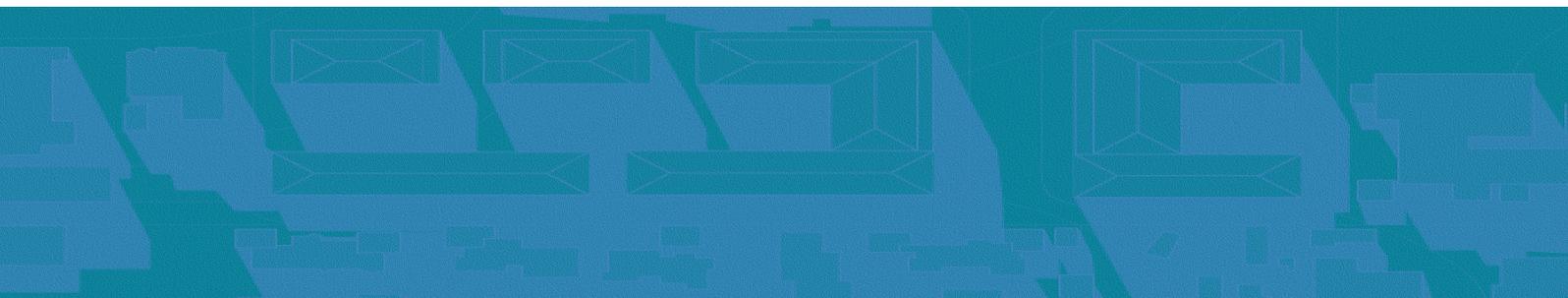




# BPPB

## Building Professionals Board

### Code of Conduct: a guide





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## Introduction

This guide provides explanatory notes to the Code of Conduct for accredited certifiers (the Code) contained in Schedule 4 of the Building Professionals Board's accreditation scheme (the scheme). The notes do not form part of the scheme or the code. The code is reproduced at **Attachment A**.

The explanatory notes are intended to be used to clarify the meaning and scope of the Code and to provide guidance on how to comply with the requirements of the Code. The explanatory notes are not intended to be exhaustive of all situations that may give rise to a breach of the Code.

These explanatory notes do not in any way limit the extent of the Code of Conduct Requirements.

## Acting in the public interest (Code of Conduct Requirement 1)

Accredited certifiers are included within the definitions of 'public official' in the *Independent Commission Against Corruption Act 1988* and 'public authority' in the *Ombudsman Act 1974*. Public officials occupy positions of public trust and the public has a right to be assured they will operate in an open and honest way and make decisions based on high ethical standards.

Accredited certifiers must carry out certification functions in the public interest and must not take action that would compromise the health, safety and amenity of any person or property.

An accredited certifier shall take appropriate and prompt action in relation to complaints made by the public, councils or any other body in relation to building work or subdivision work for which the accredited certifier is carrying out certification functions.

An accredited certifier shall take reasonable steps to promptly inform the complainant of the action he or she has taken in response to the complaint, including informing the complainant of a decision not to take any action in response to the complaint.

### Example of performing certification functions to promote or protect the public interest:

- Taking suitable action to deal with complaints made by a member of the public in relation to work occurring on a development for which the accredited certifier is the principal certifying authority (PCA) including:
  - promptly investigating complaints that the builder is not building in accordance with the development consent and/or is not complying with conditions of development consent including those aimed to protect the public safety and those relating the amenity of neighbours, such as conditions that specify permitted working hours on a building site, dust control measures and allowable noise levels resulting from building work, and
  - verbally directing the builder to rectify any non-compliance with the development consent and/or to comply with the relevant development consent conditions if the certifier's investigation of a complaint finds that the builder is not complying with the development consent, and
  - carrying out another inspection within a reasonable time to check that the non-compliance has been rectified and/or the builder is complying with the relevant conditions of development consent, and
  - issuing a notice of intention to issue an order under the *Environmental Planning and Assessment Act 1979* (EP&A Act) if the builder has failed to rectify the non-compliance with the development consent within a reasonable time and/or continues not to comply with the development consent conditions despite a reasonable number of verbal direction/s to comply.

