- (d) the process for gazettal of a Code after approval has been granted.

A checklist has also been provided to assist industry groups or professional associations in confirming that any Code submitted to the VBA for approval has addressed the VBA's assessment criteria.

This Protocol is also intended as a general guide to consumers, as it details the minimum expectations in terms of conduct which the VBA expects registered building practitioners (**RBP**s) to meet when undertaking their daily business activities.

The VBA is available to provide guidance on Codes at any stage during a Codes development and approval process if industry groups or professional associations wish to submit a Code for its approval on behalf of a class or category of building practitioners. The VBA encourages that its guidance be sought as early as possible in the drafting process.

It should be noted that the involvement by the VBA in the drafting process of a Code will not guarantee its approval by the VBA, and that the VBA at all times reserves absolute discretion in deciding whether to approve any particular Code.

### Version control

Version	Date	Notes
V.1	04/11/16	Final Draft for Public Consultation

## Table of contents

1.	Summary.....	3
	Version control.....	3
2.	Background.....	5
3.	Effect of a Code.....	5
4.	Preparation of a Code.....	5
5.	Content of Codes.....	5
6.	Guide to drafting a Code– General provisions.....	6
	6.1 Preamble.....	6
	6.2 Background/Application/Scope.....	6
	6.3 Objectives.....	6
	6.4 Definitions.....	6
	6.5 Acronyms.....	7
	6.6 Substantive Code content – General requirements.....	7
	6.10 Referencing other documents to be complied with in a Code.....	8
	6.12 Code review.....	8
	6.14 Compliance monitoring mechanisms.....	8
	6.15 Provisions for public awareness.....	8
	6.16 Provisions for industry training.....	8
7.	Guide to drafting a Code – Specific provisions.....	9
	7.1 Application.....	9
	7.2 Obligations.....	9
	7.2.1 Compliance with legal obligations.....	9
	7.2.2 Acting in the public interest.....	9
	7.2.3 Honesty, integrity and conflicts of interest.....	10
	7.2.4 Confidentiality and Privacy obligations.....	10
	7.2.5 Cooperation and dispute resolution.....	11
	7.2.6 Competence.....	11
	7.2.7 Reputation of the profession.....	12
	7.2.8 Behaviour towards other members of the building industry.....	12
	7.2.9 Behaviour toward clients.....	13
	7.2.10 Collusive tendering and uncompetitive behavior.....	13
	7.2.11 Fees and Payments.....	13
8.	Victorian Building Authority – Approval Process.....	14
	8.1 Submitting a Code for approval.....	14
	8.2 What the VBA will consider.....	14
	8.3 Once Code is approved.....	14
	Appendix – Checklist for Code authors.....	15

## 2. Background

On 19 April 2016, the Parliament of Victoria passed the *Building Legislation Amendment (Consumer Protection) Act 2016 (Vic) (Amendment Act)*. One of the purposes of the Amendment Act was to enhance consumer protection in relation to domestic building work by improving the regulation of RBPs.

To this end, the Amendment Act changes the Building Act (Division 2 of Part 11, sections 177, 177A-177D) to enable the VBA to approve Codes for categories or classes of RBP.

## 3. Effect of a Code

An approved Code establishes a binding standard of behavior and professional conduct for RBPs in a particular category or class.

A RBP must comply with a Code that applies to their category or class of registration, as a breach of the Code will be grounds for the VBA to take disciplinary action against a RBP.

## 4. Preparation of a Code

Under the legislative reforms introduced in the Amending Act, the VBA may develop a Code, or an organisation representing RBPs may prepare and submit a Code to the VBA for approval.

The VBA may make changes to a Code submitted by an organisation representing a class or category of RBPs, but it must consult with that organisation before doing so.

If the VBA approves a Code, it takes effect under the Building Act and is binding on all RBPs in that class or category.

## 5. Content of Codes

In the second reading speech before the Amending Act was passed, the Honorable Richard Wynne, Minister for Planning, stated that Codes of Conduct would likely address the following areas:

- Acting in the public interest;
- Complying with legislative requirements;
- Avoiding conflicts of interest;
- Acting independently; and
- Not performing functions outside competence or areas of expertise.

In addition, the VBA, when considering any Code submitted for its approval will also ensure that the Code is consistent with, and aids in achieving the VBA's functions as outlined in section 197 of the Building Act.

