



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**



WA Building Surveyors' Code of Conduct



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This Code is issued by the Building Commissioner under section 96(1)(b) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA)

This Code does not affect or displace obligations under any written law.

A breach of this Code does not constitute a disciplinary matter, but may be taken into account by the Building Commissioner in assessing a disciplinary complaint.

WA Building Surveyors' Code of Conduct

1. Comply with the law and act in the public interest

- 1.1. A building surveyor, undertaking building surveying work must comply with laws relevant to their work, conduct and organisation.
- 1.2. A building surveyor must act in the public interest when providing advice or making decisions relating to their statutory functions.
- 1.3. A building surveyor must not perform a statutory function in relation to building work they have assisted to:
 - design, or
 - develop a performance solution for.
- 1.4. A building surveyor must notify the appropriate authority where they have become aware of, or hold a reasonable suspicion of a matter that may create an immediate or imminent risk to health and safety, in relation to building work.

2. Professionalism

- 2.1. A building surveyor must only perform building surveying work that is permitted under their registration and within their professional competency.
- 2.2. A building surveyor must exercise due skill, care and diligence in undertaking building surveying work.
- 2.3. A building surveyor should maintain their professional competency to ensure their knowledge and skills are current for the work they undertake.
- 2.4. A building surveyor should take reasonable steps to ensure the quality of their work by obtaining and assessing the suitability of all relevant information when carrying out a statutory function.
- 2.5. A building surveyor should work cooperatively with others in the building industry, and regulators.
- 2.6. A building surveyor must ensure that any building surveying work carried out under their supervision is supervised appropriately to ensure the quality of work undertaken.

3. Honesty and integrity

- 3.1. A building surveyor must not engage, whether by act or omission, in misleading or deceptive conduct in connection with the performance of a statutory function.
- 3.2. A building surveyor should take all reasonable steps to avoid actual or potential conflicts of interest.

- 3.3. A building surveyor should not use their statutory function role for the purpose of obtaining, either directly or indirectly, any preferential treatment or other improper advantage for themselves or for any other person.
- 3.4. A building surveyor should not disclose confidential information obtained in the course of performing statutory functions except where the relevant person has granted consent, or there is a legal or professional duty to disclose the confidential information.
- 3.5. A registered building surveyor must notify the Building Commissioner if they have:
 - been found to have breached a relevant code of conduct in another Australian state or territory,
 - had registration or another type of authorisation as a building industry practitioner suspended or cancelled in another Australian state or territory,
 - been found to have breached laws related to planning, building, or development in WA or another Australian state or territory, or
 - had a professional indemnity insurance policy refused, cancelled or conditions applied that are inconsistent with registration requirements in WA.

4. Transparency and accountability

- 4.1. A building surveyor must ensure any agreement or contract for performing statutory functions is consistent with this Code and any requirements set by the Building Commissioner.
- 4.2. A building surveyor must provide reasons for decisions on statutory functions.
- 4.3. A building surveyor must respond in a timely and professional manner to enquiries or complaints about decisions made when carrying out statutory functions, including any requests made by the Building Commissioner or permit authorities.

Explanatory Notes

Introduction

This Code of Conduct for Building Surveyors (the Code) sets out minimum expectations of registered building surveyors undertaking building surveying work in Western Australia (WA).

It applies to building surveyors who are registered under the *Building Services (Registration) Act 2011* (WA) to perform statutory functions of assessing compliance and approving building designs and building work under the *Building Act 2011* (WA) and associated legislation. This can involve assessing and certifying that the design demonstrates how the building work, if built, will meet the applicable building standards and, when inspecting building work during and post construction, certifying that the building work meets applicable standards and any conditions on the applicable building permit.

Professional associations or the Building Commissioner may set standards that apply to other services provided by building surveyors, however, these must not reduce the minimum obligations in the Code. It is acknowledged individuals may choose to comply with a higher standard, for example through membership of an organisation that has an approved professional standards scheme.

The Code establishes a consistent basis for education, audit and compliance activities undertaken by regulators. It also assists registered building surveyors to meet their obligations, and manage the expectations of others.