## Regard for interests of principals and other parties (Code of Conduct Requirements 2 and 3)

An accredited certifier need to make it clear to the principal (their client) at the outset what work they can and cannot undertake. A certifier must also inform the principal of matters that arise during the course of carrying out their statutory functions, which affect the building or subdivision work that need to be carried out.

An accredited certifier should provide their professional services conscientiously and competently. The accredited certifier should enter into a service agreement or other form of documentation with the principal, outlining the information to be provided to the principal, the accredited certifier's tasks and professional responsibilities and a fee for service

An accredited certifier needs to take all reasonable steps to provide certification functions in a timely manner and in accordance with any service agreement, contractual obligation or any other undertaking to provide a service within an agreed time frame.

Code of Conduct Requirement 3 recognises that an accredited certifier is under a duty to act professionally, responsibly and with accountability.

**Examples of an accredited certifier not having regard for the interests of others:**

- Not taking reasonable steps to return clients' phone calls promptly.
- Agreeing to be appointed as the PCA even though he or she will be unable to provide agreed certification functions due to other existing work commitments.
- Agreeing to be appointed the PCA and then changing employment, changing business address and contact details such as phone, fax and email and not advising the client of new contact details.
- Not taking appropriate action to give clients prior notice of their intention to no longer provide certification functions for any reason.
- Not taking reasonable steps to assist a client in replacing them the PCA when the accredited certifier has decided not to renew their accreditation or has decided to no longer provide certification functions to that client for any reason.
- Advising applicants that they will have a Part 4A certificate within a certain time frame then not meeting that commitment and failing to take reasonable steps to advise the client before, if practicable, or soon after as to the reasons why the commitment cannot be met.
- Charging clients or others large fees for copies of certificates issued by the certifier.

**Treatment of others (Code of Conduct Requirement 4)**

Accredited certifiers are at all times to treat members of the public fairly and consistently, with proper respect and with regard for their rights. Certifiers need to carry out their duties in a professional and responsible manner. This includes not using derogatory, abusive or threatening words towards others and treating people with courtesy.

To act without discrimination, a certifier must not harass or discriminate against his or her colleagues or members of the public on the grounds of sex, marital status, race, colour, nationality, ethnic or national origin, ethno-religious identity, descent, age, disability, sexual preference, transgender or ethno-religion. Such harassment or discrimination may constitute an offence under the *Anti-Discrimination Act 1977*. In addition, a certifier must not harass or discriminate on the grounds of political or religious conviction.

A certifier is not taken to have discriminated against a person, however, merely because the certifier has declined to accept an engagement (contract) from that person where any ground of discrimination set out above has not occurred.

**Example of not performing certification functions with honesty and good faith:**

- An accredited certifier appointed as the PCA making commitments or promises to complainants to have the builder, developer or owner do things that he or she does not have the power to require the builder, developer or owner, respectively, to carry out.

**Duty of care (Code of Conduct Requirement 5)**

When appointed to carry out certification functions under the EP&A Act or strata legislation, an accredited certifier has a duty of care in relation to any advice given and action taken (or not taken) in assuming the role.

An accredited certifier is given certain discretionary powers under the EP&A Act, such as:

- determining whether relevant conditions of consent have been met,
- interpreting and implementing performance-based conditions of consent,
- determining whether detailed plans are consistent with the approved development application plans and/or whether a modification of the development consent is required,
- determining whether inspections in addition to the mandatory critical stage inspections should be carried out,
- certifying satisfaction of nominated standards in detailed designs or completion of certain works,
- dealing with alternative solutions under the Building Code of Australia (BCA),
- certifying compliance with performance standards under the BCA,
- determining whether to issue a notice of intention to issue an order, and

- determining whether buildings are fit for occupation and/or use.

The certifier will be subject to the ordinary principles of the law of negligence in carrying out those functions and must exercise a reasonable standard of care in making these types of decisions.