## 6. Guide to drafting a Code– General provisions

The following sections provide guidance as to the minimum content that the VBA expects a Code to contain.

Building industry groups and associations wishing to submit a Code for the VBA's approval on behalf of a class of RBPs are encouraged to utilise the checklist in Appendix 1 prior to submitting their Code for approval to ensure that at a minimum, all required content has been included.

### 6.1 Preamble

Although the VBA does not require Codes to contain a foreword, some industry groups or associations may choose to include one which outlines the group's or association's commitment to Code objectives, the membership that the group or association represents or similar matters.

### 6.2 Background/Application/Scope

A Code should contain a brief background statement, which sets out the statutory and factual context for the Code.

This section should also include the name of the industry group or association that is initiating and administering the Code and detail the category or class of building practitioners that the Code, once approved, will apply to.

The industry group or association that will become the administrator of the Code (once approved) should also briefly outline how:

- it intends to implement the Code across all building practitioners falling within a particular class or category;
- its role in relation to complaints handling, compliance monitoring; and
- how it will address non-compliance with the Code.

This section must also contain a statement that the Code imposes binding obligations on RBPs in a relevant category or class of building practitioners, and that breaches of these obligations can have significant consequences for the RBP, including disciplinary action being taken against them by the VBA.

### 6.3 Objectives

The Code should set out its objectives. This section should outline what the Code is intended to address and what the Code aims to achieve.

The VBA is of the view that this section will be a critical part of the Code, as RBPs must have certainty in terms of what standards of behavior they will be expected to comply with and why that behavior is considered appropriate and essential.

For example, the primary objective of a Code will be to enhance consumer confidence in a particular class or category of building practitioners, by clearly stating the expected standards of behavior for RBPs in the relevant class or category in Victoria.

### 6.4 Definitions

The Code should set out its defined terms in a separate section for ease of reference. Definitions should be written clearly and simply to explain the meaning of complex, legal or frequently used terms in the Code.

## 6.5 Acronyms

All acronyms used in the Code should be listed and a full description of the acronym provided in a separate section at the start of the document.

## 6.6 Substantive Code content – General requirements

The sections below outline in greater detail the VBA's expectations in terms of how obligations and rules contained in the Code should be drafted.

Building industry groups or associations should consider the relevance of each section to the class or category of RBPs on whose behalf they wish to submit a Code for VBA approval.

In general, RBPs should ensure that any obligations or rules in the proposed Code meet the following criteria:

- The rules are written in concise, plain English. Plain English means:
  - Using short sentences
  - Using active voice
  - Using the present tense
  - Using short, simple words where possible
  - Avoiding the use of jargon
- The Code should have a logical structure. It should be broken down into sections and organised by headings that concisely explain the content of the relevant section.
- Pictorial references to documents or guidelines should not be used to ensure Codes do not need to be updated when those documents are amended.
- Rules should be drafted in 'mandatory terms', that is use 'must' instead of 'should' or 'may'.
- Good drafting practice means that wherever possible, each rule should be contained in a separate clause or paragraph.
- Rules should place a clear obligation on RBPs to comply. For example:
  - Example of unenforceable rule: "A domestic builder should ensure that information required after the signing of a contract is delivered in a timely fashion"
  - Example of enforceable rule: "A domestic builder must provide information required after the signing of a contract within 3 business days of the agreement being signed"
- Rules must clearly relate to obligations on the RBPs under, and promote the objectives of, the Building Act.
- The rules should correspond to and demonstrate how the Code's objectives will be achieved.
- The rules should clearly articulate what responsibilities the RBPs has in relation to any subcontracting arrangements.
- Codes must not attempt in any way to limit a RBPs responsibilities under the Building Act or any other legislation or at general law. The Code exists to protect the interests of the public and promote the standing, trust and professionalism of building practitioners in the relevant class or category, not to limit the liability or legal obligations of RBPs.

## **6.7 Referencing other documents to be complied with in a Code**

As far as possible, Codes should be stand-alone documents. This means that they should be self-contained and generally not refer to other documents, including other codes.

## **6.8 Code review**

The VBA wants to encourage RBPs to continuously improve their practices and evaluate the effectiveness of the relevant Code in terms of shaping desired behavior amongst practitioners in the class or category.

A Code must therefore state that a review of the Code will be undertaken as required from time to time but at least once every three years to ensure that the Code content remains relevant to RBPs.

