



ABCB

Code of conduct for building surveyors

Model guidance on BCR recommendation 10

2021

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Preface

The [Building Confidence Report](#) (BCR), published in April 2018, made 24 recommendations to Building Ministers to address systemic issues in the Australian building industry. Building Ministers established the BCR Implementation Team within the Office of the Australian Building Codes Board (ABCB) to work with governments and industry to respond to the recommendations with a focus on national consistency where possible.

The BCR Implementation Team's work aims to establish national best-practice models in response to BCR recommendations. If implemented, the responses will strengthen compliance with the National Construction Code (NCC), better protecting the interests of people who own, work in, live in and use Australian buildings.

All responses to BCR recommendations have been developed in accordance with the [Building Confidence National Framework](#) with input from industry and governments. Figure 1 lists the outputs developed under the Framework, and where to find them.

State and territory governments have agreed to consider implementation of all BCR endorsed responses. This process will take time depending on each government's regulatory reform agenda, and may be undertaken in stages.

The model guidance for the *Code of conduct for building surveyors* (the Code) represents a nationally agreed response to BCR recommendation 10. This recommendation states "...that each jurisdiction put in place a code of conduct for *building surveyors* which addresses the key matters which, if contravened, would be a ground for a disciplinary inquiry".

The BCR noted that, without a clear standard for *building surveyor* conduct, it can be difficult for building regulators to oversee and address unprofessional behaviour. In addition to establishing a basis for disciplinary action, the Code can also be used to manage client expectations.

Figure 1 – Building Confidence Implementation Framework - Outputs



Next Steps

Implementation by state and territory governments

Governments have agreed to consider implementation of the responses. Contact the building authority in your jurisdiction for information on progress.

Each of the outputs listed in Figure 1 can be accessed on the [ABCB website](#).

Defined terms used in this document are shown in italics. The definitions can be found in the [Building Confidence Glossary](#).

Adoption of the Code

As the Code is a model, it does not have any force until adopted by jurisdictions. States and territories should have regard to the content of the Code when amending or adopting a code of conduct for *building surveyors* in their jurisdiction. They may expand the scope of the Code but should not reduce it given its scope as a minimum applying to only statutory functions of *building surveyors*.

Because the Code sets out minimum expectations, it is likely that most practitioners will already comply with the obligations. Others may find some of their practices will need to change. It is expected that jurisdictions will allow a transition period for newly adopted obligations to allow practitioners to introduce or modify their processes if necessary.

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Adoption of model guidance

As a model, this Code does not have any force until adopted by a jurisdiction. States and territories may have regard to the content of the model. This may include amending or adopting the model for application in their jurisdiction.

The model needs to be read in conjunction with the relevant legislation in a jurisdiction. It is written in generic terms and is not intended to override legislative requirements.

Introduction

The Code of Conduct for Building Surveyors (the Code) sets out minimum expectations of *building surveyors* performing statutory functions.

It applies to *building surveyors* who are authorised by a government authority to perform statutory functions of assessing compliance and approving building designs and *building work* under laws in a state or territory. This can involve assessing and determining applications for *building work*, inspecting buildings under construction and authorising the occupation of a building.

Professional associations or governments may set standards that apply to other services provided by *building surveyors*, however, these must not reduce the minimum obligations in the Code.

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

Structure

The Code contains obligations and explanatory information. Numbered paragraphs are the obligations that are intended to be adopted by states and territories, if a corresponding and equivalent obligation does not already exist. The unnumbered paragraphs are explanatory and non-binding.

Guidance on implementing a compliance regime to support the Code is at Appendix A.

Obligations

Obligations for building surveyors

Comply with the law and act in the public interest

- 1.1 A building surveyor 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 a building they have assisted to:
- a. design, or
 - b. develop a Performance Solution for.
-
- 1.4 A building surveyor must notify the relevant government authority where they have become aware of, or hold a reasonable suspicion of, unlawful activity or a matter that creates an immediate or imminent risk to health and safety, in relation to a building for which they are or were, but for replacement or resignation, engaged to provide a statutory function.