Accredited certifiers need to be aware of the limits of their discretion and operate accordingly (see the Department of Planning's practice note, 'Exercising discretion', in *Guiding Development: better outcomes*, August 2001).

Whether a certifier owes a duty of care to a person and whether an accredited certifier has breached that duty, will depend upon many factors. The judgement as to the reasonable standard of care will depend upon the type of development and in part, may be determined by best practice or acceptable standards.

**Example of an accredited certifier's duty of care in performing certification functions:**

- Taking reasonable steps to ensure that the information included in any Part 4A certificates they issue is correct and complies with the requirements of the EP&A Act and the Environmental Planning and Assessment Regulation 2000.

For instance, if in the notice of appointment of the PCA the notice includes a statement that "I (the accredited certifier appointed the PCA) have seen evidence that the builder is licensed and insured", then the accredited certifier has a duty of care to actually see appropriate evidence of the builder's licence and insurance.

## **Making decisions and taking actions (Code of Conduct Requirements 6, 7)**

One of the principles of natural justice requires a decision-maker to take into account only relevant considerations and not take into account any irrelevant considerations when making decisions. For example, an accredited certifier cannot make a decision based upon private considerations.

An accredited certifier must be able to demonstrate that they have obtained all relevant facts reasonably available when making a decision. A certifier can do so by documenting the findings of fact, the evidence or other material on which the findings were based and the reasons for the decisions made.

In making decisions, an accredited certifier needs to exercise reasonable judgement. Code of Conduct Requirement 7 does not require a certifier to make decisions without error. It is recognised that errors of judgment will occur. However, a certifier may breach this requirement if they act negligently, recklessly or unreasonably in issuing a complying development certificate, strata certificate or a Part 4A certificate.

**Examples of an accredited certifier taking all reasonable steps to obtain all relevant documentation and ensuring a decision is supported by adequate documentation:**

- Not simply relying on the word of the applicant that the plans and specifications submitted with an application for a construction certificate are not inconsistent with the development consent. A certifier should require the applicant to provide a copy of the development consent, including all conditions and approved plans.
- When appointed as the PCA, in satisfying himself or herself that the principal contractor for the work is the holder of the appropriate licence and is covered by appropriate insurance in cases where these are required by the *Home Building Act 1989*, the PCA for building work should not only see appropriate evidence of the builder's licence and insurance but should obtain copies of the documentary evidence of the builder's licence and insurance and retain these copies with other information related to that development.

## **Protecting and using information (Code of Conduct Requirement 8)**

Information obtained by accredited certifiers in the course of performing their official duties, should only be used for official purposes. Requirement 8 of the Code aims to protect confidential information. The requirement places the following obligations on certifiers:

- not to improperly disclose any information obtained in the course of carrying out his or her official functions,
- to take steps to ensure confidential information cannot be accessed by any unauthorised person and that sensitive information is only discussed with people who are authorised to have access to it, and
- not to use confidential information for their, or someone else's, advantage.

Section 148 of the EP&A Act provides a number of statutory obligations on accredited certifiers in relation to the information they obtain when carrying out certification functions under that Act. These prevent accredited certifiers disclosing and using certain information.

An accredited certifier may also be subject to the National Privacy Principles (NPP) under the *Privacy Act 1988 (Cwlth)* in relation to personal information collected. The Principles aim to ensure that organisations that hold personal information about people handle the information responsibly.<sup>1</sup> The NPP obligations include only using or disclosing personal information for the primary purpose for which it is collected (unless an exception applies) and taking reasonable steps to protect the personal information held from misuse and loss and from unauthorised access, modification or disclosure. Certifiers should refer to the Office of Federal Privacy Commissioner, *Guidelines to the National Privacy Principles*, September 2001, for further information.

In general, an accredited certifier should not reveal facts, data or information obtained from the applicant without obtaining the prior consent of the applicant. An exception to this is where the accredited certifier is required by law to reveal the information.