The VBA intends releasing guidance to industry groups and professional associations covering classes or categories of building practitioners about the scope and nature of these semi-regular reviews.

## **6.9 Compliance monitoring mechanisms**

It is good practice for an industry group or professional association for a particular class or category of building practitioners to monitor compliance and adherence to the Code's objectives by practitioners.

Industry groups or associations representing a particular class or category of building practitioners must indicate how they intend monitoring compliance with their Code in the Code.

## **6.10 Provisions for public awareness**

Public awareness is critical to achieving the objectives of Codes and the Amending Act in terms of consumer protection.

The Code must therefore be made publicly available by the industry group or association and will be published on the VBA's website. The Code must reflect this.

## **6.11 Provisions for industry training**

At the time of submitting a Code for VBA approval, industry groups or associations representing a category or class of building practitioners must outline to the VBA how they propose to raise awareness amongst the relevant class of building practitioners of the requirements outlined in the Code and the Code's objectives, to encourage compliance.

## 7. Guide to drafting a Code – Specific provisions

The sections below provide specific guidance to industry groups and associations wishing to submit a Code for VBA approval on behalf of a category or class of building practitioners on the minimum obligations and subject matters which the VBA expects a Code to cover.

### 7.1 Application

The Code must clearly set out the class or category of registered building practitioner to which it applies. The Code must indicate that compliance by the class or category of building practitioners covered is mandatory, and that breach of these obligations can have serious consequences for the practitioner.<sup>1</sup>

### 7.2 Obligations

It is expected that a Code will impose a range of different types of obligation. Some of these obligations are generic; others are more specific to the particular context or class of building practitioners. The obligations should be rationally connected to the Code's objectives.

Set out below are the types of obligations which for the VBA expects to see in a Code applicable to a particular class or category of building practitioners.

#### 7.2.1 Compliance with legal obligations

The Code must require a RBP to comply with all applicable legal obligations under the Building Act, other legislation and at law.

This obligation might extend to:

- all relevant building and other legislation, including regulations;
- court and tribunal orders, directions and decisions;
- common law agreements between an employer and employee; and
- enterprise agreements and awards.

#### 7.2.2 Acting in the public interest

The Code must require RBPs, when undertaking their professional functions, to act in the public interest.

A Code should provide guidance as to what is meant by the 'public interest' in the context of a RBP carrying out their work in a lawful and professional manner. This inclusion will promote the standing of building practitioners in the relevant category or class within the Victorian Community.

The section will also protect the safety of the Victorian public generally rather than for the RBP's own private or commercial interest.

The objectives of the Building Act could be used to give content to the 'public interest' in this context. For the purposes of the Building Act, the 'public interest' consists in, among other things:

- the safety and health of people who use buildings;

---

<sup>1</sup> Section 178 of the Building Act.

- the amenity of buildings;
- the adoption and efficient application of national building standards;
- the cost effective construction and maintenance of buildings;
- the construction of environmentally and energy efficient buildings; and
- an effective and competitive building industry.

### 7.2.3 Honesty, integrity and conflicts of interest

The Code must require the relevant class or category of RBPs to act with honesty and integrity, and to avoid and manage conflicts of interest appropriately.

These obligations tend to have the following content:

- a RBP must not engage in any fraudulent, dishonest or corrupt conduct or venture;
- a RBP must act fairly and honestly with potential clients, employees, subcontractors and competitors, which includes that all communications with potential or actual clients must be courteous and clearly detail what services the client will receive for the fees payable to the RBP;
- a RBP must not make statements or provide information that they know or ought reasonably to have known are false or misleading; and
- a RBP must avoid and manage actual and perceived conflicts of interest .

With respect to conflicts of interest, a Code should detail as to what constitutes a conflict of interest and when a conflict of interest prohibits a practitioner from acting versus circumstances in which appropriate measure for managing the conflict of interest can be implemented and what this requires.

In addition to general duties of honesty and integrity, the Code could require building practitioners to promote their services in an honest and reasonable way. This obligation could include the following elements:

- a RBP must promote their services, qualifications and experience in an accurate and fair manner, which is not misleading or deceptive;
- a RBP must include their registration number in any advertising materials;
- a RBP must attribute credit and responsibility for work honestly, and not permit their name to be used in relation to any work to misleadingly imply credit or responsibility for it; and
- a RBP must not hold out, or authorise the holding out, as a RBP of someone who is not a RBP.

