

Australian Capital Territory

Professional Engineers (Professional Engineers) Code of Practice 2024

Disallowable instrument DI2024–279

made under the

Professional Engineers Act 2023, s 85 (Codes of practice)

1 Name of instrument

This instrument is the *Professional Engineers (Professional Engineers) Code of Practice 2024*.

2 Commencement

This instrument commences on 6 March 2025.

3 Code of practice

I approve the code of practice for professional engineers in schedule 1.

Rebecca Vassarotti MLA
Minister for Sustainable Building and Construction
5 September 2024

Schedule 1

(see section 3)

Code of Practice for Professional Engineers

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Introduction

This Code of Practice for Professional Engineers (Code) is made under section 85 (1) (a) of the *Professional Engineers Act 2023* (Professional Engineers Act).

Professional engineers must comply with this Code to meet their obligations under section 27 of the Professional Engineers Act. The failure to comply with this Code is both a ground for disciplinary action and an offence (sections 36 and 61 of the Professional Engineers Act).

Purpose of this Code

The purpose of this Code is to set standards of conduct for professional engineers. This supports the objects of the Professional Engineers Act to uphold standards of practice and maintain public confidence in the standard of services provided by professional engineers in the ACT.

Application of this Code

This Code sets out professional conduct obligations and applies to professional engineers in all areas of engineering prescribed in the Professional Engineers Act.

The provisions of this Code apply to the extent reasonably practicable in relation to professional engineering services in progress at the time this Code commenced.

Dictionary

A term used in this Code has the same meaning as the term has in the Professional Engineers Act.

In this Code –

Client means the person who engages a registered professional engineer to provide professional engineering services and may be an individual or an organisation.

Conflict of interest means circumstances where a professional engineer may be influenced or may reasonably be perceived to be influenced by a private or business interest when providing professional engineering services.

Confidential information means any information that is:

- a. acquired by or provided to a professional engineer in the course of providing professional engineering services or in the course of their employment; and

- b. agreed or understood by the professional engineer and the client or the professional engineer and their employer, if employed, to be confidential, or that may reasonably be expected to be considered as confidential to that client or that employer.

Professional Engineers Act means the *Professional Engineers Act 2023*.

Professional conduct obligations for professional engineers

1. Comply with the law

A professional engineer must comply with—

- a. the Professional Engineers Act and any regulations made under that Act; and
- b. any other laws relevant to their work.

2. Act in a professional manner and meet the standards reasonably expected of a professional engineer

A professional engineer must—

- a. act with honesty, integrity and in a professional manner;
- b. act towards their client, and provide their professional engineering services, in good faith;
- c. not knowingly act or enter into conduct that could bring, or tend to bring, the profession of engineers into disrepute;
- d. take all reasonable steps, appropriate for the scope of professional engineering services being provided, to protect the health and safety of the community when providing professional engineering services, including doing the following—
 - (i) identifying hazards;
 - (ii) assessing current and future state risks; and
 - (iii) implementing appropriate strategies to manage risk.

Note: Risks to be considered should include social, environmental and economic risks as well as physical risks.

In providing professional engineering services, a professional engineer is responsible for the services being accurate, complete, and professionally performed.

A professional engineer must ensure any individual they use to assist with their work is properly trained and supervised to undertake the tasks assigned to them.

A professional engineer must not—

- a. misinform, mislead or deceive any parties in connection with the provision of professional engineering services; or
- b. permit their name to be used in relation to, including but not limited to any work, document, presentation or publication to falsely represent their authorship of, responsibility for or agreement with the content or form of the work, document, presentation or publication.

A registered engineer must not—

- a. give or promise to give a client or prospective client any inducement intended to improperly influence that person's decision –
 - (i) to engage the professional engineer to provide professional engineering services; or
 - (ii) regarding the professional engineering services being provided by the professional engineer; or
- b. accept from any person anything intended to improperly influence the advice provided, or decisions made, by the professional engineer.

A professional engineer must have processes that provide for quality assurance of their work and cooperate with any independent design review of their work.

