

Victorian Code of Ethics and Minimum Service Standards for professional members of occupational health and safety (OHS) associations

Edition 2, October 2009



Introduction

This 2nd edition of the *Victorian Code of Ethics and Minimum Service Standards for professional members of OHS associations* has been developed, consulted and approved by the Health and Safety Professionals Alliance (HaSPA). It includes guidance on managing complaints and disputes about professional conduct and breaches of the Code of Ethics.

HaSPA was formed in 2007 after WorkSafe Victoria research identified opportunities to improve health and safety outcomes in Victorian workplaces by working with Occupational Health and Safety (OHS) associations and education providers.

HaSPA is an alliance of OHS associations and education providers facilitated by WorkSafe. It is the first time in Australia such an alliance has been formed.

HaSPA aims to:

- promote OHS as an area of professional practice
- enhance the quality of OHS professionals
- improve OHS service delivery to workplaces
- improve OHS in Victorian workplaces.

HaSPA released the 1st edition of the *Victorian Code of Ethics and Minimum Service Standards for professional members of OHS associations* in April 2008. The objectives of the Code of Ethics and Standards are to:

- support the continuing development of ethics and service standards for professional members of OHS associations
- provide guidance for OHS associations and their members on ethical and service standard issues.

Achieving these objectives will ensure work and practices of professional members of OHS associations contribute to achieving the highest level of protection for employees, employers and other workplace health and safety stakeholders against risks to their health and safety.

It was the first time a common code and standard for professional members of OHS associations has been developed in Australia. Currently, the Code and Standards are endorsed by:

- Australian and New Zealand Society of Occupational Medicine
- Australian Institute of Occupational Hygienists
- Safety Institute of Australia
- Human Factors and Ergonomics Society of Australia.

HaSPA and the associations and organisations it represents believe working with WorkSafe will deliver sustained OHS improvements across Victoria and help reduce workplace injury and disease.

Like WorkSafe, HaSPA's vision is to see Victorian workers returning home safe every day.

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Objectives

The objectives of the Code and Service Standards are to:

1. Develop and maintain minimum standards of ethics and service for professional members of OHS associations.
2. Provide guidance for professional members of OHS associations on ethical and service standard issues.
3. Strengthen and extend professionalism and promote self-regulation across OHS associations.

Achieving these objectives will help ensure the work and practices of professional members of OHS associations contribute to achieving the highest level of protection for employees, employers and other workplace health and safety stakeholders (including members of the public, workplace visitors, volunteers and others) against risks to their health and safety.

Note: For the purpose of this document the term 'professional member' refers to a member of an OHS association who:

- is a person with high-level training and education in one or more of the various aspects of OHS (eg occupational hygiene, ergonomics as applied to OHS, occupational health, occupational safety)
- has achieved and maintained a professional or certified level of membership of an OHS association as defined by the association
- complies with a professional code of ethics when carrying out their work.

Section 1

Code of Ethics

The Code of Ethics (the Code) specifies standards of ethical conduct for professional members of OHS associations. It places obligations on these persons to practice and work in an objective manner, follow recognised OHS principles as specified in the Victorian *Occupational Health and Safety Act 2004* (OHS Act) and realise the lives, health and welfare of individuals may be dependent upon their judgement.

It may be referred to by the relevant OHS association when dealing with complaints about work or conduct of professional members.

Nothing in the Code will require professional members of OHS associations to contravene any obligations under any relevant occupational health and safety legislation or other relevant legislation, regulations or codes.

Professional members will act in accordance with the following requirements:

1.1 Responsibility

Act and work responsibly and competently at all times to improve health and safety in workplaces and ensure they do no harm.

Give priority to the health, safety and welfare of employees, employers and other workplace health and safety stakeholders in accordance with accepted standards of moral and legal behaviour during the performance of their duties.

Ensure the health, safety and welfare of employees, employers and other workplace health and safety stakeholders takes precedence over the professional member's responsibility to sectional or private interests.

Ensure work by people under their direction is competently performed and honestly and reliably reported. This applies, for example, to a professional member employed as an OHS manager within an organisation who has staff reporting to them or a professional member working as an OHS consultant who engages others to provide services to a client.

Ensure they do not engage in any illegal or improper practices.

1.2 Integrity, honesty, objectivity, impartiality

Perform their work and duties with integrity, honesty and equity while adhering to legal principles.

Provide advice, express opinions or make statements in an honest, objective, impartial and efficient way and consider the reasonably foreseeable consequences of that advice.

Section 1 Code of Ethics

1.3 Areas of competence

Perform work only in their areas of competence and within the limits of their abilities. Make public statements claiming professional knowledge in an area of public interest only if competent to do so, and only if such statements are consistent with other parts of the Code and Service Standards.

1.4 Conflict of interest

Avoid real or apparent conflicts of interest.

All significant financial and other relevant interests with potential for providing conflict of interest or influencing the impartiality of any reports, advice or decisions must be disclosed to relevant parties promptly and effectively. Parties to be advised of financial and other relevant interests may include employees, employers, other workplace parties, the community and the professional member's employer or clients.

1.5 Confidentiality

Respect the confidentiality of the information obtained in the course of their work and only reveal such information to others with the consent of the people or organisations or their legal representatives. Where necessary reference, should be made to relevant federal and state privacy laws and related legislation

1.6 Disclosure and whistleblowing

A professional member of an OHS association may become aware of an organisation breaching OHS legislation or standards resulting in a risk of injury or disease. How the professional member responds to this situation will be determined by the nature of the relationship (if any) the professional member has with the organisation.

Initially, the professional member should discuss the problem with management at the highest level and point out the problem, potential consequences and professional member's ethical (and perhaps legal) responsibilities. If there is no action on the part of the organisation and the only way of reducing the risk is to disclose their knowledge of the risk to a third party (eg WorkSafe, an employee health and safety representative, the workplace health and safety committee) the professional member should do so.

Before doing so, the professional member should seek advice from senior colleagues, their OHS association or other relevant parties, and should inform management of the organisation of their actions. In the case where the organisation is a public body, the professional member may be protected by the Victorian *Whistleblowers Protection Act 2001*.

1.7 Maintaining the standing and reputation of professional members of OHS associations

Conduct their affairs to promote and improve the practice of professional members.

Actively assist and encourage the continuing development of professional members, OHS professions and associations and, where appropriate, specific areas and disciplines of OHS practice.

Section 2

Minimum Service Standards

2.1 Compliance with OHS legislation and regulations and evidence - based practice

Have a thorough understanding of all relevant OHS legislation, regulations, codes and standards, and promote the understanding of these amongst employees, employers and other workplace health and safety stakeholders.

Advise employers and employees of any observed non-compliance with OHS legislation, regulations, codes and standards.

Inform the employer when they have a statutory duty to disclose findings to employees or their representatives.

Undertake their role in the workplace with the aim of achieving, as a minimum requirement and as appropriate to the circumstances of their work, compliance with all relevant OHS legislation, regulations, codes and standards.

With regard to achieving compliance, particular reference must be made by the professional member to Sections 4, 20–32, 35 and 36 of the OHS Act.

Undertake their work using an evidence-based practice approach including using research and other relevant information from recognised sources, using valid and reliable information and giving appropriate credit to and using proper citations with regard to sources of information.

2.2 Expert witness

Where a professional member is acting as an expert witness in legal proceedings or proposed proceedings, they will comply with the *Expert Witness Code of Conduct* or other appropriate requirements as specified by the jurisdiction (eg the Victorian Supreme Court (General Civil Procedure) Rules 2005, page 556, Rule 44.01: *Expert Witness Code of Conduct*).

Section 2 Minimum Service Standards

2.3 Certification of professional members of OHS associations

Certification of professional members is important in attaining the objectives listed on page three and achieving the highest level of protection for employees, employers (and other workplace health and safety stakeholders) against risks to their health and safety.

It is necessary for the professional member who is certified to maintain their certification status and expertise and continually develop as a professional in line with the dynamic nature of OHS practice and the constant changes in the state-of-knowledge, work and workplaces.

For certification to be a valid means of protecting employees, employers and other workplace health and safety stakeholders, and providing certainty to those engaging professional members, a system for effectively managing complaints about professional members is essential.

Minimum standards for certification of professional members

2.3.1 Certification is carried out by an OHS association.

2.3.2 The association has documented certification procedures publicly available and easily accessible.

How these procedures are implemented and managed is at the discretion of the association. Typically, there is a separate and independent board or council to carry out these functions. Where appropriate, the candidate for certification may be certified in a specific set of competencies directly related to the scope of the member's practice.

2.3.3 The criteria for certification are:

- completion of an education program specified by the certification board or council or an alternate means of establishing the applicant has the required knowledge, expertise and competencies
- demonstrated practical expertise
- a minimum period of full-time practice or equivalent.

2.3.4 The process for certification is as follows:

- submission of a written pro-forma application for certification, evidence of having completed a specified education program and possibly the submission of specified work products and other evidence
- assessment of the application by the certification board or council
- advice to the applicant of the outcome of their application.

To finalise certification the successful applicant makes a written declaration to:

- abide by a formal written Code of Ethics (if this is not already a requirement for all members of the association)
- meet the written requirements for maintenance of the certification status
- comply with the procedures, policies and processes for dealing with misconduct, breaches of the Code of Ethics and complaints about their professional conduct.

Section 2 Minimum Service Standards

In the event that an application is unsuccessful there is:

- a) the right of appeal and a mechanism to appeal the decision of the certification board or council, or
- b) a mechanism to provide feedback to the unsuccessful applicant and advice on what is required to satisfy the certification criteria.

- 2.3.5** In circumstances where an association may make major changes to certification procedures, processes and policies, a transitional clause (sometimes referred to as a 'grandfather' clause) may be included in the new procedures.

Minimum standards for certification maintenance and continuing professional development

- 2.3.6** The association has documented processes, policies and procedures for maintaining certification that are publicly available and easily accessible.
- 2.3.7** The certification board or council ensures professional members comply with these processes, policies and procedures.
- 2.3.8** The processes, policies and procedures typically involve a time cycle of no greater than five years.
- 2.3.9** The activities and tasks the professional member must undertake to maintain certification ensures professional members will continue to develop and enhance their knowledge and skills for the duration of their active careers.
- 2.3.10** Failure to comply with certification maintenance requirements results in the professional member losing their certification status.
- 2.3.11** The processes, policies and procedures may typically include provisions for personal hardship, unemployment and voluntary temporary suspension (eg family leave).

Section 3

Managing complaints and disputes

Procedure for managing complaints and disputes about professional conduct and breaches of the Code of Ethics

3.1 Purposes:

- establish a forum to hear complaints about potential non-compliance of members with the Code of Ethics and Professional Service Standards of their OHS association
- resolve complaints about members
- maintain, strengthen and extend professionalism of members and the integrity of the association
- support and facilitate the continuing professional development of members
- provide guidance to members on professional and ethical conduct.

3.2 The procedure:

- is independent, objective, fair and ensures natural justice for all parties
- aims to discover all relevant facts regarding complaints
- aims to provide appropriate responses to upheld complaints, including punitive measures in the case of serious wrongdoing
- operates efficiently, effectively and transparently with regard to all parties and with regard to processes and procedures, technical matters, timeliness, communications and implementation of decisions and outcomes
- has clear, transparent and well-documented processes and pathways accessible to all parties involved, or who have the potential to be involved, in a complaint
- has outcomes reported appropriately and provide reasons for decisions
- has minimum complexity and legality
- is affordable and practical
- is regularly audited and regularly reviewed, with input from relevant parties including members and clients in light of experience and external factors
- maintains confidentiality, anonymity and privacy at all times except when the resolution of a complaint requires otherwise
- rigorously controls access to and use of information and records and access is strictly determined by the requirements of the procedure.

3.3 The association:

- is committed to the efficient and fair resolution of complaints and follow through of outcomes including compliance with any disciplinary provisions
- recognises a complaint process can be stressful, difficult and may involve risks to professional relationships and reputations
- provides good support for parties as necessary during the complaint process. This does not include legal support. Support may include advice and information about the complaints process, counselling and the opportunity to discuss the particular complaint and options for resolution.
- appropriately publicises the existence and content of the procedure (internally and externally).

Section 3 Managing complaints and disputes

3.4 What complaints can be about

Possible or perceived breaches of the association's Code of Ethics and Professional Service Standards.

3.5 What complaints cannot be about

- contractual or legal matters
- fees
- obtaining financial restitution or compensation
- issues best dealt with by other bodies
- complaints about the association as an organisation/corporation - such matters are addressed by reference to the association's constitution.

Complaints outside the procedure's scope may be referred on to an appropriate alternative dispute mechanism such as a community justice centre, mediation or arbitration, direct court action, police or a state or federal jurisdictional body.

3.6 Who can make a complaint?

- members of the public, clients of members, consumers of services provided by members
- association members
- the association
- external agencies or organisations.

3.7 Who can be complained about?

Only members bound by the association's Code of Ethics and Professional Service Standards.

3.8 Making a complaint

Information about making a complaint will be published online and available to all at no cost. Information will include:

- contact details (postal address, email address and telephone) of a person or persons nominated by the association with whom complaints can be discussed, verbally or in writing, in the first instance. This provides an opportunity to screen complaints and also to provide guidance to the person making the complaint
- information about the rationale, function and workings of the complaints process
- information about common misunderstandings on which complaints are often based
- advice about contacting and attempting to resolve an issue or complaint directly with the member before recourse to the complaints process
- a complaint form and guidance on making a complaint and the complaints process.

3.9 Processing complaints

If the issue or complaint can't be resolved directly with a member then a complaint is lodged in writing with the association.

Screening of a complaint

The first step is to determine if there is a case for a valid complaint. A complaint may be rejected if it is deemed to be frivolous, vexatious, inappropriate, invalid, misconceived or beyond the scope of the procedure. The complainant may be requested to provide further information at this stage.

Section 3 Managing complaints and disputes

Complaints judged outside the procedure's scope may be referred on. If there is a case for complaint, the subject of the complaint is advised and provided with all relevant information within three working days of this decision.

Support and advice is offered to the subject of the complaint.

There is a staged and flexible process for resolving the complaint:

1. Less formal avenues are explored first and complaints are, if possible, resolved between the parties by mediation and other means.
2. If unsuccessful, a hearing into the complaint is held by a panel.

3.10 Hearing of a complaint by a panel

- A panel is appointed by a process determined by the association.
- Panel members appointed are subject matter experts with regard to the issues associated with the complaint and with regard to the industry involved.
- The panel is independent, impartial, objective and credible.
- Members are peers of the complainant or have a higher professional standing than the subject of the complainant.
- The backgrounds and associations of panel members are known to the subject of the complaint and the complainant.
- Membership of the panel can be challenged by the complainant or the subject of the complaint (eg on grounds of bias).
- A panel member may come from outside the association.
- With regard to the standard of proof, laws of evidence do not apply but natural justice must be observed.
- The panel must be comfortably satisfied about any decision it makes.
- Any decision of the panel will be based on the evidence.

3.11 Outcomes of a panel hearing

Complaints will generally be about unsatisfactory professional conduct (involving a substantial or consistent failure to reach reasonable standards of competence or diligence) or serious professional misconduct (involving conscious and deliberate bad behaviour).

A panel can decide to dismiss a complaint. If a complaint is confirmed by a panel, the nature of the complaint will determine the outcomes of a panel hearing.