### 7.2.4 Confidentiality and Privacy obligations

The Code must require RBPs to observe their duties of confidentiality and privacy. There are several possible elements to this obligation.

First, the Code could provide that a RBP must not use or disclose confidential information obtained in the course of their work for a client for their personal or a related party's benefit. The Code should set out exceptions to this general duty, including disclosure with the client's free and informed consent, and disclosure authorised or required by law.

Second, the Code could require practitioners to maintain adequate practices and procedures to discharge their duties under the privacy legislation and their confidentiality obligations. This might include having in place adequate physical and electronic security systems to safeguard clients' records and personal information.

### 7.2.5 Cooperation and dispute resolution

The Code must require RBPs to adopt a cooperative, conciliatory approach to dispute resolution.

This obligation could have any of the following elements:

- RBPs must cooperate and communicate with all relevant parties, to enable all parties to fulfil their contractual obligations;
- RBPs must respond promptly to requests for advice and information from a client or another practitioner involved in a project;
- RBPs must make appropriate endeavours to minimise the potential for, and resolve problems or disputes with their clients;
- RBPs must establish a written procedure for timely and respectful handling of complaints with a view to achieving resolution of the complaint as quickly as possible and without resorting to litigation wherever possible; or
- A commitment to handle and resolve complaints in accordance with the relevant Australian Standard on Complaint Handling.

### 7.2.6 Competence

The Code must require RBPs to perform work competently and to the highest professional standard.

The Code must also state that RBPs have a duty not to undertake work which they are not competent to deliver.

This obligation can be broken down into the following components:

- a RBP must only perform work in their area(s) of competence;
- before commencing work, a RBP must enter a written agreement with the client which appropriately covers the key terms of the work, including that the RBP is registered to undertake the required building work and that the client is entitled to make a complaint about the RBP to the VBA;
- a RBP must perform work to the highest professional standard;
- a RBP must deliver the work within timeframes agreed with the client;
- a RBP must ensure that their work is supported by the required documentation;
- clients must be kept informed of:
  - the progress of their work;
  - the costs associated with the RBPs work
  - whether work requires qualifications or experience outside the RBP's area of competence; and
  - the extent to which and to whom any work is proposed to be subcontracted by the RBP.

- a RBP must ensure that any person they engage to undertake or assist with the work will also perform that work to a the highest professional standard;
- a RBP must make appropriate arrangements for the completion of the work in the event of their inability to practise, due to incapacity, retirement etc.;
- a RBP must have effective procedures in place to ensure that their business is run competently and that work is monitored, supervised and reviewed by an RBP; and
- a RBP must have effective procedures in place to ensure that they meet their obligations under the Code.

### 7.2.7 Reputation of the profession

The Code must require a RBP to act in a manner which does not potentially bring their profession or the public's perception of the industry into disrepute.

The Code could state that RBPs:

- must not conduct themselves in a way that brings, or may potentially bring their profession into disrepute; and
- must immediately notify the VBA if certain events occur in accordance with the Building Act, including:
  - if they are convicted of a criminal offence;
  - if they are the subject of an order disqualifying them from acting as a company director, or a bankruptcy order;
  - if they are the director of a company which is wound up;
  - repeated breaches of the legislation; or
  - failure to comply with an order of the court.

### 7.2.8 Behaviour towards other members of the building industry

The Code must impose a standard of behaviour expected of RBPs towards other members of the building industry.

For example, the Code could prohibit a RBP from:

- accepting a contract where another RBP has been engaged to perform the same work, without first contacting that practitioner to discuss the work and any relevant circumstances;
- expressing negative opinions about the competence or integrity of other RBPs, unless it is in the public interest to do so; and
- acting maliciously to damage the reputation or business of another building practitioner or any other member of the building industry.

The Code should also ensure that there are principles that support understanding, engaging with and respecting other practitioners in a collaborative approach to achieving industry standards and compliance.

### 7.2.9 Behaviour toward clients

The Code must impose a standard of behavior expected of RBPs towards their clients.

For example, a Code could require a RBP to:

- treat all clients with courtesy;
- provide all required information promptly; and
- ensure clients are promptly made aware of variations to fees, payment schedules and other relevant matters.

### 7.2.10 Collusive tendering and uncompetitive behavior

The Code must require a RBP not to engage in collusive or other anti-competitive practices or behaviour. However, this obligation may be covered by obligations to comply with legal requirements and to act with honesty and integrity.