Accredited certifiers should note that it can be a criminal offence (constituting corrupt conduct) to misuse information or material that has been acquired in the course of carrying out official functions, whether or not for the benefit of the certifier or for any other person (section 8(1) of the *Independent Commission Against Corruption Act 1988 (NSW)*).

## Acting within his or her competence (Code of Conduct Requirement 9)

Accredited certifiers must always ensure that they act within the terms of their accreditation. These terms are specified in:

- their certificate of accreditation and any conditions attached to the certificate of accreditation,
- restrictions in Schedule 1 of the Building Professionals Regulation 2007 (the Regulation) for the relevant category(s) of accreditation,
- provisions of the accreditation scheme, and
- any conditions prescribed by the Regulation.

An accredited certifier must continually refer to the requirements of the Regulation and the accreditation scheme to ensure that they act within their accreditation. If an accredited certifier has any doubt as to whether they can carry out a certification function, they should seek guidance from the Board.

Accredited certifiers must carefully scrutinise the documents relating to the development for which they are being appointed to provide certification functions and must have a thorough knowledge of the relevant legislation and the accreditation scheme to ensure they act within their accreditation.

If, during the course of carrying out certification functions on a project, it becomes clear to an accredited certifier that they do not have the appropriate accreditation to complete the work contracted for, they must immediately draw that fact to the attention of the principal and inform the principal either that the relevant development consent needs to be modified, or that the principal needs to seek the services of another accredited certifier to complete the work.

Code of Conduct Requirement 3 will be breached if an accredited certifier misrepresents his or her qualifications, experience or area(s) of expertise to any person or organisation.

Acting within his or her competence means more than just acting within the terms and conditions of his or her accreditation. It also means operating within the limits of his or her qualifications, experience and expertise. These limits are not always defined by the terms of accreditation. An accredited certifier may be asked to carry out certification functions that are within the limits of their accreditation but are beyond their expertise and/or ability to accurately and confidently carry out.

### **Examples of when building work or subdivision work may be within the terms of a certifier's accreditation but still be beyond their competence:**

- The work itself may be of such a highly innovative, specialised or complex nature that the certifier may not have the technical expertise to assess the work for compliance with the relevant requirements.
- The accredited certifier may not have any experience in assessing the proposed work or similar works for compliance with the relevant requirements.

<sup>1</sup> An individual is defined as an "organisation", except where the person is a "small business operator", ie a person who carries on a small business with an annual turnover of \$3 million or less – see sections 6C and 6D of the *Privacy Act 1988 (Cwlth)*.

In such circumstances, it would be appropriate for the accredited certifier to take one of the following actions:

- rely upon documentary evidence that the subject matter complies with relevant requirements provided from another accredited certifier who has the appropriate competence, or
- when it is unreasonable or impracticable to obtain evidence from another accredited certifier with the appropriate competence, the accredited certifier can rely upon documentary evidence that the subject matter complies with relevant requirements from a person who is appropriately accredited/registered by a professional association, institute or similar body and has the appropriate competence, or
- if it is unreasonable or impracticable to obtain evidence from either of the above two sources, the accredited certifier can rely upon documentary evidence that the subject matter complies with relevant requirements provided from a suitably competent person, or
- not carry out certification functions for that building work or subdivision work.

Part of carrying out certification functions within an accredited certifier's area of competence, requires the accredited certifier to maintain that competence. Maintaining competence requires accredited certifiers to commit to a process of continuing professional development to ensure they constantly keep informed of developments within the industry and the law relevant to carrying out certification functions. It is a requirement of annual accreditation that an accredited certifier undertake continuing professional development in accordance with the Board's continuing professional development program set out in Schedule 5 of the scheme.

### **Proper exercise of power (Code of Conduct Requirement 10)**

Decision-makers are required to exercise their powers only for proper purposes. Where subjective judgements can be made, opportunities exist for abuse of that power. An accredited certifier cannot take advantage of their situation to obtain an improper advantage.

