

Code of Conduct for Professional Engineers

Professional Engineers Registrations Act 2019

27 May 2021



Justice
and Community
Safety





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Professional Engineers Registration Act 2019

Code of Conduct for Professional Engineers

(Section 30)

Introduction

This *Code of Conduct for Professional Engineers* (Code) is prepared and approved by the Director of Consumer Affairs Victoria under the authority of sections 30(1) and 31(1)(a) of the *Professional Engineers Registration Act 2019* (Professional Engineers Registration Act).

This Code applies to the conduct of registered professional engineers from 1 July 2021 and should be read in conjunction with the Professional Engineers Registration Act and the regulations made under that Act.

This code is available on the Consumer Affairs Victoria website at consumer.vic.gov.au/engineers.

Purpose

The purpose of this Code is to set standards of conduct for registered professional engineers, which support the objective of the Professional Engineers Registration Act to promote best practice in providing professional engineering services.

Among other matters, and in line with section 30(3) of the Professional Engineers Registration Act, this Code includes obligations for registered professional engineers “to act fairly, honestly and in the best interests of a client”.

Applications of this Code

The obligations set out in this Code (see ‘Professional conduct obligations’ below) apply to all registered professional engineers regardless of the area or areas of engineering in which they provide professional engineering services.

The professional conduct obligations in this Code also apply to ‘endorsed building engineers’, who are professional engineers whose registrations have been endorsed by the Business Licensing Authority to engage in the building industry.

Breaches of this Code

Registered professional engineers must comply with this Code under section 33 of the Professional Engineers Registration Act. Compliance with this Code promotes public confidence in the professional engineering services provided by registered professional engineers.

Compliance with this Code is monitored by Consumer Affairs Victoria and the Victorian Building Authority both of which have authority to take disciplinary action for a breach of this Code. Whether disciplinary action is led by Consumer Affairs Victoria or the Victorian Building Authority will depend on whether a registered engineer is also an endorsed building engineer.

Consumer Affairs Victoria is mainly concerned with the conduct of registered professional engineers who are not endorsed building engineers. As section 33 of the Professional Engineers Registration Act requires a registered professional engineer to comply with the Code, a registered professional engineer who fails to do so has contravened that Act. Such a contravention is grounds on which the Director of



Consumer Affairs Victoria may take disciplinary action against a registered professional engineer under section 55(1)(a)(i) of the Professional Engineers Registration Act.

The Victorian Building Authority is mainly concerned with the conduct of registered professional engineers who are also endorsed building engineers. Under section 179(1)(a)(iv) of the *Building Act 1993* (the Building Act) the Victorian Building Authority may take disciplinary action against an endorsed building engineer who has contravened the Professional Engineers Registration Act by failing to comply with this Code.

Endorsed building engineers must also comply with the Building Act and the regulations made under that Act.

Definitions

In this Code—

- **Building Act** means the *Building Act 1993*;
- **client** means the person who engages a registered professional engineer to provide professional engineering services and may be an individual or an organisation;
- **confidential information** means any information that is—
 - acquired by or provided to a registered professional engineer in the course of providing professional engineering services or in the course of their employment; and
 - agreed or understood by the professional engineer and the client or the professional engineer and their employer, if employed, to be confidential, or that may reasonably be expected to be considered as confidential to that client or that employer;
- **conflict of interest** means circumstances where a registered professional engineer may be influenced or may reasonably be perceived to be influenced by a private or business interest when providing professional engineering services;
- **endorsed building engineer** is a registered professional engineer whose registration has been endorsed by the Business Licensing Authority to engage in the building industry;
- **impractical** means incapable of being put into practice with the available means;
- **personal or business relationship** means a family, business or fiduciary relationship, or relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of another person;
- **professional engineering service** has the same meaning as in section 3(1) of the Professional Engineers Registration Act;
- **Professional Engineers Registration Act** means the *Professional Engineers Registration Act 2019*;
- **public interest** includes, but is not limited to, the safety, health and well-being of the community;
- **reasonable** means an action or conduct that would be considered by an average person to be just, rational, appropriate, ordinary or usual in a particular situation;
- **unreasonable** has the opposite meaning to reasonable;
- **registered professional engineer** has the same meaning as in section 3(1) of the Professional Engineers Registration Act and includes a reference to an endorsed building engineer.

Professional conduct obligations

The following obligations comprise the Code for registered professional engineers for the purposes of section 33 of the Professional Engineers Registration Act.



1. Know and comply with the law

- (1) In providing professional engineering services, a registered professional engineer must know and comply with—
 - (a) the Professional Engineers Registration Act and the regulations made under that Act; and
 - (b) any other laws relevant to the professional engineering services the professional engineer provides in the area or areas of engineering in which they are registered.
- (2) An endorsed building engineer must also know and comply with—
 - (a) the Building Act and the regulations made under that Act; and
 - (b) any other laws relevant to the professional engineering services the endorsed building engineer provides in the area or areas of engineering in which they are registered and endorsed.

2. Be honest and fair

- (1) A registered professional engineer who provides professional engineering services must act with honesty, fairness and integrity.
- (2) A registered professional engineer must not—
 - (a) misinform, mislead or deceive any parties when providing professional engineering services; or
 - (b) permit their name to be used in relation to any work, document, presentation or publication to falsely represent their authorship of, responsibility for or agreement with the content or form of the work, document, presentation or publication.

