



SOUTH ELEVATION

MASTER BUILDERS AUSTRALIA

National Code of Practice Third Edition

September 2006



MASTER BUILDERS
A U S T R A L I A

NATIONAL CODE OF PRACTICE

THIRD EDITION

SEPTEMBER 2006

Master Builders Australia Inc
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FOREWORD

BY PAUL IBBOTT

National President, Master Builders Australia Inc

I am pleased to introduce the third edition of Master Builders Australia Inc's National Code of Practice.

Master Builders has a long and proud tradition of assisting consumers. It has constantly shown leadership in this area, including when it developed the Code's first edition in co-operation with the Trade Practices Commission, now the Australian Competition and Consumer Commission.

The Code continues to be underpinned by trade practices principles. Master Builders has continued to demonstrate its full commitment to them since the Code's introduction more than ten years ago as well as to the education and training package with which the Code is associated. In addition, for the first time, the Code contains an Appendix which explains how **all** consumer complaints will be dealt with.

The third edition of the Code demonstrates Master Builders' continuing commitment to ensure that its clients – Australian business and consumers – can enter into contracts in good faith and with an expectation of fair play and honesty.

A handwritten signature in black ink, appearing to read 'Paul Ibbott', with a long horizontal line extending to the right.

Paul Ibbott, FAICD

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PART 1

INTRODUCTION

- 1.1 ABOUT THE MASTER BUILDERS MOVEMENT
- 1.2 ABOUT THE CODE
- 1.3 CODE FORMAT
- 1.4 STATE AND TERRITORY MASTER BUILDERS ASSOCIATIONS
- 1.5 MASTER BUILDERS NON-CODE COMPLAINTS

1.1 ABOUT THE MASTER BUILDERS MOVEMENT

The Australian Master Builders movement (Master Builders) was established over 100 years ago as a federation of State and Territory Master Builder associations to represent, promote and protect the interests of employers within the Australian building and construction industry (**Industry**).

It comprises contractors, sub-contractors and suppliers in all sectors of the industry including commercial, civil, industrial, general contracting and housing.

The movement is represented at the national level by Master Builders Australia Inc (**MBA Inc**) and at the State and Territory level by the following Associations (each a **State or Territory MBA**):

- Master Builders Association of the ACT
- Master Builders Association of New South Wales
- Master Builders Association Queensland
- Master Builders Association of South Australia
- Master Builders Association of Tasmania
- Master Builders Association of Victoria
- Master Builders Association of Western Australia
- Newcastle Master Builders Association
- (Northern) Territory Construction Association

Contact details for all Associations are set out in Part 1.4.

Master Builders provides a suite of services to its Members with the objective of ensuring that the Industry operates in a profitable, efficient and ethical manner. These services include:

- preparing and publishing standard forms of contract and subcontract documents and explanatory guides;
- conducting a Industry education and training seminars and workshops on a range of issues;
- representing the Industry on a range of government consultative committees and key Industry bodies. Examples include – National Workplace Relations Consultative Council, Standards Australia, Australian Building Codes Board, Small Business Forum and the Australian Building Energy Council;
- representing the Industry on a number of international bodies which include the International Federation of Asian and Western Pacific Contractors Association;
- preparing and forwarding a range of submissions to Government on various issues which include – tax reform, workplace relations reform, industry training, consumer protection and environmental and building regulations; and

- promoting industry best practice through the conduct of a range of industry awards at both State and Federal level where the achievements of industry champions and leaders are acknowledged.

1.2 ABOUT THE CODE

What is the Code?

The Code establishes the infrastructure for comprehensive standards of industry conduct and practice and ensures the accountability of Members for their breach of acceptable standards of conduct and practice.

The Code provides a more flexible and cost efficient marketplace alternative to government regulation.

The Code deals with disciplinary procedures relating to commercial ethics and behaviour.

The Code does not deal with contractual rights and technical issues. It is not a substitute for civil remedies which may be pursued by whatever means are specified in a particular contract (eg settlement by intermediary, mediation, arbitration or litigation) or at contract law. How these complaints are dealt with is set out in the Appendix.

The Code owes its origin to the various inquiries undertaken by governments in the early 1990s into industrial lawlessness, collusive tendering and other unacceptable practices in the Industry. These inquiries were the culmination of a decade of rapid expansion of the Industry which was accompanied by profound changes in building procurement and delivery systems and a resurgence of union militancy.

In particular, the Royal Commission into Productivity in the New South Wales Building Industry and the Trade Practices Commission's Review of Home Building – Consumer Problems and Solutions, demonstrated the need for industry reform in the areas of industrial relations, contracts, dispute resolution, information and education. The need for further reforms in a number of these subject areas was confirmed by the findings of the Cole Royal Commission in 2003.

Although such inquiries were directed towards the whole of the Industry and not just builders and contractors, MBA Inc recognised that the industry needed to undergo change from within or suffer the consequences of government regulation.

In April 1994, MBA Inc entered into a Memorandum of Understanding with the, then, Trade Practices Commission which stipulated the following as its principal aim:

“... to achieve the common goals of continuance of Industry reform and promotion of 'best practice' through an integrated range of national measures which are as follows:

- (a) the introduction of a comprehensive Industry Code of Practice which would deal not only with best practice but identify Industry behaviour which is unacceptable. The Code would encompass such matters as compliance with the Trade Practices Act, tendering ethics and disciplinary measures;*

- (b) *the development of new national conditions of contact for the domestic (housing) sector of the Industry which are both understandable and operate fairly for all parties;*
- (c) *the establishment of Industry training, educative and compliance programs with the focus on the needs of contractors, building suppliers and consumers;*
- (d) *the development of model Articles for its constituent Members regarding prohibition of collusive practices by Members.”*

The Code meets the above aims of establishing standards of conduct for the activities of Members. This is its third form. The fundamental purposes and basic tenets of the Code have not changed.