Section 148(3) of the EP&A Act also places certain prohibitions on accredited certifiers in relation to gaining direct or indirect advantages for themselves or for persons with whom they are associated, when making decisions on complying development certificates.

Seeking a preferential or improper advantage for themselves, or for any other person or body, includes seeking such advantages:

- as an inducement or reward for, or otherwise on account of:
  - doing or not doing something, or having done or not having done something
  - showing or not showing, or having shown or not shown, favour or disfavour to any person or body in relation to the affairs or business of the agency, or
- where the receipt of the advantage (or any expectation of receipt) would in any way tend to influence the person to show, or not to show, favour or disfavour to any person or body.<sup>2</sup>

### **Gifts and benefits (Code of Conduct Requirements 11 and 12)**

The Ombudsman advises that public officials should never expect to receive anything extra for doing what they are paid to do.<sup>3</sup> Section 84 of the Act makes it an offence for an accredited certifier to seek or accept, or offer or agree to accept, any benefit on an understanding that he or she will act otherwise than impartially in exercising their functions as an accredited certifier. It is also an offence to corruptly receive a gift or benefit.<sup>4</sup>

The acceptance of gifts and other benefits has the potential to compromise an accredited certifier's position by creating a sense of obligation in the certifier and undermining his or her impartiality. It may also affect the public perception of the integrity and independence of the certifier in carrying out certification functions.<sup>5</sup> The Independent Commission Against Corruption (ICAC) reports that there is a correlation between exposure to the offering of bribes and occupations involving high levels of discretion and independence because of the opportunities and pressure for corruption for persons in these occupations.<sup>6</sup>

<sup>2</sup> NSW Ombudsman, *Good Conduct and Administrative Practice: Guidelines for state and local government*, August 2003, p A-14.

<sup>3</sup> Ibid.

<sup>4</sup> Section 249B of the *Crimes Act 1900* (NSW).

<sup>5</sup> Independent Commission Against Corruption, *Code of Conduct and Ethics*, September 2002, p14.

<sup>6</sup> Independent Commission Against Corruption, *Gifts, Benefits or Just Plain Bribes? Guidelines for Public Sector Agencies and Officials*, June 1999, p. 17.

It is often not a question of whether a gift or benefit is or was an attempt to influence a public official, but what an impartial observer would think. Factors that could influence the perception of a gift or benefit include:

- the scale, lavishness or expense/cost/value
- the frequency of occurrence, and
- the degree of openness surrounding the occasion or gift.<sup>7</sup>

For the purposes of Requirements 11 and 12 of the Code of Conduct, gifts or other benefits do not include items or benefits that are essentially token or constitute moderate acts of hospitality.<sup>8</sup> In cases where the gift or benefit has more than a nominal value, it is possible that it was offered to create a sense of obligation and even an expectation that something will be given in return.<sup>9</sup> Feelings of obligation will undermine the impartiality of a certifier.

Generally, token gifts or benefits and moderate acts of hospitality could include:

- gifts of single bottles of reasonably priced alcohol given to a certifier at end of year functions, public occasions or in recognition of a presentation,
- free or subsidised meals, of a modest nature, and/or beverages provided infrequently (and/or reciprocally) that have been arranged primarily for, or in connection with, the discussion of official business,
- free meals, of a modest nature, and/or beverages provided to a certifier who formally represents their association, institute or employer at work-related events such as meetings, training, education sessions, workshops and other similar functions,
- refreshments of a modest nature provided at conferences at which the certifier is a presenter,
- ties, scarves, coasters, tie pins, diaries, chocolates, flowers, pens, key rings and small amounts of beverages, or
- invitations to appropriate out-of-hours social functions organised by recognised groups.<sup>10</sup>

A certifier should not accept an offer of money, regardless of the amount, as a gift or benefit over and above the fee that has been agreed as part of the service agreement entered into with the applicant.

