

**ACEA
CODE
OF
ETHICS**

NOVEMBER 2003

CONTENTS

1. PREAMBLE	3
2. CODE OF ETHICS - PRINCIPLES	4
3. CODE OF ETHICS - TENETS	5
4. INTERPRETATION	6
4.1 THE COMMUNITY	6
4.2 AREAS OF COMPETENCE AND DESCRIPTION OF QUALIFICATIONS	7
4.3 CLIENTS AND EMPLOYERS	8
4.4 COLLEAGUES	10
5. ACTING AS AN EXPERT WITNESS	11
6. PUBLIC COMMENT OR STATEMENTS	12
7. WHISTLEBLOWING	13
8. PROCEDURES FOR HANDLING ALLEGED BREACHES OF THE CODE OF ETHICS	14

1. Preamble

This Code of Ethics establishes the standards, including the Standards of Conduct, to be adopted and adhered to by all member firms of the Association of Consulting Engineers Australia and their staff as part of their working habits and relationships with clients, colleagues and the community generally.

A member of the Association of Consulting Engineers Australia, in the context of this code of Ethics, refers to both the firms and their staff individually.

The members are bound by a common commitment to promote technology based intellectual consulting services for the built and/or natural environment and facilitate its practice for the common good, based upon shared values of:

- ethical behaviour;
- competent performance;
- innovative practice;
- excellence in service provision;
- equality of opportunity;
- social justice;
- unity of purpose;
- sustainable development;
- responsible decision making;
- accountability for conduct and behaviour;
- recognition and management of risk; and,
- honesty and integrity.

This Code of Ethics and its obligations and requirements on members was approved by members in accordance with Article 12.1 and By-Law 6.1(b) by a general meeting of the Association held on 28 November 2003.

2. Code of Ethics - Principles

The members are committed to the Principles of this Code of Ethics. These are:

- to act honestly and with integrity;
- to respect the inherent dignity and privacy of the individual;
- to act on the basis of competence and a well informed conscience;
- to hold paramount the welfare, health and safety of the community; and
- to uphold, at all times, the Tenets as expressed in this Code of Ethics.

3. Code of Ethics - Tenets

The Tenets of the Code of Ethics are the specific principles to which the Association ascribes:

- 1** Members shall at all times place their responsibility for the welfare, health and safety of the community before their responsibility to private interests, or to other members;
- 2** Members shall act with honour, integrity and dignity in order to merit the trust of the community;
- 3** Members shall act only in areas of their competence and shall practise in a careful and diligent manner;
- 4** Members shall act with honesty, good faith and without discrimination towards all in the community, including clients, employers and colleagues;
- 5** Members shall apply their skill and knowledge in the interest of their employer or client for whom they shall act with integrity, without compromising any other obligation to these Tenets;
- 6** Members shall take all reasonable steps to inform themselves, their clients and employers and the community of the social and environmental consequences of the actions and projects in which they are involved;
- 7** Members shall express opinions and recommendations, make public statements or give evidence in an objective and truthful manner and only on the basis of existing and adequate knowledge having regard to their obligations of confidentiality and their responsibility to the safety, health and welfare of the community;
- 8** Members shall continue to develop relevant knowledge, skill and expertise throughout their careers and shall actively assist and encourage those under their direction to do likewise; and
- 9** Members shall not assist, induce or be involved in a breach of these Tenets, shall support those who seek to uphold them, and having knowledge of any alleged violation of this Code of Ethics will raise it with the member and the Association as considered appropriate.

4. Interpretation

The comments which follow provide interpretation of the Tenets as they apply to practices and situations in which members may find a need for ethical guidance. A breach of the Code of Ethics occurs when a member acts contrary to one of the nine Tenets judged on the circumstances of the case and not on the emphasis of the interpretations.