The Code has a client driven focus. This focus assumes fair competition to satisfy client requirements and also provides the infrastructure for industry self-regulation at great saving to the public purse.

The Code reflects a desire by responsible participants in the industry for a regulatory procedure which is both fair and transparent. It is a product of the recognition by mature Industry participants that they must be accountable to their peers to ensure that the reform process continues.

The Code is supervised and administered in the following ways:

- Each State or Territory MBA deals with initial Complaints against its Members;
- MBA Inc deals with matters which cannot be resolved at the State or Territory level.
- A Code Administration Committee monitors the Code and manages its effectiveness.

Failure to comply with the Code results in sanctions being applied under the provisions of clause 3.6.

MBA Inc intends this Code to serve as an industry model, providing both an impetus for reform and a standard for other industry participants such as design professionals, clients and unions.

To Whom Does the Code Apply?

The Code applies to each State or Territory MBA.

A Complaint against a Member will be heard first by that Member’s MBA. If the person who makes a Complaint or the Respondent Member is not happy with the way that their State or Territory MBA handles the Complaint then they have the right to appeal to MBA Inc and have the matter dealt with at the national level.

Who Can Make a Complaint?

Any Member of a State or Territory MBA or any of their clients, any State or Territory MBA or any government agency or body.

Where Can Complaints be Made?

Complaints should be made in writing to the Executive Director of the State or Territory MBA where the Complaint arises. However, if desired, a Complaint may be made in writing to MBA Inc (see the address details below).

Who Will Deal With the Complaint?

Most Complaints will be handled by the MBA in the State or Territory where the Complaint arises. However, a Code Complaint may be ultimately determined by a Mediator or the Appeals and Complaints Board at the national level.

What is a Mediator?

A Mediator is a person who is trained and has experience in assisting parties in dispute to understand each other's point of view, reconsider their position and be actively involved in negotiating an agreed outcome.

What is the Appeals and Complaints Board?

This is a disciplinary tribunal established under the Code to ensure that Code Complaints are dealt with properly and fairly and to provide Complainants with a right of appeal against the decision of a State or Territory MBA.

Who Administers the Code?

The Code is administered, reviewed and updated by a Code Administration Committee with the administrative support of MBA Inc.

To Whom Can a Code Inquiry be Directed?

Any inquiry concerning the operation of the Code may be directed to:

Chief Executive Officer
Master Builders Australia Inc
Level 1
16 Bentham Street
YARRALUMLA ACT 2600
PO Box 7170
YARRALUMLA ACT 2600
Phone: 02 6202 8888
Fax: 02 6202 8877

1.3 CODE FORMAT

The Code comprises:

- (a) **formal provisions** which lay down the Code's specific requirements to which all Members must adhere;
- (b) boxed and smaller print **explanatory notes** to help with an understanding of how the Code operates; and

(c) **headings and subheadings** to further assist understanding of the Code.

All are integral parts of the Code and should be read together. However, if any ambiguity or conflict arises, the formal provisions (which include the definitions) override the explanatory notes, headings and subheadings.

Because the Code has the potential to affect the reputation and livelihood of Members, it is necessary, in many places, to use formal, technical or legal language.

Some words begin with a capital letter. This usually means that they have special meaning. Their meaning can be found under the Definitions in the subheading in clause 2.1.

1.4 STATE AND TERRITORY MASTER BUILDERS ASSOCIATIONS

Master Builders Association of the ACT
241 Northbourne Avenue
LYNEHAM ACT 2602
Phone: 02 6247 2099
Fax: 02 6249 8374

Master Builders Association of NSW
52 Parramatta Road
FOREST LODGE NSW 2037
Phone: 02 8586 3555
Fax: 02 9660 3700

Master Builders Association of Queensland
417-419 Wickham Terrace
BRISBANE QLD 4000
Phone: 07 3404 6444
Fax: 07 3832 2361

Master Builders Association of South Australia
47 South Terrace
ADELAIDE SA 5000
Phone: 08 8211 7466
Fax: 08 8231 5240

Master Builders Association of Tasmania
2nd Floor, 81-89 Brisbane Street
HOBART TAS 7000
Phone: 03 6234 3810
Fax: 03 6234 3860

Master Builders Association of Victoria
332 Albert Street
EAST MELBOURNE VIC 3002
Phone: 03 9411 4555
Fax: 03 9411 4591

Master Builders Association of Western Australia
35-37 Havelock Street
WEST PERTH WA 6005
Phone: 08 9476 9800
Fax: 08 9476 9801

Newcastle Master Builders Association
Suite 1, 1st Floor
118 Belford Street
BROADMEADOWS NSW 2292
Phone: 02 4962 4900
Fax: 02 4962 2366

Territory Construction Association
Cnr Winnellie Road & Hickman Street
WINNELLIE NT 0802
Phone: 08 8922 9666
Fax: 08 8922 9600

1.5 MASTER BUILDERS NON-CODE COMPLAINTS

The manner in which non-Code complaints will be handled by the State and Territory Master Builders Associations is, for convenience, set out in an Appendix to this Code.

