



19 November 2016

By email: CodeofConduct@vba.vic.gov.au

Victorian Building Authority
Goods Shed North,
733 Bourke Street, Docklands
Victoria, Australia 3008

Dear Sir/Madam

Codes of Conduct for Registered Building Practitioners

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Victorian Building Authority's (**VBA**) Draft Codes of Conduct Protocol (the **Draft Protocol**). We understand that the Draft Protocol been designed to assist building industry groups or professional associations to draft industry codes for approval by the VBA.

We generally welcome the Draft Protocols, however this submission makes comment on:

- the need for the VBA to focus its regulatory effort on consumer outcomes;
- the opportunity for guidance around what is required in relation to code development;
- the guidance provided around compliance monitoring of the code, and code reviews.

Our comments are detailed more fully below.

About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

General comments

Consumer Action strongly supports the enactment of the *Building Legislation Amendment (Consumer Protection) Act 2016* (the **Act**). This legislation has been a long time coming, and will be instrumental in enhancing consumer protection in relation to domestic building work conducted in Victoria. The purpose of the Act is to bring a stronger consumer protection focus to building

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regulation, and we encourage the VBA to adopt practices and processes that place the consumer at the centre of its regulatory task.

In Consumer Action's experience in dealing with industry regulators, we have observed that a significant level of regulator effort is focused on the regulated industry or profession, through licensing, monitoring and enforcement activities as well as educating, informing and engaging with the industry or profession. Of course, these industry-focused activities are expected to (and often do) contribute to better outcomes for consumers.

However, there is a risk that industry regulators, particularly if regulating a narrow industry or profession, can become 'industry captive', given the predominant interaction is with the industry. There is also a risk that the regulator's approach is based on assumptions about the problems consumers experience, the causes of those problems, and what should be done to address them. Effective regulation often requires the regulator to question these assumptions and to have an increased understanding of the consumer perspective. We would be happy to provide further information to the VBA about effective methods of consumer focus and engagement.

VBA's new ability to approve codes of conduct is an opportunity for VBA to refocus its regulatory effort on consumers. Industry codes should primarily focus on improving consumer protection, rather than being about providing further protection of particular classes of building practitioners.

Draft Protocol

We are broadly supportive of many aspects of the Draft Protocol. In particular, we support the guidance around codes needing clear objectives and the guidance around language, drafting and structure at Clause 6.3 of the Draft Protocol.

However, there is a further opportunity to consider where consumer interests can be incorporated into the Draft Protocol.

For example, there is limited guidance about code development in the Draft Protocol. We recommend VBA consider the guidance provided by the Australian Securities & Investments Commission (**ASIC**) in its regulatory guidance on codes of conduct.¹ With respect to the development, ASIC's guidance suggests the following processes:

- identifying at the outset all relevant stakeholders, including affected consumers, relevant community and consumer groups, industry participants and their peak bodies, and relevant regulators and government departments;
- effectively consulting with all stakeholders to identify the issues and debate appropriate responses (including obtaining information about consumer complaints from a variety of sources);
- adopting transparent procedures (e.g. issuing a discussion paper, recommendations and/or a draft code for public consultation purposes) and considering the appointment of an independent party to conduct consultations;
- assessing whether a code actually provides the best option to address the identified problems; and

¹ ASIC, *Regulatory Guide 183: Approval of financial services codes of conduct*.

- resolving what is in (and out) of the code without bias towards any group of stakeholders.

Recognising the limited ability of consumer representatives to contribute to code development, the guidance could also recommend that industry bodies resource this contribution. Mature industries have a practice of resourcing input from consumer organisations.

We also suggest that the Draft Protocol provide greater guidance with respect to administration and compliance monitoring of codes of conduct. For example, the Draft Protocol should set expectations around:

- establishing appropriate data reporting and collection procedures;
- publicly reporting annually on code compliance;
- hearing complaints about breaches of the code and imposing sanctions and remedial measures as appropriate;
- recommending amendments to the code in response to emerging industry or consumer issues, or other issues identified in the monitoring process; and
- ensuring that building practitioners are appropriately trained in the code.

Compliance monitoring should also incorporate a level of external or independent monitoring. Other code compliance mechanisms involve representation from both consumer and industry interests; we would encourage this level of guidance to be included in the Draft Protocol.

We welcome the guidance around public awareness. However, this should go further to require proactive promotion, for example, by relevant building practitioners in their dealings with consumers.

Finally, the Draft Protocol includes guidance around regular reviewing. This guidance should clarify that a review should be conducted independently of the host industry association.

Please contact me on 03 9670 5088 or at info@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer