

Occupational Licensing (Fit and Proper) Code of Practice 2010

OCCUPATIONAL LICENSING ACT 2005

15 December 2010

I, Kerrie Davidia Crowder, Administrator of Occupational Licensing, establish the following Code of Practice under section 53 of the *Occupational Licensing Act 2005*.

1. Short title

This Code of Practice may be cited as the *Occupational Licensing (Fit and Proper) Code of Practice 2010*.

2. Commencement

This Code of Practice takes effect on 15 December 2010.

3. Revocation of previous Code

The *Occupational Licensing (Fit and Proper) Code of Practice 2008* is revoked.

4. Purpose

To be granted and retain a licence under the *Occupational Licensing Act 2005*, a contractor and practitioner must be fit and proper. Other persons under the Act, for example, company directors and officer bearers in companies, must also be fit and proper.

5. Application of Acts Interpretation Act 1931

The *Acts Interpretation Act 1931* applies to this Code of Practice.

6. Definitions

“**Act**” means the *Occupational Licensing Act 2005*;

“**harassment**” means conduct that –

- a. could reasonably be expected to cause another person to be apprehensive or fearful;
or
- b. tends to harass, embarrass or intimidate;

“**improper conduct**” has the meaning given it by section 90(3) (a), (b) and (d) of the Act;

“**offence**” means an offence or crime in Tasmania or elsewhere;

“**prescribed work**” has the meaning given it by the Act;

“**contractor’s business**” has the meaning given it by the Act.

7. Substantive provisions

To determine if a contractor, practitioner or other person subject to the Act is “fit and proper” the person making that determination may take into account any matter the Administrator considers relevant. This can include, but is not limited to, where a person -

- (1) is guilty of improper conduct;
- (2) has been convicted of an offence;
- (3) has, at any time, been convicted of, or charged with, an offence against the Act or a law elsewhere which relates to (either wholly or partially) the performance of prescribed work or the conducting of a contractor’s business;
- (4) is, or has been at any time, subject to disciplinary proceedings under the Act or a law elsewhere relating to, either wholly or partially, the performance of prescribed work or the conducting of a contractor’s business;
- (5) has been refused a licence under the Act or a law elsewhere relating to, either wholly or partially, the performance of prescribed work or the conducting of a contractor’s business;
- (6) has engaged in conduct that indicates:
 - (a) disregard for the proper performance of prescribed work;
 - (b) fraud or deception in connection with:
 - (i) contracts related to the performance of prescribed work; or
 - (ii) the performance of prescribed work;
 - (c) overcharging of a deliberate or persistent nature in connection with contracts related to the performance of prescribed work;
 - (d) harassment in connection with contracts related to the performance of prescribed work;
- (7) has applied the skills, knowledge or experience of a practitioner licensed under the Act or a law elsewhere in the commission of an offence;
- (8) has, as a contractor, signed (or caused or permitted to be signed) a notice required by the Act relating to the performance of prescribed work when that prescribed work was not performed by a person:
 - (a) acting for and on behalf of the contractor; and
 - (b) who was not then recorded on the register required to be kept by a contractor pursuant to section 98 of the Act;
- (9) is a person undergoing an approved course of training who:
 - (a) is carrying out prescribed work; and
 - (b) believes that any prescribed work presents an immediate danger to life or property; and
 - (c) fails, as soon as practicable, to advise a licence holder of that danger.

- (10) is a licence holder who:
 - (a) is carrying out prescribed work; and
 - (b) believes that any prescribed work presents an immediate danger to life or property; or
 - (c) having been informed pursuant to paragraph (9) of this document, believes that any prescribed work presents an immediate danger to life or property; and
 - (d) fails, as soon as practicable, to advise the owner or occupier of the property where the danger exists, of that danger.
- (11) as a contractor or practitioner has, or has attempted to, transfer, lease, assign or grant the benefit of the use of their licence (either wholly or in part) to another;
- (12) without reasonable excuse, fails to assist (to the satisfaction of the Administrator) the Administrator and authorised officers appointed under the Act in promoting and advancing:
 - (a) the aims and purposes of the Act;
 - (b) compliance with the Act; and
 - (c) investigations into suspected or alleged non-compliance with the Act.

8. Guides to interpretation

- (1) The above matters -
 - (a) are to be assessed according to the standard of proof in a civil trial;
 - (b) are to apply to a person, whether animate or not;
 - (c) are indicative, but not necessarily conclusive, of whether a person is fit and proper;
 - (d) whether taken singly or in conjunction with any other, may be conclusive of whether a person is fit and proper;
 - (e) are not necessarily to be treated as having equal significance, and are not ranked in any order;
 - (f) will be of diminishing significance (even to the point of irrelevance) the more remote they are in time from the occasion when the issue of “fit and proper” falls to be determined;
 - (g) are to be assessed according to their relevance to the type of licence held by the licence holder and the scope of work permitted under that licence; and
 - (h) are to be assessed according to their risk to public health, danger to the public or damage to property or infrastructure.

- (2) The weight to be attached to an offence is to be assessed in the context of -
- (a) whether it occurred in the course of, or in relation to, the carrying out of prescribed work or in connection with contracts related to the performance of prescribed work;
 - (b) whether it occurred when the holder of a licence under the Act;
 - (c) the seriousness of the offence;
 - (d) the circumstances surrounding the offence;
 - (e) the circumstances of the offender;
 - (f) the penalty, if any, imposed on the offender (whether convicted or where a court does not proceed to conviction);
 - (g) the terms of any suspended sentence imposed on the offender (whether convicted or where a court does not proceed to conviction);
 - (h) the terms of any parole imposed on the offender; and
 - (i) the degree and the extent to which the offence and any past record of offences exhibits an attitude of mind or a pattern of conduct indicative of an absence of adherence to, or respect for, either the law generally or a law that relates to duties or responsibilities that a person under this Act or a law elsewhere is obliged to discharge.

Kerrie Crowder

ADMINISTRATOR OF OCCUPATIONAL LICENSING

15 December 2010

EXPLANATORY NOTE

(This note is not part of the Code)

This Code replaces the *Occupational Licensing (Fit and Proper) Code of Practice 2008*.

This Code differs from the previous Code by:

- (a) adding conduct that indicates harassment as a matter the Administrator may consider when determining if a contractor, practitioner or other person is “fit and proper”; and
- (b) adding a definition of “harassment”; and
- (c) adding two further guides to interpretation.

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