Gifts and benefits that have more than a nominal or token value include tickets to major sporting events or other entertainment, corporate hospitality at a corporate facility at a sporting venue, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel and free training excursions.<sup>11</sup>

Accredited certifiers must reject an offer of a gift or benefit that is of more than nominal value. The certifier should inform the person that an attempt to improperly influence a certifier may be corrupt conduct and may also be a breach of section 84 of the Act. If an offer of a gift or benefit is of more than nominal value, the certifier should take the following steps:

- make notes of the details of the incident, and
- notify the Board as soon as possible and provide a copy of the notes to the Board.

A general discount or benefit provided to all members of an association or other organisation that is not intended, and cannot be perceived by a reasonable person to be intended, to influence or have the potential to influence an accredited certifier carrying out certification functions is not considered to be a breach of Requirements 11 and 12 of the Code.

## **Bias (Code of Conduct Requirement 13)**

A public official should not display favour or bias toward or against any person in the course of carrying out their duties, even if there is no payment or return favour as a result.<sup>12</sup>

A reasonable apprehension of bias is damaging to the reputation of public officials. Public officials are under a positive obligation to exercise their power and functions in the public interest and not for the benefit of particular persons or interests.<sup>13</sup>

One test for the apprehension of bias is:

*'whether a hypothetical fair-minded lay person properly informed as to the nature of the proceedings or process, might reasonably apprehend that the decision-maker might not have*

<sup>7</sup> NSW Ombudsman, op cit, p. A-14.

<sup>8</sup> NSW Ombudsman, op cit, p. A-11.

<sup>9</sup> ICAC, June 1999, p. 1.

<sup>10</sup> Ibid, and see Department of Local Government, *Draft Model Code of Conduct and Guidelines*, August 2004, p13.

<sup>11</sup> Department of Local Government, op cit, and ICAC, June 1999, p. 12.

<sup>12</sup> NSW Ombudsman, *Bad Faith, Bias and Breach of Duty*, Public Sector Agencies fact sheet No. 2, July 2003.

<sup>13</sup> NSW Ombudsman, op cit.

*brought an impartial mind to making the decision. In deciding the issue, the court determines the issue objectively.*<sup>14</sup>

The NSW Ombudsman provides guidance to certifiers on ways to prevent and manage occasions of bias.<sup>16</sup>

Conflicts of interest refer to situations where conflict arises between a public duty and private interests that could influence the performance of official duties and responsibilities.<sup>17</sup>

The Act (section 66) and the Regulation (clauses 17 and 18) set out the situations in which an accredited certifier is prohibited from issuing a certificate because they have a conflict of interests. The Regulation also sets out some limited circumstances in which an accredited certifier does not have a conflict of interests where they certify a development in relation to which they have provided certain types of advice. The provisions are designed to ensure certifiers put all personal interests aside when carrying out their functions.

However, these provisions do not cover all situations when an accredited certifier may have a bias or a conflict of interests. Code of Requirement 13 is intended to further ensure an accredited certifier carries out their functions at arms length and with due regard to their obligations to protect the public interest.

Accredited certifiers need to be aware of the need to separate any consultancy role from the certification role. The NSW Administrative Decisions Tribunal has provided the following statement in relation to the separation of these roles:

*“what is required by the conflict of interest standard is a separation of the consultancy role and the certification role sufficient to satisfy a reasonably-informed member of the general public that there is no likelihood that the accredited certifier might be influenced by the performance of the consultancy role and might lack the necessary objectivity.”*<sup>18</sup>

More advice on when an accredited certifier should not act as a certifying authority or PCA if they have provided assistance in the approvals process [will](#) soon be available in a new circular on conflicts of interest for accredited certifiers at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au).

It is not always easy to identify when a conflict of interest situation arises. In assessing whether a public official has an actual, potential or reasonably perceived conflict of interests, the NSW Ombudsman suggests that the following questions be asked:

- How serious is the matter and does it directly impact on the rights or interests of any person or of the general public?
- Does the official have a current or previous personal, professional or financial relationship with an interested party and if so, how significant is or was the relationship?
- Would the official or anyone associated with the official benefit from, or be detrimentally affected by, a decision or finding in favour of, or adverse to, any interested party?
- What does any relevant code of conduct require in relation to conflicts of interests?