PART 2

THE CODE - BEHAVIOUR

- 2.1 PRELIMINARIES
- 2.2 PRINCIPLES AND OBJECTIVES
- 2.3 ETHICAL BEHAVIOUR
- 2.4 UNACCEPTABLE TENDERING PRACTICES
- 2.5 FAIR TRADING
- 2.6 INDUSTRY CODES OF PRACTICE
- 2.7 CONFLICTING PROVISIONS
- 2.8 COMPLIANCE

2.1 PRELIMINARIES

Because part of this Code contains a disciplinary procedure which could result in fines, suspension and expulsion which could, in severe cases, lead to the loss of a builder's or contractor's livelihood, it is necessary, in some parts, to use formal, technical or legal language. Therefore, some words have special meanings which are set out below and paragraphs are given numbers for accuracy of reference. In order to make this Code easier to read, a meaning may sometimes be repeated in similar, but not identical, language to that contained in a definition – but, if there is any ambiguity, a definition's meaning will always take precedence.

2.1.1 Definitions

The following words have the following meanings in this Code unless the contrary intention appears:

“Alternative Disciplinary Procedure”

means a non-Code disciplinary procedure established by MBA Inc under an agreement with any of the Commonwealth, State or Territory Governments.

“Appeals and Complaints Board”

means the tribunal established in accordance with clause 3.2.1.

“Association Member”

has the meaning prescribed in the Constitution of MBA Inc from time to time.

At the time of printing, the term means each State or Territory MBA.

“Board”

means the board of directors of MBA Inc.

“Chief Executive Officer”

means the Chief Executive Officer of MBA Inc.

“Code”

means the Master Builders movement's National Code of Practice as amended from time to time.

“Code Administration Committee”

means the committee established in accordance with clause 4.1.1.

“Code Complaint”

means an appeal which complies with the requirements of clause 3.3.2 or any other matter designated as such by the Board. It does not mean any matter which is entirely the subject of an Alternative Disciplinary Procedure or its appeal unless such Alternative Disciplinary Procedure provides for the Appeals and Complaints Board to hear and determine the appeal.

“Collusive Arrangement or Understanding”

means an arrangement or understanding in respect of, or having the effect of:

- unsuccessful tenderers’ fees;
- special fees;
- cover bids;
- collaboration between tenderers on contract prices;
- meetings and discussions between tenderers; or
- reducing free and open competition.

“Commission”

means the Australian Competition and Consumer Commission.

“Complainant”

means the person making a Complaint.

“Complaint”

means any grievance expressed to a Member by a building and construction industry consumer.

“Constitution”

means, according to the context, the constitution, articles, memorandum, rules, by-laws or codes of behaviour of either MBA Inc or each State or Territory MBA.

“Ethics”

means those ethics specified in clause 2.3 and any others declared from time to time by MBA Inc to be ethics for the purposes of this Code.

“Independent Chairman”

means a person nominated by the Law Council of Australia or other similar independent body and agreed to by MBA Inc who is not a Member or a director, officer, office-bearer, shareholder or employee of a Member.

“Independent Person”

means a person appointed from time to time by MBA Inc in consultation with the Commission who:

- (i) is not a present or past staff member or director of a Member; and
- (ii) has not acted or does not act for a Member; and
- (iii) has requisite industry history and involvement in a building or construction-related discipline; and
- (iv) is not retained by a Member in any other capacity, either currently or in the past; and

- (v) has not and does not provide consultancy or other services for a Member; and
- (vi) has no shareholding or other interests in a Member's corporation; and
- (vii) has an ability to be well-informed and objective and to exercise sound and balanced judgment on issues; and
- (viii) has an ability to objectively assess the relevant factors about a Code Complaint from the point of view of both the Complainant and the respondent.

“Industry”

means the Australian building and construction industry.

“Industry Code of Practice”

means any code or rules, regulations, principles or guidelines relating to industry conduct or practice, the provisions of which are declared by MBA Inc from time to time to be incorporated into this Code.

“MBA Inc”

means Master Builders Australia Incorporated.

“Mediator”

means a mediator appointed to the clause 3.1 panel established by MBA Inc in consultation with the Commission.

“Member”

means, according to the context, either:

- a State or Territory MBA which has adopted this Code; or
- a Member of a State or Territory MBA which has adopted this Code.

“Respondent”

means the person the subject of a Code Complaint.

“State or Territory MBA”

means:

- Master Builders Association of the ACT
- Master Builders Association of New South Wales
- Master Builders Association of Queensland
- Master Builders Association of South Australia
- Master Builders Association of Tasmania
- Master Builders Association of Victoria
- Master Builders Association of Western Australia
- Newcastle Master Builders Association
- Territory Construction Association

and other trade organisation or association which becomes an Association Member.

2.1.2 Interpretation

Unless the contrary intention appears:

- the word 'person' includes an individual, a body corporate and an unincorporated association;
- the singular includes the plural and vice versa;
- a reference to one gender includes all genders; and
- where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2.2 PRINCIPLES AND OBJECTIVES

2.2.1 The guiding principles of this Code are independent endeavor and freedom of association, enterprise and competition for the benefit of Australia's economy and quality of life.

2.2.2 To further these principles, the guiding objectives of this Code are:

- to promote world's best practice in all stages of building project procurement and delivery;
- to set standards of acceptable behaviour in the Industry via a code of commercial ethics;
- to adhere to government codes and guidelines applicable to the industry;
- to comply with both the spirit and the letter of the law;
- to conduct equitable complaint and disciplinary procedures;
- to continue to develop the potential of the Industry's human resources;
- to actively pursue the continued reform of the Industry to prevent a recurrence of past undesirable practices; and
- to develop a culture which stimulates free and open competition between all parties to an industry project.