Professionalism

- 2.1 A building surveyor must only perform statutory functions that are permitted under their registration and within their professional competency.
-
- 2.2 A building surveyor must maintain their professional competency to ensure their knowledge and skills are current for the work they undertake.
-
- 2.3 A building surveyor must 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.
-
- 2.4 A building surveyor must work cooperatively with other building practitioners and regulators.

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 must:
-

Obligations for building surveyors

- a. take all reasonable steps to avoid actual or potential conflicts of interest, and
- b. not perform a statutory function where a reasonable person would conclude there is a real risk that their decision could be influenced by conflict of interest.

3.3 A building surveyor must 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 must 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 building surveyor must notify regulators in each state and territory where they are registered if they have:

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

Transparency and accountability

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

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

4.3 A building surveyor must have a system in place for managing enquiries or complaints about decisions made when carrying out statutory functions.

Obligations with explanatory notes

Comply with the law and act in the public interest

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

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

Laws enacted in each jurisdiction govern the licencing, 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 a building complies with relevant state or territory legislation and the National Construction Code (NCC) as called up in each jurisdiction.

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 Federal and jurisdictional laws applicable to their work and taking proactive steps to ensure they comply with these.

A *building surveyor* is not required to check other practitioners are meeting any legal obligations that are outside their statutory functions, but may be required to report activities they become aware of (see obligation 1.4).

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

Building laws and the NCC contain 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. As public officials, *building surveyors* must balance and apply these objectives when performing statutory functions. This obligation requires *building surveyors* to give greater weight to the

objectives generally considered to be of higher concern to the public, those being health, safety and amenity.

For example, project documentation may appear 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 building surveyor must not perform a statutory function in relation to a building they have assisted to:

- a. design, or**
- b. 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 under building laws to complete the design, but should not indicate or decide on placement, either alone or working with the designer, before assessing it.

This obligation does not prevent a *building surveyor* from providing reasons for a decision, or likely decision, that a building or building design will not comply with building laws or the NCC (see obligation 4.2). 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. However, they must either resign from their statutory role before providing advice how to resolve the non-compliance, or direct the person to another independent practitioner to obtain assistance.

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 issuing 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 building surveyor must notify the relevant government authority where they have become aware of, or hold a reasonable suspicion of, unlawful activity or a matter that creates an immediate or imminent risk to health and safety, in relation to a building for which they are or were, but for replacement or resignation, engaged to provide a statutory function.

The *building surveyor* is obligated to report activities they become aware of in the course of performing statutory functions where they hold a reasonable suspicion of the activity being unlawful or creating an immediate or imminent risk to health and safety. The *building surveyor* is not required to proactively seek out these activities, nor investigate or collect evidence to substantiate their suspicions. The relevant government authority will vary depending on the jurisdiction and the matter reported.

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) the *building surveyor* must report the matter to the relevant government authority with jurisdiction over the work.

An example of an unlawful activity could include the *building surveyor* carrying out their obligation to check information on a product data test sheet to confirm the product has been tested for the proposed application of the product. The *building surveyor* has concerns about the validity of the data sheets and checks with the company that the correct documents have been provided. The response creates a reasonable suspicion the data has been falsified. The *building surveyor* must report their suspicions to the relevant government authority.

Professionalism

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

- ensuring all work undertaken is within their 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 statutory functions that are permitted under their registration and within their professional competency.

Building surveyors must only perform statutory functions that are within:

their registration or licence conditions in the relevant jurisdiction, 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 licence 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 licence, but has never worked on a Class 9a building or has not done so for many years, then the *certification* of a hospital 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 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 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 a *Continuing Professional Development (CPD)* course or scheme 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.

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 that offers a related service.