It is in a certifier's interests to identify the existence of a conflict of interests. An accredited certifier must consider whether he or she will have a conflict of interest (except those allowed under the Act and Regulation) before agreeing to carry out any certification function and must be vigilant in identifying any conflicts of interests that may arise when undertaking certification functions.

Where an accredited certifier considers that he or she has a conflict of interests, he or she should:

- notify the Board of the conflict of interest, and
- refuse to undertake the work, or any remaining work, in relation to which the conflict of interests arises.

<sup>14</sup> Per McHugh J in *Hot Holdings Pty Ltd v Creasy* [2002] HCA 51, as reported in NSW Ombudsman, op cit.

<sup>16</sup> Op cit.

<sup>17</sup> NSW Ombudsman, *Conflict of Interests*, Public Sector Agencies fact sheet No. 3, July 2003.

<sup>18</sup> *Director-General, Department of Infrastructure, Planning and Natural Resources v Stapleton (No 2)* [2004] NSWADT 70, para 94.

Unlike many other public officials and public authorities that make decisions, the accredited certifier is an arbiter rather than part of a committee making a decision. This means that the option of simply disclosing the extent of an actual or potential conflict of interests is not appropriate.

## References

For further guidance, accredited certifiers should refer to the following documents:

Department of Local Government, *The Model Code of Conduct for Local Councils in NSW*, December 2004.

Department of Planning, *Guiding Development: better outcomes*, September 1999.

*Director-General, Department of Infrastructure, Planning and Natural Resources v Stapleton (No 2)* [2004] NSWADT 70

Independent Commission Against Corruption, *Gifts, Benefits or Just Plain Bribes? Guidelines for Public Sector Agencies and Officials*, June 1999

Independent Commission Against Corruption, *Code of Conduct and Ethics*, September 2002.

NSW Ombudsman, *Bad Faith, Bias and Breach of Duty*, Public Sector Agencies fact sheet No. 2, July 2003.

NSW Ombudsman, *Conflict of Interests*, Public Sector Agencies fact sheet No. 3, July 2003.

NSW Ombudsman, *Good Conduct and Administrative Practice: Guidelines for state and local government*, August 2003.

Office of the Federal Privacy Commissioner, *Guidelines to the National Privacy Principles*, September 2001

Premier's Department of New South Wales, *Model Code of Conduct for NSW public agencies*, Policy and Guidelines 1997

# Attachment A - Code of conduct for accredited certifiers

## Introduction

The Building Professionals Board Code of Conduct for Accredited Certifiers (the Code) presents the principles to guide the behaviour of, and the standards of conduct and professionalism expected from, accredited certifiers when performing certification functions.

Accredited certifiers must exhibit, and be seen to exhibit, the highest ethical standards in carrying out their duties so as to maintain public confidence in the integrity of the certification system. The Code is a key mechanism to assist accredited certifiers to act honestly, ethically, responsibly and with accountability.

If an accredited certifier is in doubt as to the propriety of any course of action, he or she should seek the guidance of the Board.

Accredited certifiers may be bound by other codes of ethics or professional conduct issued by their respective professional associations/institutes. While those requirements will supplement the principles within this Code, they do not have any legal status under the Act. Where there is an apparent conflict between principles in this Code and in another code of professional conduct, particularly where the public interest is concerned, this Code will prevail for the purposes of the the Act.

The Code applies equally and to each person accredited by the Board as an accredited certifier.

## Purpose of the Code

The purpose of the Code is to:

- set standards of conduct and professionalism expected from accredited certifiers when performing their certification functions
- inform the community of the standards of conduct and professionalism expected from accredited certifiers
- provide consumer, regulatory, government, employment and professional bodies with a basis for making decisions regarding standards of conduct and professionalism expected from accredited certifiers, and
- assist accredited certifiers to:
  - fulfil their statutory duties, and
  - act in a way that enhances public confidence in the process of the certification of development.