This Code's overriding philosophy is that certain types of commercial behaviour are unacceptable and those who choose to participate in them should not operate without appropriate sanctions being applied. All who gain their livelihood from the Industry have a duty to ensure that this Code operates effectively.

2.3 ETHICAL BEHAVIOUR

All Members must:

(a) **Ethical conduct**

act at all times with honesty, integrity and responsibility and in the spirit of good faith and fair dealing;

(b) **No sharp practices**

not engage in any conduct which is unfair, harsh or unconscionable including, but not limited to, the:

- removal of fittings and materials unless permitted by a contractual provision or by law;
- valuation of variations or increasing prices otherwise than in accordance with a contractual or other entitlement; and
- deliberate undervaluing of provisional sums or prime cost items in order to subsequently increase a contract's price.

(c) **No lowering of standards**

not engage in any willful practice which might tend to lower the standards applicable in the Industry including, but not limited, to the:

- supply of material of a lesser standard than specified;
- knowing specification of unsuitable materials; and
- misrepresentation of capabilities and experience.

(d) **Observe the law**

observe both the spirit and the letter of the relevant laws of the Commonwealth, States and Territories in which the Member operates including the Trade Practices Act and the relevant Fair Trading Act, by ensuring that all key management personnel participate in the training and compliance programs conducted by the relevant State or Territory MBA and bring any known breach of the Code by a Member to the attention of the State or Territory MBA and MBA Inc without delay;

(e) **Promotion**

promote the objectives of this Code; and

(f) **Observance**

observe the principles of this Code.

2.4 UNACCEPTABLE TENDERING PRACTICES

A Member must not knowingly:

(a) **Collusive Tendering**

- attempt to make:
 - arrive at:
 - give effect to:
 - be concerned with; or
 - be a party to:
- any Collusive Arrangement or Understanding; or

(b) **Misleading Conduct**

engage in any conduct which is misleading or deceptive or which is likely to mislead or deceive.

2.5 FAIR TRADING

Members must not knowingly:

(a) **Anti-Competitive Practices**

supply, or attempt to supply, any good or material upon condition that the purchaser agrees to take other goods or services from a nominated third party;

(b) **Resale Price Maintenance**

engage or attempt to engage in the practice of resale price maintenance; or

Members involved in manufacturing or supply must not stipulate minimum prices for which their goods must be sold.

(c) **Misleading Conduct**

engage in any conduct which is misleading or deceptive or which is likely to mislead or deceive.

2.6 INDUSTRY CODES OF PRACTICE

All Members must observe the requirements of Industry Codes of Practice.

Some State or Territory MBAs and governments have introduced their own codes or guidelines for matters such as tendering and industrial relations. If MBA Inc decides that a code is applicable, then it is incorporated into this Code and any breach of the code is a breach of this Code.

2.7 CONFLICTING PROVISIONS

All Members must observe the Constitution, objectives, principles and ethics of each State or Territory MBA of which they are Members, to the extent that such Constitutional provisions, objectives, principles or ethics are not inconsistent with those of this Code.

This Code does not seek to replace the constitutional provisions, codes or rules of each State or Territory MBA which have often been developed to meet important regional requirements. All will operate together. However, in the unlikely event of a conflict or ambiguity, the provisions of MBA Inc's Constitution and this Code will take precedence. As soon as MBA Inc becomes aware of any conflict, it will, of course, take the necessary action to resolve the difference. Further, in the unlikely event of this Code or a State or Territory Code conflicting with any State or Federal Code, then law will prevail.

2.8 COMPLIANCE

Every Respondent Member must comply with a determination of the Appeals and Complaints Board.

It is a condition of Membership that Members not only comply with the provisions of this Code but also with any disciplinary sanctions imposed as a result of action flowing from their breach of it.

PART 3

THE CODE - APPEALS AND COMPLAINTS

- 3.1 MEDIATION
- 3.2 APPEALS AND COMPLAINTS BOARD
- 3.3 NATIONAL LEVEL CODE COMPLAINT JURISDICTION
- 3.4 MEDIATION PROCEDURE
- 3.5 APPEALS AND COMPLAINTS BOARD PROCEDURE
- 3.6 APPEALS AND COMPLAINTS BOARD SANCTIONS

This Part contains the machinery for dealing with Complaints.

Each State or Territory MBA has tried and proven dispute-handling procedures in place. It is important for the parties to maintain effective communication at all times during the tendering and building processes. In many cases disputes arise through no more than a failure to communicate effectively in a timely fashion.

Preventing and Handling Contractual Disputes

Members are encouraged to effectively and regularly communicate with their clients. Experience has shown that the majority of disputes are minor in nature and are often due to no more than a lack of understanding of the building process.

It is important to note that this Code only applies to the conduct and behaviour of Members. It does not apply to contractual disputes which should be dealt with under the contract between the parties. Non-Code Complaints are covered in the Appendix.

Code Breaches

Before lodging any Code Complaint, the parties should meet at least once to try and explain their concerns and to endeavour to mutually resolve the matter. If this is unsuccessful, then a written complaint should be made to the Executive Director of the appropriate State or Territory MBA setting out details of the Code Complaint.