Application

This Code of Conduct applies to all building surveying practitioners registered under the *Building Services (Registration) Act 2011*. All mentions of building surveyor in the Code means registered building surveying practitioner.

Structure

The Code contains obligations and explanatory information. Numbered paragraphs are the obligations, and the unnumbered paragraphs are explanatory and non-binding. The Code, without explanatory text, is listed above.

Guidance on implementing a compliance regime to support the Code is in the section “Building surveyor obligations under the Code”. A glossary of terms used in the Code is in Appendix C.

Adoption of the Code

WA is adopting the National Model Code of Conduct for Building Surveyors, as prepared by the Australian Building Codes Board (ABCB) in 2020,¹ but amended as appropriate for WA’s legislative framework. The purpose of this adoption is to provide regulatory oversight to building surveyors in a more nationally consistent manner.

¹ ABCB, *Code of conduct for building surveyors: Model guidance on BCR recommendation 10* (2021)

The Code is issued under the *Building Services (Complaints Resolution and Administration) Act 2011*, section 96(1)(b)(ii). A breach of this Code does not constitute a breach of the Act or a disciplinary matter in itself, but may be asserted, and may be taken into account in determining a disciplinary complaint.

Because the Code sets out minimum expectations, it is likely that most building surveyors will already comply. Others may find some of their practices will need to change. Building and Energy will allow a 12-month transition period, from the date of issue, to enable building surveyors to introduce new or modified processes if necessary.

Building surveyor obligations under the Code

1. Comply with the law and act in the public interest

Building surveyors performing statutory functions are to comply with relevant legislation and regulations, and act in the public interest.

1.1. A registered building surveyor must comply with laws relevant to their work, conduct and organisation.

Laws enacted in WA govern the licensing, functions and powers of building surveyors. Building surveyors must carry out their work in accordance with these laws. For example, a building surveyor must not issue certification unless the building work complies with relevant WA laws and the National Construction Code (NCC).

Building surveyors, like most professionals, are subject to a range of other laws that govern their conduct and that of their business. These include, but are not limited to, consumer protection, work health and safety, anti-discrimination and privacy laws.

Building surveyors will meet their obligation by being aware of the Commonwealth and WA laws applicable to their work and taking proactive steps to ensure they comply with these.

1.2. A registered building surveyor must act in the public interest when providing advice or making decisions relating to their statutory functions.

Building laws and the NCC have a number of objectives such as health and safety, amenity, accessibility, cost effectiveness, efficiency of the industry and sustainability in the design, construction, performance and liveability of buildings. Building surveyors must balance and apply these objectives when performing statutory functions.

Building surveyors are required to give greater weight to objectives considered to be of higher concern to the public, those being health, safety and amenity of buildings. A building surveyor undertaking a statutory function must put the public interest before their responsibility to clients and employers.

For example, project documentation may appear to be sufficient to demonstrate a design complies, but a building surveyor is concerned an assumption made in structural design may have an unintended impact on another part of the building. In this situation the building surveyor should take steps to investigate the potential issue and ensure that it is resolved rather than defer to the client's interest in getting earlier authorisation for construction.

1.3. A registered building surveyor must not perform a statutory function in relation to building work they have assisted to:

- **design, or**
- **develop a performance solution for.**

Building surveyors must not accept roles where they are required to certify their own work as this is inconsistent with the independent nature expected of statutory functions. For example, a building surveyor engaged to certify a design is asked to indicate where exit signs and fire doors should be placed on an incomplete plan. The building surveyor may direct the designer to what is required to meet the applicable building standards, but should not indicate or decide on placement, either alone or working with the designer, before assessing it.

A building surveyor employed by a permit authority must not undertake design work for a building located within the boundary of their employer's jurisdiction.

A building surveyor working for a permit authority as a contractor must not undertake design work for a building that they are, or are likely to be, engaged to undertake a statutory role.

This obligation does not prevent a building surveyor from being engaged early, or from being involved during the design process. During the design process, the certifying building surveyor may:

- provide preliminary or routine advice on NCC deemed to satisfy (DtS) requirements and solutions;
- discuss the concept of performance solutions, and which performance requirements are relevant to a specific DtS deviation; and
- provide input into a performance-based design brief (PBDB) as an Appropriate Authority stakeholder consulted as part of the development of the brief, under NCC A2.2(4).

