



Building (Code of Ethics for Licensed Building Practitioners) Order 2021

Cindy Kiro, Governor-General

Order in Council

At Wellington this 26th day of October 2021

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 314A of the Building Act 2004 on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Building and Construction.

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Order

- 1 Title**
This order is the Building (Code of Ethics for Licensed Building Practitioners) Order 2021.
- 2 Commencement**
This order comes into force on 25 October 2022.

Part 1

Preliminary matters

3 Application

- (1) The Code of Ethics set out in clauses 4 and 5 and Parts 2 to 5 applies to all licensed building practitioners on and after 25 October 2022.
- (2) For the purposes of this order, a licensed building practitioner carrying out or supervising building work as a volunteer must—
 - (a) be treated as an employed licensed building practitioner if they work as part of a team of 2 or more and are not the team leader; but
 - (b) otherwise be treated as a self-employed licensed building practitioner.
- (3) The extent of a licensed building practitioner's obligations under clauses 10(1) and (2), 13(1) and (2), 14, 15, 16, 18(1) and (2), 20, and 21(1) and (2),—
 - (a) if they are an employed licensed building practitioner, is limited to the matters that they are responsible for carrying out or supervising under their employer's directions:
 - (b) if they are a self-employed licensed building practitioner, is limited to the matters that they are responsible for carrying out or supervising, to the person who has engaged them.
- (4) Part 2 does not limit the Health and Safety at Work Act 2015 or any legislation made under that Act, and compliance with Part 2 by a licensed building practitioner does not exhaust the obligations of the practitioner under the Health and Safety at Work Act 2015 or any legislation made under that Act.
- (5) In this clause, **matters** includes building work and any thing related to building work (for example, client communications, giving quotations, or participating in dispute resolution).

Code of Ethics

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

5 Interpretation

In this order, unless the context otherwise requires,—

building work has the same meaning as in section 7 of the Building Act 2004

licensed building practitioner means a building practitioner—

- (a) whose name is, for the time being, entered in the register established and maintained under section 298 of the Building Act 2004; and
- (b) who holds a current licence, issued under Part 4 of that Act, that is not suspended or is otherwise inoperative for any reason

restricted building work has the same meaning as in section 7 of the Building Act 2004

supervise has the same meaning as in section 7 of the Building Act 2004

you, in relation to any person, means a person who is a licensed building practitioner, and **your** has a corresponding meaning.

6 Overview of Code of Ethics

The Code of Ethics gives effect to 4 principles, as follows:

- (a) the principle of working safely is implemented by Part 2:
- (b) the principle of acting within the law is implemented by Part 3:
- (c) the principle of taking responsibility is implemented by Part 4:
- (d) the principle of behaving professionally is implemented by Part 5.

Part 2 Work safely

7 You must take responsibility for health and safety

While carrying out or supervising building work you must—

- (a) take reasonable care of your own health and safety; and
- (b) take reasonable care to avoid doing things that might adversely affect the health and safety of others; and
- (c) take all reasonable steps to—
 - (i) identify risks to health and safety; and
 - (ii) eliminate or manage those risks in an appropriate manner.

8 You must report unsafe behaviour by others on building site

If you believe, as a result of observation or information you obtain during the course of your work, that someone is engaging in unsafe behaviour or work practices on a building site, you must—

- (a) report those matters to an appropriate person (for example, the person engaging in unsafe behaviour or work practices, or the supervisor, building site manager, or person responsible for the building site); and
- (b) if that behaviour or those practices do not cease, take other appropriate action (for example, reporting the matters to WorkSafe).

9 You must avoid harming the environment

When carrying out or supervising building work, you must take all reasonable steps to avoid harming the environment.

Part 3

Act within the law

10 You must comply with the law

- (1) When you carry out or supervise building work, you must ensure that the building work complies with the following:
 - (a) the Building Act 2004;
 - (b) the building code set out in Schedule 1 of the Building Regulations 1992;
 - (c) the Building (Residential Consumer Rights and Remedies) Regulations 2014;
 - (d) any relevant requirements in other legislation or bylaws.
- (2) You must also ensure that building work that is carried out by you or supervised by you, is carried out or supervised in accordance with—
 - (a) the Resource Management Act 1991;
 - (b) the Hazardous Substances and New Organisms Act 1996;
 - (c) the Construction Contracts Act 2002;
 - (d) the Fair Trading Act 1986;
 - (e) the Consumer Guarantees Act 1993;
 - (f) the Health and Safety at Work Act 2015;
 - (g) any relevant legislation made under those Acts.