2.3 A building surveyor must 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 or *building work* is compliant as part of their statutory function. If a *building surveyor* is unsure whether a product or technique is compliant, they should actively seek out information, such as test reports or expert opinion they need to be satisfied that the product or technique is compliant.

The information sought needs to be 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 ensure or seek assurances that the structural engineer is competent, appropriately qualified and, if required, *registered* in that jurisdiction.

Building surveyors should seek out any 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 should request a full copy of the test report to confirm that the product was tested by an

appropriate testing facility, and conforms to the Standards relevant to the intended use of the product.

The statutory functions of a *building surveyor* cannot be delegated. However, building *surveyors* may rely on employees and contractors to help them gather information needed to perform statutory functions. *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 *assessment* or approval issued in relation to a statutory function.

2.4 A building surveyor must 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. This includes, for example, withholding a certificate due to non-payment unless expressly allowed by the relevant state or territory legislation. 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.

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 state or territory legislation,
- misleading other building practitioners as to their role in the certification process, and
- seeking to deceive regulators and auditors appointed by the government or an association.

The Australian Competition and Consumer Commission advises that conduct is considered 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 licence, 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 state and territory legislation, even if the purpose of this representation is to consult on the design, rather than performing a statutory function.

3.2 A building surveyor must:

- a. **take all reasonable steps to avoid actual or potential conflicts of interest, and**
- b. **not perform a statutory function where a reasonable person would conclude there is a real risk that their decision could be influenced by conflict 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*.

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, 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. This is a normal and acceptable arrangement where a jurisdiction has adopted a private *certification* model.

3.3 A building surveyor must 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).

3.4 A building surveyor must 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 building regulator as evidence that the building 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 regulators in each state and territory where they are registered if they have:

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

In most jurisdictions, registration as a *building surveyor* is contingent upon proof that the applicant is of good standing in addition to other criteria. As mentioned previously, this is usually determined by the absence of findings, convictions or other penalties for offences related to their statutory functions.

This obligation requires building practitioners to notify regulators when they no longer meet certain criteria associated with their registration. It applies in jurisdictions where a *building surveyor* is currently *registered*, including any suspended registration.

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.

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 requirements set by the regulator.

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 building laws 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. State and territory regulators may have specific requirements for record keeping, including the documentation that must be produced, how long those records must be retained or to whom they must be submitted for retention. However, 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 a regulator to understand reasoning and replicate conclusions.

4.3 A building surveyor must have a system in place for managing enquiries or complaints about decisions made when carrying out statutory functions.

A *building surveyor* must have a system that enables them to respond to enquires or complaints from people affected by their decisions such as owners, adjoining building owners and other building practitioners. An enquiry handling process helps manage unexpected issues and resolve misunderstandings before they develop into a formal complaint to the regulator.

A good enquiry handling system should:

- provide a reasonable process for managing and responding to enquiries and complaints in a fair and timely manner,
- be documented in a brief policy statement that can be provided upon request, covering, for example:
 - how to make an enquiry or complaint,
 - how the enquiry or complaint will be actioned,
 - the expected timeframe for responses, and
 - information on the type of enquiries and complaints that can reasonably be dealt with, and an alternative contact for any other information requests if available, and
- be followed, and refined as necessary.

Where a building manual has been produced, that is a file with construction and *certification* documents provided to owners on completion of a building, it may be sufficient for a *building surveyor* to refer owners to the relevant section of the manual if that will answer their question. Having documentation that sets out reasons for a decision on a statutory function will assist with developing accurate responses (see obligation 4.2).

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

Appendix A - Compliance Policy

Introduction

The main objective in developing the Code is to improve regulatory oversight of *building surveyors* in a nationally consistent manner. This compliance policy aims to assist regulators to apply the Code in a consistent manner.