If a Complainant (or Respondent) is unhappy with the manner in which the Code Complaint is handled by their State or Territory MBA or with its outcome, then they may appeal in writing to the Chief Executive Officer for review at the national level. At this point the Chief Executive Officer of Master Builders Australia Inc will seek a full report from the State or Territory MBA in order to become fully informed about the nature of the complaint and the manner in which it has been handled. It is this step which may lead to resolution at the national level.

If the circumstances allow, the second level of national review entails mediation of the Code Complaint. If this is not appropriate or if the Code Complaint is not resolved then the matter will be referred to the Appeals and Complaints Board which has wide ranging powers to impose penalties.

3.1 MEDIATION

MBA Inc must establish and maintain a panel of up to three Mediators in order that a Mediator is available to hear a Code Complaint when so appointed.

3.2 APPEALS AND COMPLAINTS BOARD

3.2.1 MBA Inc must establish and maintain an Appeals and Complaints Board to hear Code Complaints when so appointed.

- 3.2.2 The Appeals and Complaints Board must comprise:
- (a) an Independent Chairman;
 - (b) Two Independent Persons;
 - (c) a non-voting observer appointed by the Commission; and
 - (d) three members of the Board.
- 3.2.3 So far as is practicable (but with due regard to the considerations of time, expense and location), the Chief Executive Officer must rotate the three Board member appointees amongst all Board members.

3.3 NATIONAL LEVEL CODE COMPLAINT JURISDICTION

- 3.3.1 Neither the Appeals and Complaints Board nor a Mediator has jurisdiction to hear any dispute which is of a contractual nature. However, each may hear a Code Complaint which arises out of the conduct of a Member in connection with a dispute of a contractual nature.
- 3.3.2 If a Complainant or Respondent is unhappy with the manner in which a Complaint has been dealt with by any State or Territory MBA bound by this Code or with the outcome of its determination, then the Complainant or Respondent may appeal to the Chief Executive Officer in writing. Sufficient detail and reasons must be included in the appeal letter to enable the Chief Executive Officer to form a view on its merits and as to whether it is about conduct which is the subject of this Code. On each occasion when an appeal letter is received by the Chief Executive Officer he must refer it to the relevant State or Territory MBA in order to obtain knowledge of the manner in which the Complaint was handled and in order to ascertain whether or not the matter should be treated as a Code Complaint. The Chief Executive Officer may seek a written response from the Respondent if, in the view of the Chief Executive Officer, such a step is necessary.

An appeal letter which complies with these requirements becomes a Code Complaint. See Part 2.1.1 Definitions.

- 3.3.3 The Chief Executive Officer must inform the Board of the details of all Code Complaints he receives and must notify the Complainant of the status of the Complaint. The Chief Executive Officer must notify the Complainant where he believes that the Code does not apply.
- 3.3.4 As soon as practicable after determination that a Complaint is a Code Complaint, the Chief Executive Officer must determine the manner in which the Code Complaint is to be handled. If he determines that the Code Complaint:
- (a) is not frivolous or vexatious, he must refer it to the Board for its determination unless paragraph (b) and (c) apply;
 - (b) can be dealt with by mediation, he must appoint a Mediator; or
 - (c) cannot be dealt with in any other manner or could not be resolved with the

assistance of a Mediator, he must refer the matter to the Independent Chairman, appoint the necessary Board members and assist the Independent Chairman to convene a meeting of the Appeals and Complaints Board.

- 3.3.5 To assist the Chief Executive Officer in making his determination, Mediators and the Appeals and Complaints Board may only hear:
- (a) any Code Complaint by a client, government body or authority alleging a breach of this Code by a State or Territory MBA bound by the Code;
 - (b) any Code Complaint by a Member of a State or Territory MBA bound by the Code against a decision of that State or Territory MBA which seriously affects the commercial interest of the Member;
 - (c) any other matter designated as a Code Complaint by the Board;
 - (d) any appeal by a Complainant or a Respondent Member against a decision of a State or Territory MBA which is bound by this Code;
 - (e) any appeal by a Member against a penalty imposed by the Member's State or Territory MBA (provided it is bound by this Code) or;
 - (f) any appeal by a State or Territory MBA bound by this Code against its disciplining or expulsion by MBA Inc.
- 3.3.6 If the Chief Executive Officer determines that a Code Complaint is frivolous or vexatious, then the Chief Executive Officer must notify the Complainant in writing that no further action is to be taken under this Code.

3.4 MEDIATION PROCEDURE

- 3.4.1 As soon as practicable after the Mediator is notified of his appointment, the Mediator must convene a Mediation of the Complaint;
- 3.4.2 The procedure for the conduct of a Mediation must be agreed in writing between the parties and the Mediator subject to the following:
- (a) the Mediation must not exceed two business days during business hours in length unless the Chief Executive Officer provides his prior consent; and
 - (b) the cost of the Mediation, other than the parties' own costs, will be paid by MBA Inc.