4.1 The community

Members' obligations to the welfare, health and safety of the community involves the application of sound judgement based on experience and relevant analysis to arrive at the appropriate balance of considerations which must apply in a given situation. Protection of the environment is both a short term and long term concern of the community and needs to be considered by members at all times. Members' obligations extend to taking all reasonable steps to understand the consequences of their own actions and the actions of those with or for whom they are working.

Members:

- (a) shall work in conformity with accepted environmental standards in a manner which does not jeopardise the public welfare, health or safety;
- (b) shall endeavour at all times to maintain services essential to public health and safety;
- (c) shall use their best endeavours, at all times, to meet the requirements and obligations in relation to the health and safety of employees, colleagues and the workforce;
- (d) shall give due weight to the need to achieve sustainable development and to conserve and restore the productive capacity of the earth;
- (e) shall endeavour to ensure that information provided to the public is relevant and in a readily understood form;
- (f) shall avoid assignments taken on behalf of clients or employers that are likely to create a conflict of interest between the member or their clients or employers and the community;
- (g) shall not use association with other persons, corporations or partnerships to conceal unethical acts
- (h) shall not involve themselves with any practice which they know to be of a fraudulent, dishonest or criminal nature. Successful prosecution before a Court for any such action may be deemed to be a breach of the Code of Ethics ; and
- (i) shall work in accordance with generally accepted professional and engineering standards in a manner which does not jeopardise the safety, health or welfare of the public and the community.

4.2 Areas of competence and description of qualifications

Members should understand the distinction between working in an area of competence and working competently. Working in an area of competence requires members to operate within their qualifications and experience; working competently requires sound judgement. If an error of judgement occurs, the outcome may be construed as negligence, however, it does not necessarily imply that the member has acted unethically.

Members:

- (a) shall neither falsify nor misrepresent their own, or their associates', qualifications, experience and prior responsibility;
- (b) shall inform their employers or clients, and make appropriate recommendations on obtaining further advice, if an assignment requires qualifications and experience outside their fields of competence;
- (c) shall only undertake assignments and provide services within the member's area of competence and qualification, and;
- (d) shall not affix their signatures to any plans or documents dealing with subject matter in which the member lacks competence or qualifications.

4.3 Clients and employers

Members shall practice in an open and informed manner and act in the best interests of the client and/or the employer unless to do so would jeopardise the safety, health or welfare of the public, the community or the environment.

Members:

- (a) shall promote the principle of selection of services by clients upon the basis of merit, and shall not compete with other consulting engineers on the basis of fees alone. However, it shall not be a breach of the Code of Ethics for members to provide information as to the basis upon which they usually charge fees for particular types of work. Also, it shall not be a breach of the Code of Ethics for members to submit a proposal for the carrying out of work, which proposal includes, in addition to a technical proposal, an indication of the resources which members can provide and information as to the basis upon which fees will be charged or as to the amount of the fees for the work which is proposed to be done. In this respect it is immaterial whether or not members are aware that others may have been requested to submit proposals, including fee proposals, for the same work;
- (b) shall take reasonable steps to recognise, manage and mitigate the risks associated with each assignment or engagement of work, and, in particular, the risks to the client, the workforce, the community and the environment, and;
- (c) shall, on request prior to engagement, advise existing clients and prospective clients of the relevant insurance maintained by the member. If the member does not maintain professional indemnity insurance this must be disclosed to the existing client or prospective client.
- (d) may use advertising (which includes direct approaches to prospective clients by any reasonable means) which is not misleading, to announce their practice and availability. Information given must be truthful, factual and free from ostentatious or laudatory expressions or implications;
- (e) shall, when acting as administrator of a contract, be impartial as between the parties in the interpretation of the contract. This requirement of impartiality shall not diminish the duty of members to fairly apply their skill and knowledge in the interests of their employers or clients;
- (f) shall keep their employers or clients fully informed on all matters, including financial interests, which are likely to lead to a conflict of interest;
- (g) shall advise their clients or employers when they judge that a project will not be viable, whether on the basis of commercial, technical, environmental or any other such risk which the member might reasonably have been expected to consider;