3. Deliver good practice professional engineering services

- (1) A registered professional engineer—
 - (a) must exercise skill and diligence in the provision of professional engineering services; and
 - (b) must carry out professional engineering services—
 - (i) with reasonable care to achieve the standard of the services, and
 - (ii) within a reasonable time according to the timeframes agreed between a client and a professional engineer and, if employed, with their employer; and
 - (c) should seek peer review of the professional engineering services they provide, unless impractical to do so.
- (2) A registered professional engineer must not engage in conduct that is detrimental to the reputation of the engineering profession or contrary to the public interest.

4. Inform clients of the consequences of disregarded advice

A registered professional engineer must take reasonable steps to inform a client and their employer, if employed, of—

- (a) their professional concerns regarding a particular action or project; and
- (b) the likely consequences for affected parties if professional engineering advice, decisions, or judgements are modified, overruled or disregarded.



5. Act in the best interests of a client

A registered professional engineer must—

- (a) act in the best interests of a client unless it would be unlawful, unreasonable, or improper to do so; and
- (b) refuse any services or products from a third party that are contrary to the best interests of a client.

6. Act in area of professional competence

(1) A registered professional engineer must not provide professional engineering services unless—

- (a) the services are within their area or areas of competence; and
- (b) they reasonably expect to be able to competently carry out the services.

(2) A registered professional engineer—

- (a) must not directly supervise an unregistered person unless that supervision is within the registered professional engineer's area or areas of competence; and
- (b) must recognise where other professional advice is required and seek, or recommend the client and, if employed, the registered professional engineer's employer seek expert advice in appropriate areas; and
- (c) must be honest about the nature of their qualifications and experience and not make any statements or publish any material that misleads or is likely to mislead a client or prospective client as to their professional competence.

7. Directly supervise

A registered professional engineer who directly supervises an unregistered person—

- (a) must not knowingly permit an unregistered person under their direct supervision to provide professional engineering services that fall outside their area or areas of competence; and
- (b) must be competent in, and have sufficient knowledge of, the professional engineering services being carried out by the unregistered person; and
- (c) must have sufficient control over any outputs of the professional engineering services to ensure that the professional engineering services being carried out by the unregistered person are at the standard expected of a registered professional engineer; and
- (d) must take responsibility for the professional engineering services carried out by the unregistered person under their direct supervision.

8. Maintain confidentiality

A registered professional engineer must not use or disclose any confidential information of a client or an employer, if employed, unless—

- (a) the client or employer authorises the use or disclosure; or
- (b) the registered professional engineer is permitted or compelled by law to disclose the confidential information.



9. Manage conflicts of interest

- (1) Before providing professional engineering services to a client, a registered professional engineer must disclose any actual, perceived or potential conflict with their personal interests or the interests of another client to each party that may be related to or affected by the provision of the services.
- (2) When providing professional engineering services, a registered professional engineer must disclose any actual, perceived or potential conflict of interest to a client and employer, if employed, as soon as practicable after discovering the actual, perceived or potential conflict of interest.
- (2) A registered professional engineer who recommends the services of a third party to a client, must disclose to the client any personal or business relationship between the registered professional engineer and the third party.

10. Disclose endorsements and referrals

A registered professional engineer must disclose to a client or prospective client—

- (a) if the registered professional engineer receives, is likely to receive, or has been promised any payment, gift or other material advantage to recommend, endorse or comment on a product or service that is or is likely to be used in connection with the provision of professional engineering services to the client or prospective client; and
- (b) any arrangement entered into where the client or prospective client has been introduced or referred to the registered professional engineer by a third party who the registered professional engineer has given or offered to provide a fee or reward for the referral of clients or prospective clients.

11. Be impartial and objective

A registered professional engineer must not—

- (a) give or promise to give a client or prospective client any inducement intended to improperly influence that person's decision—
 - (i) to engage the registered professional engineer to provide professional engineering services; or
 - (ii) regarding the professional engineering services being provided by the registered professional engineer; or
- (b) accept from any person anything intended to improperly influence the advice provided, or decisions made, by the registered professional engineer.

12. Inform and communicate with clients

- (1) A registered professional engineer must—
 - (a) Take reasonable steps to ensure that a client is informed of decisions required of the client in respect of professional engineering services; and
 - (b) provide sufficient relevant information within a reasonable time to enable a client to make an informed decision in relation to the provision of professional engineering services; and



- (c) respond, within a reasonable time, to a client's reasonable requests for information or other communications about the provision of professional engineering services to the client; and
 - (d) take reasonable steps to ensure that all information and material provided to a client is accurate and unambiguous.
- (2) A registered professional engineer must communicate with a client or prospective client in a timely and effective manner regarding professional engineering services, fees, costs, outcomes and risks.

13. Maintain client records

A registered professional engineer must take reasonable steps to adequately protect, secure and store a client's paper and electronic records in relation to the provision of professional engineering services.

14. Resolve disputes

- (1) A registered professional engineer must make every effort to minimise and resolve complaints and disputes with a client that relate to the provision of professional engineering services.
- (2) If a client makes a complaint to a registered professional engineer about a professional engineering service, the registered professional engineer must inform the person of the process that the registered professional engineer or their employer, if employed, has in place for resolving complaints and disputes as soon as practicable after the complaint is made.

Dated: 27 May 2021

Nicole Rich

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& Director, Consumer Affairs Victoria