3.5 APPEALS AND COMPLAINTS BOARD PROCEDURE

- 3.5.1 As soon as practicable after the Independent Chairman is notified that a Code Complaint is to be determined by the Appeals and Complaints Board, the Appeals and Complaints Board must conduct a hearing into the matter and make a determination.
- 3.5.2 The Appeals and Complaints Board may determine its own procedure subject to the following:
- (a) the strict rules of evidence do not apply;
 - (b) the rules of natural justice must be observed;

- (c) any determination must be in accordance with equity and good conscience;
- (d) a minimum of formality must apply, but the Complainant and Respondent must be entitled to legal representation subject to such terms and conditions as may be determined by the Appeals and Complaints Board.
- (e) the manner and procedures for dealing with a Code Complaint must be the most appropriate in all the circumstances having regard to the gravity of the allegations the subject of the Code Complaint and the cost and convenience to the Complainant and Respondent. Procedures may include, for example:
 - the conduct of hearings in the capital city of the State in which the Code Complaint occurs;
 - conducting hearings by way of electronic facilities such as teleconferencing, facsimile and the exchange of documents and information by email;
- (f) a hearing may proceed without the Complainant or the Respondent attending or being represented if the Appeals and Complaints Board is satisfied that the Complainant or Respondent is aware of the nature of the Code Complaint and the date set down for the hearing of the Code Complaint and has been afforded a reasonable opportunity in all the circumstances to make arrangements to attend or be represented at the hearing;
- (g) determination of a Code Complaint must only be made on the evidence and arguments before the Appeals and Complaints Board;
- (h) any member of the Appeals and Complaints Board may question any person giving testimony at a Code Complaint hearing;
- (i) a determination must be made by a simple majority of the voting members of the Appeals and Complaints Board;
- (j) if the members' votes are equal then the Independent Chairman may choose to:
 - exercise a casting vote, in which case the determination of the Board is resolved; or
 - not exercise a casting vote, in which case the Code Complaint is dismissed; and
- (k) any determination of the Appeals and Complaints Board must be prepared in written form and copies must be provided to the Complainant and the Respondent as soon as practicable.

3.6 APPEALS AND COMPLAINTS BOARD SANCTIONS

The Appeals and Complaints Board may:

- (a) alter, reverse or annul a relevant decision of the Chief Executive Officer, the Board or of a State or Territory MBA:

- (b) substitute its own determination for that of MBA Inc or a State or Territory MBA;
- (c) increase, reduce, alter or otherwise modify a monetary penalty or period of suspension imposed by MBA Inc or a State or Territory MBA;
- (d) impose a monetary penalty on a Member;
- (e) suspend or expel from Membership (other than an Association Member) and/or otherwise discipline a Member;
- (f) recommend to the Board the suspension or expulsion of a State or Territory MBA as an Association Member.

An Association Member can only be suspended or expelled by the Board under the provisions of MBA Inc's Constitution.

- (g) adjourn the hearing of any Code Complaint to enable the Complainant or Respondent to prepare and conduct its case;
- (h) if it is of the opinion that a Code Complaint should be determined by a State or Territory MBA, direct that State or Territory MBA to hear and determine the Code Complaint in accordance with the State or Territory MBA's procedures;
- (i) if it is the opinion that the Code Complaint should be mediated, direct the Chief Executive Officer to appoint a Mediator to hear the Complaint;
- (j) determine that no further action is necessary in respect of the Code Complaint;
- (k) suspend the operation or effect of any determination with or without conditions;
- (l) if it is of the opinion that a Code Complaint is of a frivolous or vexatious nature, dismiss the Code Complaint without proceeding to a hearing; and
- (m) make recommendations to the Board and/or the Code Administration Committee.

PART 4

THE CODE - ADMINISTRATION

- 4.1 CODE ADMINISTRATION COMMITTEE
- 4.2 REPORTING
- 4.3 PUBLICITY
- 4.4 COMPLIANCE TRAINING
- 4.5 ROLE OF MBA INC
- 4.6 REVIEW AND EVALUATION

4.1 CODE ADMINISTRATION COMMITTEE

- 4.1.1 MBA Inc must establish and maintain a Code Administration Committee comprised of:
- (a) each member of the Board;
 - (b) a non-voting observer appointed by the Commission;
 - (c) a non-voting observer appointed by the Australian Procurement and Construction Council; and
 - (d) such other non-voting observers representing Commonwealth, State or Territory Governments as may be appointed by the Board from time to time.
- 4.1.2 The role of the Code Administration Committee is to:
- (a) monitor and report to MBA Inc on Code compliance;
 - (b) prepare an annual business plan for this Code;
 - (c) collect data on Code Complaints to identify systemic problems;
 - (d) ensure public and Member awareness of this Code; and
 - (e) publish an annual report on the operation of this Code in accordance with the criteria set out in clause 4.2.1.
- 4.1.3 The Code Administration Committee must meet at least once a year and at such other times as the Board deems necessary.

4.2 REPORTING

- 4.2.1 The Code Administration Committee must monitor and review the operation and effectiveness of the Code and must submit an annual report to the Board on the following matters:
- (a) the effectiveness of this Code in promoting commercial ethics and preventing collusive tendering;
 - (b) the effectiveness of this Code's education, training and compliance programs;
 - (c) the effectiveness of the marketing of this Code to the Industry;
 - (d) the extent of compliance with this Code by Industry participants;
 - (e) whether this Code has given rise to any problems in the Industry;
 - (f) whether this Code has introduced any anti-competitive effects into the Industry;
 - (g) the effectiveness of the Appeals and Complaints Board;
 - (h) the appropriateness of this Code's principles and ethics;
 - (i) the need for changes to this Code;
 - (j) whether any code, rule, regulation, principle or guidelines relating to conduct or Industry practice should be declared by MBA Inc to be an Industry Code of Practice, and in what jurisdictions it should apply;
 - (k) any recommendation to improve the benefits provided by this Code;

- (l) any other matter requested by the Board; and
- (m) any trend in Code violations which requires remedial action including, but not limited to, the need to establish standard penalties for certain types of breach or to impose limitations on penalties.