- (h) shall inform their clients or employers of the possible consequences in the event that a member's judgements are overruled on matters relating to the welfare of the community. Where justified by the consequences which result from the matter continuing, members shall endeavour further to persuade the client or employer to discontinue with the matter. If unsuccessful, members may make the details of the adverse consequences known to the public without incurring a breach of the Code of Ethics.
- (i) shall neither disclose nor use confidential information gained in the course of their employment without express permission, unless permission unduly withheld would jeopardise the welfare, health or safety of the community;
- (j) shall not undertake, nor should they be expected to undertake, professional work where the terms of reference are so restrictive that they are not able to carry out their responsibilities in accordance with recognised professional standards;
- (k) shall not accept compensation, financial or otherwise, from more than one party for services on the same project, nor provide free services, unless the circumstances are fully disclosed to, and agreed to, by all interested parties;
- (l) shall neither solicit nor accept financial or other valuable considerations from material or equipment suppliers for specifying their products;
- (m) shall neither pay nor offer directly or indirectly inducements to secure work, and;
- (n) shall neither solicit nor accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

4.4 Colleagues

Members have an obligation to act in good faith, honestly and with integrity when dealing with colleagues to whom this Code of Ethics applies.

Members:

- (a) shall exercise due restraint in explaining their own work, shall give proper credit to those to whom proper credit is due, and shall acknowledge the contributions of subordinates and others;
- (b) shall accept, as well as give, honest and fair professional criticism when commenting on another's work or making public comment;
- (c) shall compete on the basis of merit and not compete unfairly;
- (d) shall neither maliciously nor carelessly do anything to injure, directly or indirectly, the reputation, prospects or business of others;
- (e) shall, where acting as a representative on behalf of an employer, recognise that other members, who are employees, are colleagues to whom the Code of Ethics applies;
- (f) shall uphold the principle of adequate and appropriate remuneration;
- (g) shall neither attempt to supplant another individual or organisation who has been duly appointed by a client or employer nor accept engagement from a client or employer in replacement of another without first ascertaining that the appointment has been terminated by due notice;
- (h) shall examine the circumstances and determine the appropriateness of accepting an engagement from a client if they have evidence that they are to replace another, having first made all reasonable efforts to make the other aware of the situation;
- (i) shall, if asked by a client to review the work of another, proceed only after gaining consent from the client to discuss that review with the other party concerned. Members shall discuss the review with the other person or organisation prior to submitting the review if it is possible to do so; and
- (j) shall not unfairly criticise others for their past work where such work was conducted in accordance with the accepted standards and practices and community values of the time, and in accordance with the needs of the time.

5. Acting as an expert witness

An expert witness provides a special and unique service to legal or quasi-legal proceedings established for the purpose of making judgements. Once accepted by the judge or arbitrator, an expert becomes "an officer of the Court or Hearing".

In this capacity the expert witness is normally afforded two important privileges: the freedom to remain in the proceedings at all times and the freedom to express an opinion.

At all times the expert witness owes the proceedings total objectivity. The role of expert witness is to give the tribunal the benefit of his or her special training and experience in order to help the tribunal understand matters which it would not otherwise understand and thus help the tribunal to come to the right decision.

It follows that:

- (a) members' reports, statements or testimony before any tribunal shall be objective and accurate. They shall express an opinion only on the basis of adequate knowledge and technical competence in the area, but this shall not preclude a considered speculation based on experience and wide relevant knowledge;
- (b) members must reveal the existence of any interest, pecuniary or otherwise, including any conflict of interest, that could be taken to affect their judgement about which they are making a statement, giving evidence or providing an opinion. This shall include advising the parties and the court or tribunal of any actual or perceived conflict of interest and any circumstance where the member has previously received payment for any work or services provided to any of the parties involved in the proceedings before the court or tribunal;
- (c) members must ensure that all reports and opinions given to a client prior to a hearing include all relevant matters of which they are aware, whether they are favourable or unfavourable;
- (d) members giving evidence as experts should listen very carefully to the question put, and ensure that each answer is given objectively, truthfully and completely and covers all matters relevant to the question of which they have knowledge; and
- (e) when discharging these responsibilities, members should have regard to the normal practice at the time of the occurrence of the incident which gave rise to the call for advice.