A professional engineer must clearly document their assessments and designs, including their scope, objectives, limitations and any assumptions on which they have relied.

A professional engineer must take reasonable steps to ensure they obtain and assess all relevant information.

A professional engineer must work cooperatively with regulators and other practitioners.

3. Consider environment and sustainability

In providing professional engineering services, a professional engineer must take into account—

- a. sustainability principles and practices; and

- b. the impacts of their services on the natural environment and take all reasonable steps to minimise avoidable impacts of professional engineering services on the natural environment.

4. Act within registration and area of professional competency

A professional engineer must only perform engineering services that are within their—

- a. registration as a professional engineer including any conditions on their registration; and
- b. professional competency (that is their qualifications, skills or experience).

For example:

If a fire safety engineer holds an unrestricted licence, but has never worked on a Class 9a building or has not done so for many years, then undertaking the fire safety engineering design for a hospital could be outside their experience and therefore beyond their professional competency.

A professional engineer must not falsify, misrepresent or exaggerate their qualifications and experience.

5. Providing direction and oversight

A registered professional engineer must only provide direction and oversight to an unregistered person within the registered professional engineer's area or areas of competence.

A professional engineer who is responsible for providing direction to and oversight of another engineer must do so in accordance with the Direction and Oversight Guidance material published by the ACT Government on the Professional Engineers Registration Scheme webpage.

A registered professional engineer who provides direction to and oversight of an unregistered person—

- a. must not knowingly permit the unregistered person to provide professional engineering services that fall outside the unregistered person's area or areas of competence; and
- b. must be competent in, and have sufficient knowledge of, the professional engineering services being carried out by the unregistered person; and
- c. must have sufficient control over any outputs of the professional engineering services to ensure that the professional engineering services being carried out by the unregistered person are at the standard expected of a registered professional engineer; and

- d. must take responsibility for the professional engineering services carried out by the unregistered person under their direction and oversight.

6. Maintain professional competency

A professional engineer must:

- a. maintain their professional competency to ensure their knowledge and skills are current for the work they undertake;
- b. take all reasonable steps to improve the relevant knowledge, skills and expertise necessary for the provision of professional engineering services;
- c. be committed to pursuing professional learning and maintain a thorough knowledge of the professional engineering services to be provided and any other matters that relate to the delivery and performance of those services;
- d. ensure they meet the requirements for continuing professional development determined by the Minister under section 84 of the Professional Engineers Act.

7. Insurance

A professional engineer must take all reasonable steps to procure and maintain, or otherwise be covered by, adequate professional indemnity insurance that—

- a. is appropriate for the professional engineering services being provided; and
- b. provides indemnity against liability to which the professional engineer may become subject as a result of the carrying out of professional engineering services (for example, a policy that covers the project and the entity, where the entity employs the professional engineer).

In determining what constitutes adequate professional indemnity insurance a professional engineer should consider the following matters—

- a. the nature and risks associated with the work typically carried out by the professional engineer;
- b. the volume of the work typically carried out by the professional engineer;
- c. the length of time that the professional engineer has been registered;
- d. a reasonable estimate of claims that could be brought against the professional engineer;

- e. the financial capacity of the professional engineer;
- f. any limits, exceptions, exclusions, terms or conditions of the policy to the extent they are not inconsistent with the above or other obligations in this Code, the Professional Engineers Act or another law.

8. Act in the best interests of the client

A professional engineer must —

- a. act in the best interests of a client unless it would be unlawful, unreasonable, or improper to do so; and
- b. recognise where other professional advice is required and seek, or recommend the client and, if employed, the registered professional engineer's employer seek, expert advice in appropriate areas.

9. Inform employer of professional concerns

A professional engineer must take reasonable steps to inform their employer, if employed, of any professional concerns and the likely consequences for affected parties if their advice is modified, overruled or disregarded.