4.2.2 A member of the Code Administration Committee who objects to any part of the contents of a report may provide written particulars of the reasons for this objection to the Board for consideration and publication with the report;

4.2.3 As soon as practicable after being requested to do so by the Board or whenever the Code Administration Committee considers it necessary, a further report must also be provided to the Board on any one or more clause 4.2.1 matters.

4.2.4 The Board must produce an annual report on this Code and its administration and make it available to interested parties.

4.3 PUBLICITY

The Code Administration Committee must publicise this Code and the role it plays in the Industry.

4.4 COMPLIANCE TRAINING

4.4.1 The Code Administration Committee must ensure that all Members receive training so that they are aware of the contents of the Code and the consequences of its breach.

4.4.2 Training may include, but not be limited to:

- participation in seminars;
- one-to-one discussion;
- company-specific training; and
- journal articles and executive briefs.

4.5 ROLE OF MBA INC

In addition to establishing and maintaining the Code Administration Committee, MBA Inc must:

- ensure adequate training of Members to create awareness of this Code's regulations and sanctions for breaches;
- develop a database to collect Code Complaint information; and
- conduct periodic reviews about the effectiveness of this Code and its procedures and recommend any amendments to the Code Administration Committee.

4.6 REVIEW AND EVALUATION

This Code and its administration may be reviewed and evaluated by the Board at the end of each year of operation.

PART 5

THE CODE – ADOPTION

5.1 ADOPTION OF THE CODE

- 5.1.1 Each State or Territory MBA becomes bound to the Code by executing a deed of adherence in the form determined by MBA Inc from time to time.
- 5.1.2 The agreement of each State or Territory MBA to be bound to the Code is irrevocable without the written consent of MBA Inc which shall not be unreasonably withheld.
- 5.1.3 As soon as practicable after becoming bound to the Code, each State or Territory MBA must amend its Constitution to include such provisions as may be prescribed by MBA Inc from time to time as necessary to give effect to the Code.
- 5.1.4 All State and Territory MBA's which are bound by this Code must make copies of it readily available to the public at their principal places of business or via a website.

APPENDIX

DEALING WITH NON-CODE COMPLAINTS

INTRODUCTION

Master Builders' Member Associations will endeavor to handle complaints in the manner set out in this Appendix.

COMPLAINTS TO MASTER BUILDERS ASSOCIATIONS ABOUT THE CONDUCT OF NON-MEMBER BUILDERS

Master Builders Associations cannot assist in the resolution of complaints against non-Members of Master Builders. Wherever possible the complaint will be referred to one of the agencies set out in the Schedule below.

COMPLAINTS AGAINST MEMBERS

The following principles guide the handling of Complaints.

All Complaints must be dealt with in good faith.

Each Complaint must be logged by a staff member. The nature of the Complaint and the complainant's name together with the Member against whom the Complaint is directed must be recorded.

On each occasion where a Complaint is made, it must be communicated to the Member for response.

State or Territory MBAs may assist to resolve Complaints using informal mechanisms. Where a Master Builders Member Association takes more active steps to assist with the resolution of a Complaint, such as the convening of a without prejudice conference, then a formal file will be opened which must be kept by the State or Territory MBA but must be able to be scrutinised by the particular complainant.

Where a Complaint cannot be resolved through any informal mechanisms, the complainant:

- should be informed of formal dispute resolution mechanisms;
- must be informed of their right to seek independent advice;
- where appropriate should be referred to an external agency; and

subject to any relevant building contract, must be informed that the State or Territory MBA has no further direct role.

Individual State or Territory MBAs may have more detailed procedures about Complaints handling but those procedures must adhere to these principles.

SCHEDULE – CONSUMER AFFAIRS AGENCIES

Australian Competition and Consumer Commission

Web site: www.accc.gov.au

Australian Capital Territory

ACT Office of Fair Trading

Ground Floor Shopfront

12 Moore Street

(Cnr Moore and Rudd Streets)

Canberra City ACT 2600

GPO Box 158

Canberra City ACT 2601

Phone: (02) 6207 0400

Fax: (02) 6207 0538

Web site: www.fairtrading.act.gov.au

New South Wales

New South Wales Office of Fair Trading

Head Office

1 Fitzwilliam Street

Parramatta 2150

(P.O. Box 972, Parramatta 2124)

Phone: (02) 9895 0111

Fax: (02) 9895 0222

Web site: www.fairtrading.nsw.gov.au

Fair Trading Centres

Albury (02) 6041 3222

Armidale (02) 6773 8100

Bathurst 1800 502 042

Blacktown 13 32 20

Broken Hill (08) 8088 0100

Coffs Harbour (02) 6653 0700

Dubbo (02) 5804 5000

Gosford (02) 4324 0600

Goulburn (02) 4822 1933

Grafton (02) 6643 1705

Hurstville 13 32 20

Lismore (02) 6627 6500

Liverpool 13 32 20

Newcastle (02) 4925 7000

Orange (02) 6361 9866

Parramatta 13 32 20

Penrith 13 32 20
Port Macquarie (02) 6584 1330
Queanbeyan (02) 6298 4800
Sydney 13 32 20
Tamworth (02) 6761 9000
Tweed Heads (07) 5599 5211
Wagga Wagga (02) 6921 5166
Wollongong (02) 4254 3433

Northern Territory

Department of Justice

First Floor
Minerals House
66 the Esplanade
GPO Box 1722
Darwin NT 0801
Phone: (08) 8999 1999
Fax: (08) 8999 7657