11 Your duty to report breaches of the law

If you believe, as result of observation or information that you obtain during the course of your work, that someone is contravening any of the laws referred to in clause 10 you must—

- (a) report your belief to an appropriate person (for example, the person believed to be contravening the law, or the supervisor, building site manager, or person responsible for the building site); and
- (b) if that contravention does not cease, take other appropriate action (for example reporting the matter to WorkSafe).

Part 4

Take responsibility for your actions

12 You must be knowledgeable about what you are allowed to do

You must ensure that you understand at all times what restricted building work you are permitted to carry out or supervise and, in particular, what your class of

licence permits you to do when carrying out or supervising restricted building work.

13 You must explain risks to your client

- (1) You must take all reasonable steps to—
 - (a) discuss with your client the design and construction risks of any project you are undertaking and any particular building method you are using in carrying out or supervising building work; and
 - (b) ensure that your client understands the options available to mitigate those risks before the work is commenced.
- (2) If you become aware of a risk that has arisen or become apparent during the course of carrying out or supervising building work, you must, as soon as practicable, advise your client in writing.

14 Your duty to inform and educate client

You must provide your client with sufficient information and advice to enable them to make an informed decision to enable you to continue with your building work.

15 You must be accountable

If building work carried out by you, or someone under your supervision, is or could be defective you must—

- (a) take all reasonable steps to communicate with your client about the problem in a way that—
 - (i) is honest; and
 - (ii) is responsive; and
- (b) act with integrity in relation to the resolution of the problem.

16 You must advise clients of any delays as soon as they become apparent

You must, in relation to any building work you are carrying out or supervising, take all reasonable steps to—

- (a) give your client regular reports on progress; and
- (b) ensure that your time frame estimates to clients are realistic; and
- (c) promptly notify your client when time frames for completing work change, particularly in the event of delays; and
- (d) ensure that delays in completing the building work are prevented wherever possible.

17 You must act in your client's interests

You must take all reasonable steps to ensure that building work you carry out or supervise is carried out or supervised to an acceptable standard.

18 You must normally follow your client's instructions

- (1) You must follow the instructions of your client at all times unless those instructions would—
 - (a) involve a breach of the law; or
 - (b) be dangerous to implement; or
 - (c) be contrary to the terms of the relevant building contract or contracts; or
 - (d) be contrary to the terms of a resource consent or building consent.
- (2) If you believe that subclause (1)(a), (b), (c), or (d) applies, you must take all reasonable steps to—
 - (a) discuss the issue with the client and endeavour to come to an arrangement so that subclause (1)(a), (b), (c), or (d) will no longer apply; but
 - (b) if you cannot reach such an arrangement because your client persists with their instructions, and if subclause (1)(a), (b), or (d) applies, raise the problem with—
 - (i) the authority that issued the consent or permit; or
 - (ii) if no consent or permit was issued, a relevant authority with functions under the Building Act 2004, or the Resource Management Act 1991.

Part 5**Behave professionally****19 You must behave professionally**

In carrying out or supervising building work, you must act professionally and treat your clients and colleagues with respect.

20 You must act in good faith during dispute resolution

If there is a dispute involving you and your client about building work (including, without limitation, the price, quality, or timing of the building work or your or the client's actions), you must—

- (a) attempt to resolve the dispute with your client; and
- (b) ensure that you make yourself available to discuss the dispute with the client so that all parties (including you) have the opportunity to express their views and be heard; and
- (c) ensure that at all times you act in a professional and respectful manner towards your client.