10. Inform and communicate with clients

A professional engineer must—

- a. take reasonable steps to ensure that a client is informed of any decisions required to be made by the client to enable the professional engineer to provide professional engineering services in accordance with the Professional Engineers Act, their registration and this Code of Practice;
- b. take reasonable steps to inform a client of any professional concerns and the likely consequences if their advice is modified, overruled or disregarded;
- c. provide sufficient relevant information to the client, including about the social, environmental or economic impacts of the provision of professional engineering services that may affect the client, or the services being provided, within a reasonable time to enable the client to make an informed decision in relation to the provision of professional engineering services;

- d. respond, within a reasonable time, to a client's reasonable requests for information or other communications about the provision of professional engineering services to the client; and
- e. take reasonable steps to ensure that all information and material provided to a client is accurate and unambiguous.

A professional engineer must communicate with a client or prospective client in a timely and effective manner regarding professional engineering services, fees, costs, outcomes and risks.

11. Manage conflicts of interest including disclosure of endorsements

A professional engineer must—

- a. take all reasonable steps to avoid actual or potential conflicts of interest and where possible not perform a professional engineering service where a reasonable person would conclude there is a real risk that their decisions could be influenced by a conflict of interest; and
- b. disclose any actual, potential or perceived conflicts of interest upon discovery of the actual, potential or perceived conflict of interest; and
- c. ensure that their personal or financial interests do not interfere with the performance of their duties.

A professional engineer must disclose to a client or prospective client—

- a. if the professional engineer receives, is likely to receive, or has been promised any payment, gift or other material advantage to recommend, endorse or comment on a product or service that is or is likely to be used in connection with the provision of professional engineering services to the client or prospective client; and
- b. any arrangement entered into where the client or prospective client has been introduced or referred to the professional engineer by a third party who the professional engineer has given or offered to provide a fee or reward for the referral of a client or a prospective client.

12. Maintain confidentiality

A professional engineer must not disclose confidential information obtained while performing professional engineering services except where the relevant person has granted consent, or there is a legal or professional duty to disclose the confidential information.

13. Notification to regulators

A professional engineer 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.

A professional engineer is obligated to report activities they become aware of while providing professional engineering services to the ACT Professional Engineers Registrar where they become aware of or hold a reasonable suspicion of the activity being:

- a. unlawful; or
- b. creating an immediate or imminent risk to health and safety.

14. Retain and provide records

A professional engineer must retain records in relation to the provision of professional engineering services and the professional engineer's registration under the Professional Engineers Act for a period of 10 years, including in relation to a professional engineer's registration under the Professional Engineers Act, applications for registration and renewal and records of the person's qualifications and experience (excluding compliance with the continuing professional development determination).

A professional engineer must retain records of continuing professional development the engineer has undertaken in accordance with the continuing professional development determination issued under section 84 of the Professional Engineers Act.

A professional engineer should retain appropriate records in relation to the professional engineering services they provide. For example: professional engineering services engagement agreements or contracts, drawings, designs, plans and specifications, studies and reports, calculations and design

notes, construction documents, meeting minutes and records, approval and reviews and correspondence.

A professional engineer must comply with any request from the Professional Engineers Registrar to provide information about and/or copies of records relating to professional engineering services they have provided.

A professional engineer must be willing and able to provide reasoning for decisions made as part of providing professional engineering services to the Professional Engineers Registrar or another professional engineer involved in the provision of the professional engineering services.

15. Manage complaints

A professional engineer must take reasonable steps to minimise and resolve complaints or disputes about their service, including—

- a. have a reasonable process for managing and responding to enquiries and complaints in a fair and timely manner (complaints process);
- b. provide information about the complaints process to clients and prospective clients before, or as soon as practicable after, carrying out professional engineering work for the client;
- c. where complaints are made, advise complainants about the complaints process;
- d. document decisions in relation to complaints;
- e. follow and refine the complaints process as necessary; and
- f. produce and keep documentation that sets out decisions in relation to complaints.

Any complaints procedures relating to professional engineering services should include:

- a. privacy and natural justice considerations,
- b. informal and formal complaints processes,
- c. appeal processes,
- d. timelines and responsibilities, and
- e. external contacts.

Information on applicable complaints process in relation to professional engineer services should be

publicly available and in an accessible format so that the community can find and use this information.