Members should also refer to relevant Practice Notes issued by this Association (and in particular to section 4.0) and also to the document "Guideline for Expert Witnesses in proceedings in the Federal Court of Australia" issued by the Federal Court of Australia.

Members must act in accordance with the requirements for expert witnesses as prescribed by the relevant court or tribunal when providing reports, statements or testimony as an expert witness.

6. Public comment or statements

Public comments and statements by members should be made in a way that maintains and enhances the trust of the community and must be made in good faith in an honest and objective manner. Any public comments or statements made by members must not breach the obligation of confidentiality to the client, must not breach the privacy of an individual and must consider the safety, health and welfare of the public, the community and the environment.

It follows that:

- (a) Members may, if they consider that by so doing they can constructively advance the well-being of the community, contribute to public discussion on technical matters in their area of competence;
- (b) in areas outside of a member's area of competence, but those in which a member can demonstrate adequate knowledge, comment may be made on details of a project within that area of knowledge. Adequate knowledge generally applies to a narrow aspect of an area of competence. Adequate knowledge may be acquired from working in a related area of competence or through continued professional development. However, adequate knowledge in a narrow area is not generally a sufficient basis for public comment or advice on the overall solution to a task outside of a member's area of competence; and
- (c) in areas outside of a member's area of competence, and in which the member is not able to demonstrate adequate knowledge, public comment or statements should be limited to enquiries which seek to provide deeper understanding. In this respect, the member may draw on experience in training and analysis as a basis for asking objective questions which may assist the public to evaluate services without the member implying personal competence or knowledge in the area.

7. Whistleblowing

In the course of a member's employment, situations may arise concerning the employer, client or external organisation which may present the member with a significant moral and legal problem. This could include criminal behaviour, threats to public safety, threats to the welfare of the community, threats to the welfare of the environment, unethical policies and breaches of this Code of Ethics. Depending on the particular circumstances a member may have responsibility under existing legislation or the provisions of this Code of Ethics to ensure that any such practices are brought to the attention of those with authority to rectify the problem or to raise the matter with the appropriate regulatory authorities.

The following practical and commonsense guidance is set out for the benefit of members who have or are intending to make such disclosure:

1. Make any objections to unethical practices promptly so as to avoid any misinterpretation of the motives for doing so;
2. Focus on the issues and proceed in a tactful, low-key manner to avoid unnecessary personal antagonism which might distract attention from solving the problem;
3. Keep supervisors informed of actions as much as possible, both through informal discussion and formal memoranda;
4. Be accurate in observations and claims and keep formal records documenting relevant events;
5. Raise the problem initially through normal organisational channels;
6. Consult colleagues for advice and avoid isolation;
7. Consult with the Association through the Chief Executive on the ethical issues involved, or with other organisations as appropriate; and/or
8. Seek legal advice concerning potential legal liabilities.

8. Procedures for handling alleged breaches of the Code of Ethics

The members of the Association have approved Articles and By-Laws to govern the investigation and hearing of alleged breaches of the Memorandum & Articles of Association, the By-Laws and this Code of Ethics. The Articles at Part 3 and Part 4 and By-Laws at Part 3 provide for a process to investigate and hear alleged breaches and to reflect the importance which the Board places on all members upholding the ethical standards of the Association and its members. All alleged breaches and complaints will be considered and dealt with in accordance with the Articles of Association, the By-Laws and this Code of Ethics. If a breach of the Memorandum & Articles of Association, the By-Laws or this Code of Ethics is substantiated or held to be the case by the Board of ACEA then the following sanctions may be applied:

- admonition;
- reprimand;
- fine;
- suspension;
- expulsion;
- ongoing membership declined; or
- termination of membership.