Building surveyors can be engaged during the design stage where that engagement is limited to providing compliance advice on requirements only, leaving the design team to make decisions about how to comply. No conflict arises when the same building surveyor is subsequently engaged in a statutory role. Where practicable, a written record of the advice provided should be kept by the building surveyor.

The building surveyor may not, however, suggest a specific solution or way to achieve compliance and then certify the solution as compliant, as this will see them reviewing their own work.

For example, a building surveyor performing statutory functions identifies that a habitable room does not contain adequate natural light, in accordance with the DtS provisions of the NCC. The building surveyor can advise what the DtS requirements are, and why they have not been satisfied. The building surveyor can also discuss the concept of performance solutions, advise which performance requirements apply, and provide input to the PBDB as the Appropriate Authority. However, it is the building designer's responsibility to determine how to resolve the non-compliance.

Should the designer require assistance to do this, the building surveyor must either direct the person to an independent practitioner to obtain assistance, or resign from their statutory role before providing advice on how to resolve the non-compliance by amending the design to meet DtS requirements, or designing a performance solution to meet the relevant performance requirements.

Building surveyors may be contacted by owners for advice on an order or other notice applied to a building. The building surveyor may help the owner to understand the order, or to negotiate with the permit authority on the validity of the notice. However, if changes to the building are necessary, the building surveyor should not advise the owners on how to comply, then assess and certify the subsequent work.

For the avoidance of doubt, assessing and approving both a design and the building work using that design will not breach this obligation.

1.4. A registered building surveyor must notify the appropriate authority where they have become aware of, or hold a reasonable suspicion of, a matter that creates a risk to health and safety, in relation to a building or building work.

The building surveyor should report activities they become aware of in the course of performing statutory functions where they hold a reasonable suspicion of the activity creating a risk to health and safety. Any such report should detail the building surveyor's reason(s) for their suspicion, and including attaching any evidence that their suspicion may be based on. The building surveyor is not required to proactively seek out these activities.

The appropriate authority will vary depending on the nature of the issue to be reported. In general, issues relating to buildings are to be reported to the permit authority, while issues relating to building service providers are to be reported to the Building Commissioner. There may be issues that relate to both a building and a building service provider, which should be reported to both the permit authority and the Building Commissioner.

For example, during an inspection a building surveyor becomes aware that a lower quality concrete, not in accordance with the approved structural design, has been used in a building and has created an imminent risk to health and safety for workers, building occupants or the public. If the building surveyor is unable to get the non-compliance rectified through consultation with the builder or building owner, then (and only then) the building surveyor should report the matter to the permit authority and the Building Commissioner.

2. Professionalism

Performing the statutory functions of a building surveyor in a professional manner involves, at a minimum:

- ensuring all work undertaken is within registration conditions and professional competence,
- taking reasonable steps to ensure accuracy of work, and
- collaborating with other professionals to provide a timely and efficient service.

Additional attributes may enhance professionalism, including those listed under the subsequent obligations for honesty, integrity and transparency.

2.1. A building surveyor must only perform building surveying work that is permitted under their registration and within their professional competency.

Building surveyors must only perform functions that are within:

- their registration conditions in WA, and
- their professional competency, that is their qualifications, skills and experience.

Laws govern what work each class of building surveyor is permitted to do. Conditions may be applied to the registration by the regulator. The building surveyor must work within the scope of work for their registration.

In addition, building surveyors must critically self-assess their knowledge, skills and experience for work within their registration. For example, if a building surveyor holds an unrestricted registration, but has never worked on a Class 9a building or has not done so for many years, then the certification would generally be considered to be outside their experience and would therefore be beyond their professional competency.

If a building surveyor is unsure as to whether they have the competencies required to perform a statutory function they should refuse the engagement. This does not prevent a building surveyor from working to gain experience for future projects, for example, by assisting a colleague whose professional competency is appropriate for the work (see obligations 2.2 and 2.3)

2.2. A building surveyor must exercise due skill, care and diligence in undertaking building surveying work.

Building surveyors must not be negligent or incompetent in undertaking building surveying work.