### 7.2.11 Fees and Payments

The Code must impose requirements on RBPs regarding fees and payments.

With respect to payments, the Code must provide that all parties are entitled to receive the payments legally due to them, in a timely manner.

It could require practitioners to:

- ensure accurate and timely preparation, documentation and submission of claims for payment;
- process claims in a reasonable and timely manner; and
- resolve any dispute about payment in a reasonable, timely and cooperative manner.

With respect to fees, the Code must require RBPs to keep clients adequately informed about fees for work the RBP has been engaged to perform, which includes the requirement for the RBP to provide the client with a detailed written quote before any work is commenced.

This obligation could include:

- providing the client with regular statements of account for the work performed;
- informing the client of any significant change to cost estimates provided by the RBP; and
- ensuring that the cost of the work claimed accurately reflects the amount of work done for the client.

## 8. Victorian Building Authority – Approval Process

This section provides guidance to building industry groups and associations representing a class or category of building practitioners on the process for submitting a Code to the VBA for approval. \

Details of the VBA's approval process, relevant contact persons and additional information are contained in the sections below.

### 8.1 Submitting a Code for approval

Building Industry groups or professional associations can submit a Code for approval to the Director, Technical & Regulation Division of the VBA on behalf of a particular class or category of building practitioners.

It is the VBA's preference that Codes be submitted electronically to [CodeofConduct@vba.vic.gov.au](mailto:CodeofConduct@vba.vic.gov.au)

Prior to submitting a Code for approval, the industry group or professional association should ensure that:

- The Code has been reviewed against the checklist located at Appendix A to this document.
- The Code is accompanied by a cover letter signed by the Chief Executive Officer (or delegate) of the industry group or professional association that provides details of:
  - the consultation process used to develop and finalise the proposed Code and
  - the steps which the organisation proposes to educate relevant building practitioners about the Code and monitor compliance.

### 8.2 What the VBA will consider

The VBA intends providing additional guidance to the building industry regarding the criteria and benchmarks that any Code will be assessed against.

The Building Act allows the VBA to make changes to any Code submitted to it, provided the VBA consults with the industry association that submitted the Code.

The VBA is also permitted to consult with any other organisation during the approval process.

The VBA will seek public comment on any Code submitted to it for approval, prior to making a final decision on the Code.

### 8.3 Once Code is approved

The organization(s) who submitted a Code for VBA approval will be advised in writing whether the Code has been approved.

Consistent with the legislation, if the VBA has approved a Code, it will then publish a notice in the Victorian Government Gazette, with the Code taking effect as of that date.

The approved Code will be published on the VBA website.

## Appendix – Checklist for Code authors

This checklist is intended to assist building industry groups or professional associations and other groups purporting to represent a category or class of building practitioners to ensure that their Code has met all VBA criteria prior to submitting it for approval.

Subject	Content covered	Comments
6.1 Pre-amble		
6.2 Background/Scope		
6.3 Objectives		
6.4 Definitions		
6.5 Acronyms		
6.6 Substantive Code content: <ul data-bbox="107 1034 627 1315" style="list-style-type: none"><li>- Concise, Plain English</li><li>- Rules are mandatory</li><li>- Separate Codes Rules</li><li>- Rules have a clear obligation to comply</li><li>- Rules show how objectives will be achieved</li><li>- Rules define RBPs responsibilities for subcontractors</li></ul>		
6.7 Referencing other documents		

Subject	Content covered	Comments
6.8 Code Review		
6.9 Compliance Monitoring mechanism		
6.10 Provisions for public awareness		
6.11 Provisions for industry training		
7.1 Application		
7.2 Obligations		
7.2.1 Compliance with legal obligations		
7.2.2 Acting in the public interest.		
7.2.3 Honesty, integrity and conflicts of interest		
7.2.4 Confidentiality and Privacy		
7.2.5 Cooperation and dispute resolution		
7.2.6 Competence		
7.2.7 Reputation of the Profession		
7.2.8 Behaviour towards other industry members		
7.2.9 Behaviour towards clients		

<b>Subject</b>	<b>Content covered</b>	<b>Comments</b>
7.2.10 Collusive tendering and uncompetitive behaviour		
7.2.11 Fees and payments		
Cover letter - Consultation with Members		
Cover letter - Consultation with VBA		
Cover letter - Legal review		
Cover letter - Association branding		

DRAFT