Alice Springs

Level 1, Belvedere House
Parsons Street
Alice Springs
PO Box 1745
Alice Springs NT 0871
Phone: (08) 8951 5435
Fax: (08) 8951 5442
Web site: www.caba.nt.gov.au

Queensland

Department of Tourism, Fair Trading and Wine Industry Development

Brisbane

Level 21, State Law Building
50 Ann Street
Brisbane
GPO Box 3111
Brisbane QLD 4001
Facsimile: (07) 3246 1589
Email: BrisbaneOFT@dtftwid.qld.gov.au

Queensland Regional Offices

Cairns

10-12 McLeod Street
Cairns
PO Box 3067
Cairns QLD 4870
Facsimile: (07) 4042 3388
Email: CairnsOFT@dtftwid.qld.gov.au

Mackay

Level 1, Post Office Square
Sydney Street
Mackay
PO Box 146
Mackay QLD 4740
Facsimile: (07) 4969 3007
Email: MackayOFT@dtftwid.qld.gov.au

Maroochydore

Cnr Baden Powell Street & Maroochydore
Maroochydore QLD 4558
PO Box 870
Maroochydore QLD 4558
Facsimile: (07) 5430 8988
Email: MaroochydoreOFT@dtftwid.qld.gov.au

Hervey Bay

Ground Floor, Brendan Hansen Building
54 Main Street
Pialba QLD 4655
PO Box 3408
Hervey Bay QLD 4655
Facsimile: (07) 4197 9805
Email: HerveyBayOFT@dtftwid.qld.gov.au

Rockhampton

James Larcombe Place
209 Bolsover St
Rockhampton
PO Box 303
Rockhampton QLD 4700
Facsimile: (07) 4920 6688
Email: RockhamptonOFT@dtftwid.qld.gov.au

Southport

7 Short Street
Southport
PO Box 2565
Southport QLD 4215
Facsimile: (07) 5581 3388
Email: SouthportOFT@dtftwid.qld.gov.au

Toowoomba

137 Herries Street
Toowoomba
PO Box 841
Toowoomba QLD 4350
Facsimile: (07) 4637 6040
Email: ToowoombaOFT@dtftwid.qld.gov.au

Townsville

1st Floor, State Government Building
Cnr Stanley & Walker Street
Townsville
PO Box 2009
Townsville QLD 4810
Facsimile: (07) 4753 2288
Email: TownsvilleOFT@dtftwid.qld.gov.au

Numbers for specific matters are listed in the White Pages of the Brisbane telephone directory under "CONSUMER AFFAIRS OFFICE OF" or "FAIR TRADING OFFICE OF"
DEAF/HEARING IMPAIRED: (07) 3246 1558 TTY

South Australia**Office of Consumer and Business Affairs**

Head Office
Chesser House
91-97 Grenfell Street
Adelaide

Consumer Affairs Branch
Level 4, Chesser House
Phone: (08) 8204 9777
Fax: (08) 8204 9769
GPO Box 1719
Adelaide SA 5001

South Australian country callers telephone 131 882 for the cost of a local call (excluding mobiles). Web site: www.ocba.sa.gov.au

South Australia
Regional Services
Naracoorte

14 Butler Terrace
NARACOORTE SA 5271
Telephone: 131 882

Whyalla

171 Nicolson Avenue
WHYALLA NORRIE SA 5600
Telephone: 131 882

Port Lincoln

73-75 Tasman Terrace
PORT LINCOLN SA 5606
Telephone: 131 882

Port Pirie

Shop 7-8
72-80 Ellen Street
PORT PIRIE SA 5540
Telephone: 131 882

Tasmania

Tasmanian Office of Consumer Affairs & Fair Trading

Level 3, 15 Murray St
Hobart TAS 7000
GPO Box 1244
Hobart TAS 7001
Phone: 1300 65 4499
Fax: (03) 6233 4882

Web site: www.consumer.tas.gov.au

Victoria

Consumer Affairs Victoria

121 Exhibition Street
MELBOURNE VIC 3000
GPO Box 123A
MELBOURNE VIC 3001
Phone: 1300 558 181

Web site: www.consumer.vic.gov.au

Western Australia***Department of Consumer & Employment Protection***

219 St Georges Terrace

Perth WA 6000

Locked Bag 14

Cloisters Square WA 6850

Phone:(08) 9282 0777

General Information & Advice 1300 304 054

Web site: www.docep.wa.gov.au

Western Australia Regional Offices***North West Regional Office***

Unit 9, Karratha Village Shopping Centre

Karratha, Western Australia 6714

Phone: (08) 9185 0900

Facsimile: (08) 9185 1234

Mid West Regional Office

50-52 Durlacher St

Geraldton, Western Australia 6530

Phone: (08) 9964 5644

Facsimile: (08) 9964 5678

Goldfields / Esperance Regional Office

377 Hannan St

Kalgoorlie, Western Australia 6430

Phone: (08) 9021 5966

Facsimile: (08) 9021 5977

South West Regional Office

8th Floor

61 Victoria Street

Bunbury, Western Australia 6230

Phone: (08) 9722 2888

Facsimile: (08) 9791 8047

Great Southern Regional Office

Unit 2/129 Aberdeen St

Albany, Western Australia 6330

Phone: (08) 9842 8366

Facsimile: (08) 9842 8377

Master Builders Australia Inc

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(PO Box 7170)

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