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State Building Surveyor
Victorian Building Authority
733 Bourke Street
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Via email: andrew.cialini@vba.vic.gov.au

Dear Andrew

VBA Draft Code of Conduct for Building Surveyors and Draft Guide to the Code

Thank you for the opportunity for the Housing Industry Association (HIA) to comment on the Draft Code of Conduct for Building Surveyors and Draft Guide to the Code.

HIA notes that the proposed Victorian Code of Conduct for building surveyors has been developed as part of progressing Recommendation 10 from the *Building Confidence Report* and to underpin and support the role and conduct of building surveyors in Victoria.

HIA continues to be supportive of State and Federal Governments progressing the reforms from the Building Confidence Report and HIA continues to provide feedback on the reforms as they are being progressed at a state level and nationally through the recently established ABCB implementation team.

In relation to the recommendation for the development of a Code of Conduct for building surveyors, HIA has been broadly supportive of this recommendation and agrees that if produced to a high standard, this will make a positive contribution to improving buildings further in the Victoria.

HIA is supportive of such a Code, providing clarity around the issue of conflicts of interest, particularly around issues of providing codes and standards advice and interpretations and elements to underpin the broad matters covered by Victorian building legislation and the Government's relative expectations on scope of responsibility from a practical perspective.

Further, the Code should provide for an important consistent and transparent process with dealings between the Building Surveying Industry, our members and their clients.

HIA is supportive of the intent of Code of Conduct and the Guide and note that they are comprehensive documents and we are pleased to see that the Code reinforces the standards that our members have had with building surveyors over the years.

However, in reviewing the documents particularly the Code of Conduct, it appears that the Code is crossing over between a document to provide a set of rules outlining the norms, rules, and responsibilities of and or proper practice for an individual, with specific measures that are required to be complied with under the Building Act and Building Regulations.

It is considered that a Code of Practice should complement existing laws to give practical guidance on how to meet legal obligations, and should be written in the context of existing laws. HIA's members commonly deal with Codes of Practice relating to workplace health and safety requirements and those codes generally are written with this principle in mind.

It is HIA's view that the current draft does not fit these criteria - for example, by introducing a number of new obligations on the industry. Any new requirements being proposed as part of this Code, would more appropriately be developed and considered for inclusion in the Act or Regulations.

These proposals also risk potential unintended consequences, from overlapping and inconsistency in application where a building surveyor may only look at the Code of Conduct believing all of the requirements are contained within rather than looking at the Act and Regulations and the Code to underpin them.

If the Government is of the opinion that the Regulations are not specific enough, the Regulations should be amended instead of creating another document that can be interpreted in differing ways.

HIA considers that the current Guide document, appears to reflect more of what a code of conduct should be and contains more tangible and practical information and supported by examples that underpin the regulatory requirements. In reviewing other state and territory Codes of Conduct/Practice, HIA notes the Tasmanian Code of Practice 2018 for building surveyors which is somewhat of a combination of the draft Code of Conduct and Guide.

It is suggested that there would be merit in Victoria considering a similar approach for this document and combining the Code of Conduct and the Guide into one document. Having all the requirements and examples in one document will be of greater assistance to building surveyors to understand their obligations and the Authority when considering enforcement actions.

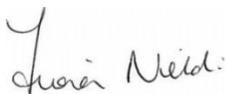
An example of how this could be done is included in the detailed comments at Appendix A.

HIA has also provided a number of detailed comments on the proposed content of the Code of Conduct and the Guide that seek to improve clarity of the documents, remove duplication from the Code of Conduct that is already prescribed by the Act and/or Regulations and provided suggestions for more practical and tangible aspects for the Code and Guide.

HIA would welcome the opportunity to meet and discuss these comments in more detail and please do not hesitate to contact either myself or Peter Zagorski, HIA Director Building Services, on 03 9280 8210 or via email p.zagorski@hia.com.au.

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED



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Appendix A – HIA Detailed Comments on the Code of Conduct and Accompanying Guide

Once accepted and approved, practitioners must comply with the Code of Conduct therefore it can be used as a disciplinary tool by the Authority. The code should not therefore include clauses that are similar to the provisions in the Act or Regulations.

- *For Example clause 3.2 requires the building surveyor to ensure advice or expertise relied upon is obtained by a qualified competent person.*

The regulations already specify that a practitioner providing advice has to be a registered practitioner in a particular class and category and the NCC requires persons to be competent and suitably qualified.

There is no need for an additional requirement to be placed within the Code of Conduct.

- *Clauses 3.5- 3.7 relate to the effective running of a business and not associated with how a practitioner conducts themselves. What is considered an effective procedure to ensure a business runs competently?*

Each person employed will need to comply with the Code of Conduct therefore they are responsible to ensure they are undertaking work within their expertise, experience and qualification.

- *Section 6 - Document and maintain records, is also covered within the Act and regulations and backed up by practice notes and information sheets. These are regulatory issues and not considered to form part of the Code of Conduct and should be removed from the document.*

If the Authority is of the opinion that the regulations are not specific enough, the regulations should be amended instead of creating another document that can interpreted in differing ways.