2.3. A building surveyor should maintain their professional competency to ensure their knowledge and skills are current for the work they undertake.

Building surveyors work in a complex and dynamic environment, often interpreting and applying multiple laws to building processes and products, all of which change over time. Because of this, building surveyors must continually work to maintain the currency of their professional competency to perform statutory functions effectively. This extends to claims of specialisation linked to statutory functions, such as accessibility or cladding.

Participating in Continuing Professional Development (CPD) courses either voluntarily or as required under legislation will assist to meet this obligation, as will assisting more experienced building surveyors on projects to extend or maintain the currency of experience and skills. Membership of an organisation that has an approved professional standards scheme will also meet this obligation.

Where a building surveyor has not maintained a professional competency, they should cease to personally perform related statutory functions and cease any promotional activities or advertising.

2.4. A building surveyor should take reasonable steps to ensure the quality of their work by obtaining and assessing the suitability of all relevant information before carrying out a statutory function.

Building surveyors must assure themselves that a design demonstrates compliance or building work is compliant as part of their statutory function. Any demonstration of compliance should be in accordance with the NCC's evidence of suitability requirements.²

If a building surveyor is unsure whether a product or building solution is compliant, they should seek out information, such as test reports or expert opinion they need to be satisfied the product or building solution is compliant. The building surveyor should be confident that any information obtained is accurate, complete and from a reliable source.

For example, if a building surveyor wishes to rely on the opinion of an independent structural engineer as to whether a structural design is appropriate, they should first seek assurances that the structural engineer is competent, appropriately qualified and, if required, registered. They should also, as far as their skillset allows, check the appropriateness and sufficiency of the design, for example that the correct design parameters have been used, and that the documentation appears to be sufficient to demonstrate how the building work will comply with the applicable standards.

Building surveyors should seek out information available on products and building methods necessary to ensure compliance. For example, if a building surveyor is told that a new or unfamiliar product has been tested to an Australian Standard, they could request a copy of the test report to confirm that the product was tested by an appropriate testing facility, and conforms to the Australian Standard relevant to the intended use of the product.

2.5. A building surveyor should work cooperatively with other building practitioners and regulators.

The obligation for building surveyors to be professional extends to their interactions with fellow practitioners and regulators.

Building surveyors should ensure that their work causes only as much disruption and inconvenience to others as is necessary for them to perform their statutory functions. They must not make unnecessary or unreasonable demands on others. Agreed timeframes should be met or parties advised of delay and new timeframes negotiated and agreed.

Building surveyors must also be responsive to requests and instructions from regulators related to their statutory functions, including audits.

² National Construction Code vols 1-3 part A5, and Australian Building Codes Board *Handbook: Evidence of suitability*

2.6. A building surveyor must ensure that any building surveying work carried out under their supervision is supervised appropriately to ensure the quality of work undertaken.

The statutory functions of a building surveyor cannot be delegated. However, building surveyors may rely on unregistered employees and contractors to help them to perform statutory functions. Indeed, this is necessary, for graduate building surveyors to gain the experience they require to be registered.

Building surveyors must ensure that anyone who assists them is properly instructed, competent and supervised to the level necessary for them to provide this assistance to the standard expected of the building surveyor themselves. The building surveyor remains solely responsible for any building surveying work undertaken.

3. Honesty and integrity

Building surveyors registered to perform statutory functions hold a position of trust. Registration conditions generally require the applicant to be of good standing and a fit and proper person. This is usually demonstrated by an absence of findings, convictions or other penalties for offences related to behaviours expected of those performing statutory functions.

3.1. A building surveyor must not engage, whether by act or omission, in misleading or deceptive conduct in connection with the performance of a statutory function.