The Code cannot address all possible circumstances that certifiers may face in their public role. The Code also does not attempt to:

- replicate the requirements placed on accredited certifiers by legislation, or
- provide standards in relation to business practices.

## Relationship of the Code to legislation

This code is the code of conduct for accredited certifiers made in accordance with section 4(2)(b) of the Act.

The definition of unsatisfactory professional conduct under section 19 of the Act includes a failure by the accredited certifier to comply with any relevant code of conduct contained in the scheme. A breach of the Code may result in disciplinary action being taken against an accredited certifier under Part 3 of the Act.

The Code does not stand alone. Accredited certifiers must follow the law, including legislation specific to their responsibilities, such as the Act, the EP&A Act, the *Anti-Discrimination Act 1977*, *Disability Discrimination Act 1992 (Commonwealth)*, the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

Nothing in the Code overrides or affects the Act, the EP&A Act or any other law.

## Code of Conduct requirements

When working as an accredited certifier and carrying out certification functions, an accredited certifier shall comply with requirements 1 to 13, inclusive, of the Code, which are the Code of Conduct Requirements.

### Acting in the public interest

1. An accredited certifier shall carry out his or her functions and duties, and exercise any discretionary powers, in ways that promote or preserve the public interest.

### Regard for interests of principals and others

2. An accredited certifier shall take reasonable steps to ensure that the person who engages the accredited certifier (the principal) to provide certification functions is made aware of any matters affecting the rights or authority of the accredited certifier to carry out his or her statutory or contractual duties, and that the principal is kept informed of any change in circumstances relating to those rights or authority.
3. An accredited certifier shall not misinform, or otherwise mislead, a principal or any regulatory, government, employment or professional body or any other person about any matter relating to the performance of the accredited certifier's certification functions.

### Treatment of others

4. An accredited certifier shall act with honesty, good faith and equity, and without discrimination, towards any person in the community.

### Duty of care

5. An accredited certifier shall exercise reasonable care and attention in carrying out his or her duties, and in the exercise of his or her powers.

### Making decisions and taking actions

6. An accredited certifier shall take all reasonable steps to obtain all relevant facts when making decisions and carrying out certification and other statutory functions.
7. An accredited certifier shall ensure that his or her decisions and actions are reasonable; fair and appropriate to the circumstances; based on consideration of all the relevant facts he or she has obtained; and supported by adequate documentation.

### Protecting and using information

8. An accredited certifier shall take care to maintain the integrity and security of confidential documents or information in his or her possession, or for which he or she is responsible, and shall not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself or for any other reason.

### Acting within his or her competence

9. Notwithstanding the category(s) of accreditation in which an accredited certifier has been accredited, he or she shall carry out certification functions only within his or her competence.

### Proper exercise of power

10. An accredited certifier shall not take advantage of his or her status, position, power or duties for the purpose of obtaining, either directly or indirectly, any preferential treatment or other improper advantage for himself or herself or for any other reason.

### Gifts and benefits

11. An accredited certifier shall not seek or accept a gift or benefit that is intended to, likely to, or could be perceived by an impartial observer as likely to, cause him or her to act in a biased or unfair manner in the course of his or her duties.
12. An accredited certifier shall take all reasonable steps to ensure that a person related to the accredited certifier does not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure, or have the effect of influencing or securing, a favour from the certifier. A person is related to an accredited certifier for the purposes of this section if the person is a spouse, de facto partner (whether of the same or the opposite sex), sibling, parent or child of the accredited certifier.

### Bias

13. Where an accredited certifier has an affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that the accredited certifier may be biased in carrying out an aspect of his or her professional role, he or she shall not carry out the conduct of that aspect unless:
  - the apprehension arises from the fact that the accredited certifier is to receive a fee for carrying out certification functions from the applicant or the owner of the land; or

- the aspect is dealt with, and is permitted by, Division 3 of Part 6 of the Act (conflicts of interest provisions).