Implementation of the Code is ultimately a matter for state and territory regulators to determine, based on their own policies, resourcing and powers. Not all jurisdictions have an existing Code of Conduct for *building surveyors*. Therefore, it is best to see this compliance policy as a guide on how the Code could be applied.

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 practitioners and competitors. Overall, it is likely only a minority of *building surveyors* may knowingly act unlawfully or unprofessionally unless they are held accountable by regulators.

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

- *Education and outreach*

Regulators 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 *CPD* requirements for *building surveyors* and others practitioners.

- *Tools to assist with compliance*

Regulators 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.

- *Auditing*

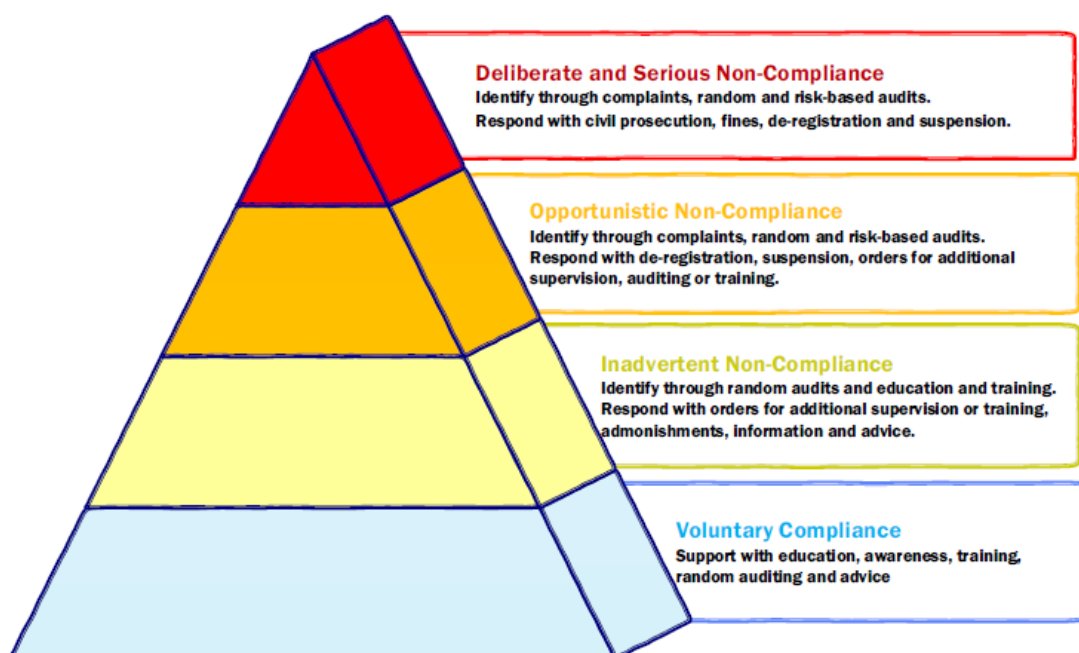
Regulators are expected to have an auditing regime to monitor compliance with the Code. The auditing regime would set out the process for conducting audits both proactively and in response to complaints received.

Response to non-compliance

Where regulators determine that a *building surveyor* has breached the Code, they should apply a tiered approach to determine the appropriate sanction to apply. The sanction must be proportionate to the breach.

High impact sanctions such as civil prosecutions, fines and immediate de-registration should be reserved for deliberate, repetitive or *serious non-compliance*. In contrast, isolated, low consequence or opportunistic non-compliance should, depending on its seriousness, be dealt with by suspension and 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 could be 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 at Figure 22 below.

Figure 2 – Proposed 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 the regulator.

Ultimately, the correct sanction will be a matter for regulators to determine in light of all the relevant facts.

Building surveyors should have the opportunity to seek administrative or judicial review of a regulator's decisions and sanctions as appropriate. However, while awaiting judicial review, a *building surveyor* subject to a serious administrative penalty such as de-registration or suspension should be prohibited from practicing 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.