Building surveyors must be honest at all times when carrying out statutory functions or in connection with those functions. Examples of misleading or deceptive conduct by a building surveyor include:

- authorising designs for construction or occupation of buildings that are known not to be compliant with relevant laws,
- falsifying records of their decisions or the supporting evidence,
- misrepresenting the requirements for compliance under the NCC and relevant WA laws,
- misleading other building practitioners as to their role in the certification process, and
- seeking to deceive regulators and auditors.

Conduct is considered to be misleading or deceptive if the overall impression created by the conduct is false or inaccurate. This means that conduct can be misleading and deceptive even if it was not intended to be. Any misunderstanding that creates a false impression that someone may rely upon must be corrected. For example, a building surveyor realises during discussions on an upcoming project that a person who may hire them has over-estimated the registration they hold. It would be misleading for the building surveyor to allow the person to decide whether or not to hire them without providing their correct registration details.

The phrase 'in connection with' captures misleading acts and omissions that occur before or about exercising a statutory function. For instance, a building surveyor who has an unrestricted registration, but has never worked on high-rise residential building must not claim they are experienced in assessing the compliance of high-rise buildings with the NCC and relevant WA laws, even if the purpose of this representation is to consult on the design, rather than performing a statutory function.

3.2. A building surveyor should take all reasonable steps to avoid actual or potential conflicts of interest.

A conflict of interest is a situation where the private interests of a person, or their immediate friends and family, conflict with their obligations or affects their ability to carry out their work impartially and without bias. Because of this, conflicts of interest need to be judged objectively, that is, by what a reasonable person observing the situation would consider to be a conflict.

There are two aspects to this obligation. The first is to actively avoid situations that could give rise to a real or potential conflict of interest. The second is to stop acting if a conflict arises, that is resign or transfer their work to another building surveyor.

'Interest' generally involves some form of financial gain or benefit to the building surveyor, their family or friends. For example, building surveyors should:

- refuse offers that could be seen as influencing their decisions, such as accepting invitations from a developer to attend a Christmas party, watch a sporting event from a corporate box for free, or attend an industry conference for free,
- refuse to provide statutory functions where the building surveyor has a personal or family interest in the project, including a business they hold shares in,³ and
- resign when an unexpected or unanticipated conflict of interest arises, such as, if their child has bought an apartment off the plan in a building they are engaged to certify.

For the avoidance of doubt, the engagement of a building surveyor to provide a private certification does not, in and of itself, constitute a conflict of interest.

Building surveyors employed by a permit authority, and acting in accordance with their employer's conflict of interest policy, are taken to comply with this clause.

3.3. A building surveyor should not use their statutory functions for the purpose of obtaining, either directly or indirectly, any preferential treatment or other improper advantage for themselves or for any other person.

An improper advantage would generally be one that goes beyond the normal commercial compensation (i.e. fee for service) associated with the performance of a statutory function.

An important distinction exists between a building surveyor who benefits inappropriately from providing a statutory function, and one who benefits appropriately from their professional skills and experience. For example, a building surveyor who withholds certification to pressure a person into offering them another job is inappropriately using their statutory function to gain a benefit. However, a building surveyor who is offered a position advising on compliance for a future project by a former colleague who was impressed by their professionalism is not breaching this obligation.

Building surveyors should also note that accepting preferential treatment or any advantage beyond normal commercial compensation would generally indicate they had failed to actively avoid a potential conflict of interest (see obligation 3.2).

³ Shares held through a superannuation fund do not apply in this scenario, unless the building surveyor has direct input into the investment such as through a self-managed super fund.

3.4. A building surveyor should not disclose confidential information obtained in the course of performing statutory functions except where the relevant person has granted consent, or there is a legal or professional duty to disclose the confidential information.

Information can become confidential in a number of ways. For example, a building surveyor's contract may specify that certain information is confidential.

Alternatively, information may become confidential due to its content and the context in which it is provided. For example, if a building surveyor is provided, by a supplier, with product specifications labelled "confidential" it would be reasonable to assume this is confidential information. If a building surveyor is unsure whether information is confidential, they should check with the owner of the information.

Confidential information can be disclosed with consent. Consent may be explicit or implicit. Implicit consent can arise when it is obvious the owner expected it to be passed on to others. For example, if a building surveyor is provided with a confidential test report to demonstrate compliance it is reasonable to assume that test report may be provided to a permit authority as evidence that the relevant building element complies.