HIA suggests the Code of Conduct and the Guide could be combined into one document. The document could specify the relevant conduct to be addressed and then provide example of how it can be achieved.

Having all the requirements and examples in one document will be of greater assistance to building surveyors to understand their obligations and the Authority when considering enforcement actions.

An example of how this could be achieve is provide below.

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 Act, Regulations and any other relevant laws, codes or standards operating in Victoria and the Commonwealth as applicable.

To meet this principle you must:

- 1.1 Act in the public interest when carrying out your functions and any other work you carry out in your capacity as a building surveyor.
- 1.2 Not engage in conduct that might bring the building surveying profession or the building and construction industry into disrepute.
- 1.3 Act in a manner that engenders confidence in, and respect, of the building surveying profession.

For Example:

- *A building surveyor should interpret legislation only in the public interest and should not look for loopholes that would advance their client's interests to the detriment of the public interest where the Act is silent.*
- *A building surveyor must, where appropriate, take suitable enforcement action in respect of building work that does not comply with legislative requirements.*

- *A building surveyor must inspect and/or make enquiries and take action where there is an issue of non-compliance identified. For example if a building surveyor is appointed to issue a building permit for a dwelling extension and on conducting a mandatory inspection the surveyor observes an existing swimming pool at the site with no barrier, there is an obligation on the surveyor to make enquiries (as there might be another building surveyor appointed for that building work) or bring the matter to the attention of the municipal building surveyor or the VBA so that enforcement action can be considered.*

For further Guidance refer to the Tasmanian Code of Practice 2018 for building surveyors.

https://www.cbos.tas.gov.au/_data/assets/pdf_file/0007/409534/Occupational-Licensing-Building-Surveyors-Code-of-Practice-2018.pdf

However if the VBA determines that the proposed clauses should remain as is in the draft Code of Conduct, there are a number suggestions that HIA would like to put forward to enhance the document:

- *Clause 3.7: Have a duty of care to your clients and ensure there are effective procedures in place to ensure the completion of your work or transfer of functions where you are unable to practice due to an absence, incapacity, your registration lapsing or retirement.*

HIA Comment:

HIA suggests that in the guide an example could be included to highlight the importance of the building surveyor being proactive in instigating the transfer of functions and not leaving this process to the last minute. Leaving this to the last minute can cause delays that can affect builders contracts with clients or worst case scenario that the transfer of function can no longer be undertaken because the building surveyors registration has lapsed or been suspended.

- *Clause 4.2 Not participate or give advice on the development of designs or performance solutions where you have already accepted an appointment to be the relevant building surveyor under the Act. and Clause 4.3: Where you are acting as a co-regulator, you must only provide advice on regulatory matters and not act as a consultant by providing advice in design aspects or assist in the development of performance solutions.*

HIA Comment:

HIA agrees that this is a necessary step however in many cases our builders, building designers, engineers, etc. may seek to discuss regulatory or NCC matters with their building surveyor prior to the lodgement for the building permit application. These clauses indicate that this will no longer be permitted and relevant parties seeking this type of information will have to seek independent consultants prior to engaging the building surveyor.

The builder, client and building surveyor may also during the project wish to discuss possible changes to the building work which may result in a request for approval of a Performance Solution approval or changes to the design. There needs to be a recognition that some engagement with the building surveyor will be necessary and it may be sometimes difficult to only discuss regulatory matters. While the objective of the clause is understood it may help to have examples to clarify this clause.

This will add an additional cost to the overall project for the client particularly when there may be just a minor change to the NCC that the builder, building designer, engineer, etc. may want clarification on by the need to engage relevant consultants given the lack of industry guidance on NCC and Australian Standards.

- *Clause 6.2 Not destroy or threaten to destroy records except where authorised by law to do so:*

HIA Comment:

Clarification for the meaning of “threaten to destroy” needs to be included in the guide. Does this mean if a building surveyor verbally states possibly in the heat of the moment that they will destroy their records that they will be caught by this clause? An example of the intent of this phrase should be included in the Guide.

- *Clause 6.4 On transfer of your functions as a private building surveyor under the Act, you must ensure all relevant documentation is provided to the new building surveyor within a reasonable time or as otherwise directed by the VBA:*

HIA Comment:

The guide should highlight what is considered as the relevant documentation to be provided to the new building surveyor to enable that building surveyor to be confident that at the time of transfer, the building works complies with the Building Act and building regulations. This could be achieved by specifying the relevant regulations that prescribe required documentation.

- *Clause 7.1 Respond promptly and effectively to your clients, other practitioners, the VBA and any other person when required in relation to your services or functions as a building surveyor:*

HIA Comment:

This clause refers to responding promptly and effectively, one of the many issues HIA members have is the lack of clarity when the RBS is requesting further information or issuing a direction to fix. The guide to this Code of Conduct could provide examples ensuring any direction given is clear and to the point.

This will save time and numerous calls to the RBS or their inspectors to clarify what they actually require to be provide or undertake.