21 You must price work fairly and reasonably

- (1) You must not do any of the following things to obtain a contract:
 - (a) accept or pay bribes:

- (b) unfairly assess or estimate the price of any work you are asked to quote for;
 - (c) quote an unrealistically low price in the expectation of charging additional costs later.
- (2) If you become aware that a contract for building work may involve additional costs, you must—
 - (a) advise your client as soon as practicable; and
 - (b) obtain their agreement before the additional costs are incurred.
- (3) To avoid doubt, subclause (1) does not prohibit any act or omission to which section 105C(3) of the Crimes Act 1961 applies (which relates to small benefits paid or given to foreign public officials for the sole or primary purpose of expediting the performance by a foreign public official of a routine government action).

22 You must declare and manage actual or potential conflicts of interest appropriately

- (1) You must take all reasonable steps to,—
 - (a) before carrying out or supervising building work, declare any actual or potential conflict of interest to an appropriate person (for example, your client, supervisor, or employer):
 - (b) while carrying out or supervising that work,—
 - (i) manage an actual or potential conflict of interest appropriately; and
 - (ii) if an actual or potential conflict of interest arises while carrying out or supervising building work, declare that conflict to an appropriate person (for example, your client, supervisor, or employer).
- (2) In this clause, **actual or potential conflict of interest**, in relation to you, means that your professional judgement or actions in planning for or carrying out or supervising building work may be adversely affected by a personal connection or financial connection of you or your family member or your company with a particular job, product, supplier of building products, or client.

23 You must maintain confidentiality of client details unless there is good reason for sharing information

If you become aware of client information of a confidential matter (for example, details of your client's private life or finances) you must take all reasonable steps to keep that information confidential, unless you are required or authorised by law to disclose it.

24 You must acknowledge and respect cultural norms and values of clients and colleagues

In carrying out or supervising building work, you must—

- (a) take all reasonable steps to act in a way that is respectful of the cultures and values of your clients and workmates; and
- (b) avoid intentionally causing offence to them.

25 You must conduct your business in a methodical and responsible manner

In conducting any business that involves carrying out or supervising building work, you must take all reasonable steps to ensure that—

- (a) accurate records of money received and paid out are maintained; and
- (b) a record of other appropriate documents is maintained.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to this order as made

There are no transitional, savings, or related provisions relating to this order as made.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 25 October 2022, sets out a Code of Ethics for licensed building practitioners (**LBP**s).

Part 1 (clauses 3 to 6) deals with preliminary matters such as the application of the order to volunteers and the limitation of certain obligations to matters for which LBPs are responsible. *Clause 4* relates to transitional provisions. *Clause 5* defines certain terms, and *clause 6* provides an overview of the Code of Ethics.

Part 2 (clauses 7 to 9) implements the principle of working safely. *Clause 7* sets out the responsibility of an LBP for health and safety. *Clause 8* sets out duties of LBPs in relation to reporting unsafe behaviour by others on a building site. *Clause 9* sets out the duties of LBPs in relation to protecting the environment.

Part 3 (clauses 10 and 11), which implements the principle of acting within the law, lists provisions building work is required to comply with (*clause 10*), and requires an LBP to report certain breaches of the law (*clause 11*).

Part 4 (clauses 12 to 18), which implements the principle of taking responsibility, requires LBPs to—

- understand what they are allowed to do (*clause 12*):
- explain risks to clients (*clause 13*):
- adequately inform and advise clients (*clause 14*):
- be accountable (*clause 15*):
- advise clients of delays promptly (*clause 16*):
- act in the client's best interests (*clause 17*):
- under normal circumstances, follow the client's instructions (*clause 18*).

Part 5 (clauses 19 to 25), which implements the principle of behaving professionally, requires LBPs to—

- behave professionally (*clause 19*):
- act in good faith during dispute resolution (*clause 20*):
- price work fairly and reasonably (*clause 21*):
- declare and manage actual or potential conflicts of interest appropriately (*clause 22*):
- maintain confidentiality of client details unless required or authorised to disclose them by law (*clause 23*):
- acknowledge and respect cultural norms and values of clients and colleagues (*clause 24*):
- conduct their businesses in a methodical and responsible manner (*clause 25*).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 28 October 2021.

This order is administered by the Ministry of Business, Innovation, and Employment.