Confidential information can also be disclosed when it is ordered by a court or required as part of a building surveyors professional duties, such as when being audited. This also includes the obligation under the Code to disclose reasonable suspicions of unlawful activities or risks to health and safety to regulators (see obligation 1.4).

3.5. A building surveyor must notify the Building Services Board if they have:

- **been found to have breached the code of conduct in another Australian state or territory,**
- **had registration or another type of authorisation as a building practitioner suspended or cancelled in another Australian state or territory,**
- **been found to have breached laws related to planning, building, or development in WA or in another Australian state or territory, or**
- **had a professional indemnity insurance policy refused, cancelled, or had conditions applied that are inconsistent with registration requirements in WA.**

This obligation requires building practitioners to notify the Building Services Board when they no longer meet criteria associated with their registration.⁴ It applies to other Australian states and territories where a building surveyor is currently registered, including any suspended registration.

In most other Australian states and territories, registration as a building surveyor is contingent upon proof that the applicant is of good standing in addition to other criteria.

⁴ Notification of insurance refusal or cancellation only applies to insurance that is required as a condition of registration.

As mentioned previously, this is usually determined by the absence of findings, convictions or other penalties for offences related to their statutory functions.

Audit or investigation in one jurisdiction does not need to be reported to other regulators. However, if the audit or investigation finds a breach, and a sanction is applied, this would need to be reported to the other regulators. Cautions do not need to be reported.

4. Transparency and accountability

Transparency and accountability are tenets of public office directly linked to positions of trust involving decisions and exercise of statutory functions that affect members of the public. This group of obligations requires transparency about terms of engagement and fees, sharing information with other building surveyors, and reasons for decisions when performing statutory functions.

4.1. A building surveyor must ensure any agreement or contract for performing statutory functions is consistent with this Code and any requirements set by the Building Commissioner.

Provisions in the Code are intended to provide for and protect the independence, integrity, professionalism and transparency of building surveyors performing statutory functions. This obligation requires those protections are not compromised in contracts or agreements entered for building surveying services. For example, contracts and agreements should:

- uphold the independence of the building surveyor, including by setting out the pre-payment terms for performing statutory functions that may include payment ahead of commencing work where legislation requires this,
- excluding services that would see the building surveyor assessing and certifying their own work,
- clearly state the services that will be provided, ensuring these are within the scope of their registration and professional competency, the costs and possible additional costs, and
- allow the building surveyor, if replaced before completion of the contracted work, to provide copies of records related to the contracted work to any replacement building surveyor.

4.2. A building surveyor must provide reasons for decisions on statutory functions.

In order to transparently exercise a statutory function, a building surveyor must provide reasons for their decisions to exercise or not to exercise a power or function. This goes beyond statements that a design or building does or does not comply. It is necessary to include why the building surveyor has arrived at a particular conclusion. This includes deciding whether or not to issue certification, orders, notices, or other authorisation provided for within their statutory functions and powers.

For example, if a building surveyor assesses the footings of a Class 10 building and determines it does not meet the design documentation and relevant technical requirements but other aspects of the build are compliant, the building surveyor should report what they observed which both did and did not comply with the applicable building standards and approved plans when reporting. This will provide the reasons for the decision to not issue a certificate and make the matters requiring remedy clear.

Best practice is to record the reasoning along with the decision. At a minimum, records (including photographs, videos, electronic or handwritten notes), should be legible, stored in an accessible format and have sufficient detail to enable another building surveyor or regulator to understand reasoning and replicate conclusions.

It is expected that records maintained by permit authorities, in compliance with the requirements of WA laws, will already meet this requirement. Building surveyors working in the private sector will need to ensure that their records of statutory decisions are also suitable.

4.3. A building surveyor must respond in a timely and professional manner to enquiries or complaints about decisions made when carrying out statutory functions, including any requests made by the Building Commissioner, permit authorities.

A building surveyor must have a system that enables them to respond to enquires or complaints from people such as owners, other building practitioners, permit authorities and the Building Services Board. An enquiry handling process helps manage unexpected issues and resolve misunderstandings before they develop into a formal complaint to the Building Commissioner.

Having documentation that sets out reasons for a decision on a statutory function will assist with developing accurate and timely responses (see obligation 4.2).

The obligation for transparency does not mean that building surveyors need to accept frivolous, vexatious or querulous complaints, or tolerate abuse. It does mean they must try to resolve enquiries and complaints in a fair and timely manner.

Compliance Policy

Introduction

The main objective in adopting the Code is to improve regulatory oversight of building surveyors in a nationally consistent manner. The Code also acts as a tool for the profession to compete effectively on a level playing field.

Priorities

The majority of building surveyors are conscientious professionals who can be trusted to act in a professional manner. However, some building surveyors may, from time to time, act unprofessionally, including when under pressure from owners, other building industry practitioners and competitors. Overall, it is likely only a small proportion of building surveyors may knowingly act unlawfully or unprofessionally unless they are held accountable.

Consistent with the above, the compliance priorities for the Code are:

- *Education and outreach*

The Building Commissioner will communicate the obligations in the Code to ensure building surveyors and industry participants are aware of and understand the role and standards expected of building surveyors performing statutory functions. This could include holding training sessions on the Code as part of training to become a building surveyor or as part of any future CPD requirements for building surveyors and others practitioners.

- *Tools to assist with compliance*

Building and Energy will develop practical tools to assist building surveyors to meet the obligations in the Code. This may include developing model clauses for contracts, a template policy for receiving and managing enquiries or complaints, further guidance on documenting reasons for decisions, or aligning registration application and renewal documentation to assist with reporting. The Code itself will act as a tool for the industry as a whole.

- *Auditing*

Building and Energy has an auditing regime to monitor compliance with the Code. The auditing sets out the process for conducting audits both proactively and in response to complaints received.

Response to non-compliance

Where the Building Services Board (or the State Administrative Tribunal depending on the circumstances) determines that a building surveyor has breached the Code, a tiered approach is applied to determine the appropriate sanction. The sanction is proportionate to the breach.

High impact sanctions such as fines and suspension or cancellation of registration are reserved for deliberate, repetitive or serious non-compliance.

Suspensions and cancellation can also only be imposed where the disciplinary matter is referred to the State Administrative Tribunal. In contrast, isolated, low consequence or opportunistic non-compliance are, depending on its seriousness, dealt with by enforceable undertakings, such as agreements to undertake additional training, operate under supervision or to accept and pay for additional oversight or audits. Inadvertent and unintentional non-compliance that has minimal consequences is dealt with through enforceable undertakings, a finding of non-compliance without further penalty (admonishment) and the provision of information and advice. This tiered approach is set out in Figure 1 below.

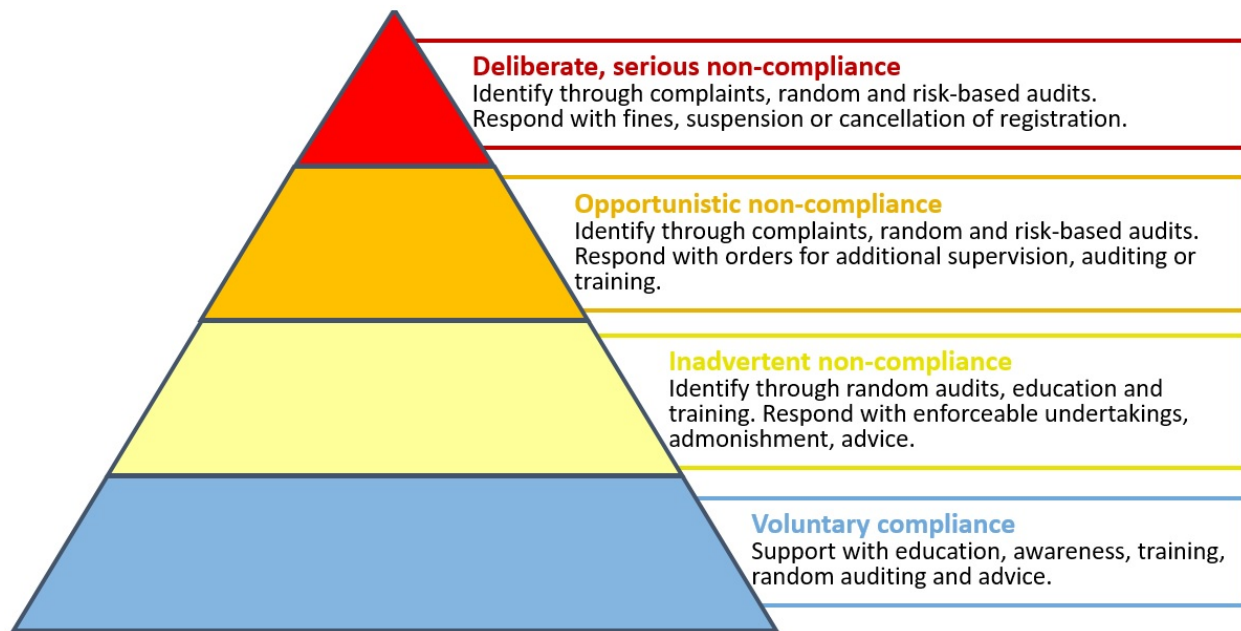


Figure 1: Compliance model

Serious non-compliance is any behaviour, action or omission that results in, or has a high probability of resulting in, substantive harm to the public interest. It includes actions such as:

- certifying a building as compliant when a building surveyor knows (or ought to know) that it does not comply and it could be unsafe,
- accepting gifts or special treatment when a reasonable person would assume these were intended to influence the building surveyor's decisions, and
- deliberately frustrating the performance of an audit or the work of Building and Energy.

Ultimately, the correct sanction will be determined in light of all the relevant facts, by the Building Services Board for instances of minor non-compliances, and by the State Administrative Tribunal for instances of serious non-compliance.

Building surveyors have the opportunity to seek administrative or judicial review of the decisions and sanctions as appropriate. However, while awaiting judicial review, a building surveyor subject to a serious administrative penalty such as suspension or cancellation of registration should not practice until such time as the decision of sanction is overturned. This is essential to ensure public confidence in the enforceability of the Code, and in the profession.

Appendix A Glossary

Building and Energy means the Department of Mines, Industry Regulation and Safety – Building and Energy Division or its equivalents from time-to-time.

Building Commissioner means the statutory office under section 85 of the *Building Services (Complaint Resolution and Administration) Act 2011*.

Building surveyor means an individual registered under the *Building Services (Registration) Act 2011* to perform the statutory functions of statutory building surveying assessment work and statutory building surveying approval work.

Certification means forming an opinion or giving a certificate required under building approval legislation that a building meets the performance requirements of the NCC and other relevant state or territory legislation.

Design(s) includes plans and specifications for a building.

Reasonable steps mean an action or series of actions an objective person would consider sensible and fair to address an issue or achieve a desired outcome in the circumstances. This includes decisions, omissions and inaction.

Registered means authorised by a state or territory government to perform defined functions and exercise powers in that state or territory.

Serious non-compliance means any behaviour, action or omission that results in, or has a high probability of resulting in, substantive harm to the public interest.

Statutory building surveying assessment work means forming an opinion or giving a certificate that a building meets the requirements of the NCC and other relevant Western Australian legislation, where building approval legislation requires a registered building surveyor to form an opinion or give a certificate as a condition of granting a building approval. Statutory building surveying assessment work includes checking, verifying and peer-reviewing building proposals and inspecting and testing installation and construction work.

Statutory building surveying approval work means authorising construction or occupation of a building under building approval legislation that requires or allows a registered building surveyor to authorise construction or occupation.

Statutory building surveying work means assessment and certifying which building approval legislation requires to be done by a registered building surveyor, and approval work undertaken by an authorised delegate of a permit authority.

Statutory functions of a building surveyor, mean statutory building surveying assessment work and statutory building surveying approval work.

Supervision means overseeing, monitoring and directing the activities of a person or people to make sure they are working effectively, and being accountable for their work.

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