As a guide only, unsatisfactory professional conduct may result in:

- counseling or mentoring (or both)
- admonition
- reprimand
- the undertaking of specified professional development
- the obligation for specified decisions to be referred from time to time to an appropriate person.

As a guide only, serious professional misconduct may result in:

- the obligation to operate professionally for a specified time under the supervision of an appropriate person. This could involve auditing of professional work such as the examination of work product or obtaining feedback on the member's behaviour or professional conduct
- suspension of certification for a specified period
- withdrawal of certification with a possible opportunity to seek re-certification after a specified period

Section 3 Managing complaints and disputes

- suspension from membership
- expulsion from membership.

3.12 Appeal

If the complainant, the subject of the complaint or senior office holder of the association (eg the president) is dissatisfied with the outcome of a panel hearing, they can appeal to a review panel.

The members of a review panel will be different from the members of the panel that heard the complaint but the criteria for membership (see previous page) of the review panel will be the same.

3.13 Publication of panel findings

The association will determine the purpose, criteria, form, content and medium for the publication of any findings.

3.14 Management of the procedure

The association is responsible for the management and conduct of the procedure. The association may set up systems, procedures and delegations as it sees fit to fulfill part or all of these responsibilities.

The association will review the procedure after one year of operation and make necessary changes to improve its functioning. The review will establish if there has been sufficient awareness of the procedure and if it has been efficient and effective in meeting the desired aims. The procedure review may also include a review of the Code of Ethics and Service Standards

Review processes may include:

- review of the data associated with the procedure (eg number of complaints, types of results, number of enquiries about the complaint process, number of hits on the complaints process web page)
- consultation with members via a website/forum, focus group or questionnaires to determine their perceptions of the procedure's effectiveness
- feedback from complainants via interviews.

Section 4

Consultant professional members

Consultant professional members provide professional services to workplaces (clients) on the basis of fee-for-service or as a contractor. They may be an employee of an independent organisation providing OHS services to workplaces (clients), the principal/owner/director of such an organisation, an independent self-employed sole practitioner, or an independent contractor providing services to workplaces (clients).

They do not work under a contract of employment for the workplace (client) to whom they are providing OHS services. This section does not apply to professional members who have an employment contract and are employees of an organisation, even if their job title/position description/employment contract entails them to act as a consultant within/to the organisation.

In addition to meeting all the preceding requirements, consultant professional members will also meet the following requirements.

- 4.1** Inform the client of any interest or employment that may compromise the exercise of independent professional judgement or conduct.
- 4.2** Not solicit for work either by calling into question the ability or integrity of another professional member or by offering or paying to a prospective client financial or material inducement.
- 4.3** Conduct their business in an ethical manner. This includes:
 - providing a clear and unambiguous statement of costs and fees
 - including appropriate disqualification clauses in contracts
 - the ethical management and resolution of conflicts of interest
 - proper representation of capacities, competencies and areas of expertise
 - meeting reasonable requests for information from employers/clients
 - having accountability for their actions
 - making responsible and proper undertakings and commitments to employers/clients about the conduct and outcomes of their work.
- 4.4** At all times, have adequate insurance coverage appropriate to the scope, circumstances and content of their work and which provides adequate cover for all parties. This typically involves public liability and professional indemnity insurance and may also include WorkCover and other insurances.

Glossary

Professional and ethical conduct

Behaviour and conduct that complies with the association's Code of Ethics and Professional Service Standards

Natural justice

Natural justice operates on the principles that people are basically good, that a person of good intent should not be harmed, and one should treat others as one would like to be treated.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:

- a member who is the subject of a complaint should be given adequate notice and information about the complaint and the proceedings and, usually, the name of complainant
- a panel member should declare any personal interest they may have in the proceedings
- a panel member should be unbiased and act in good faith. They therefore cannot be one of the parties in the complaint, nor have an interest in the outcome
- proceedings should be conducted so they are fair to all the parties
- the complainant and the subject of the complaint are entitled to ask questions and contradict the evidence of the other
- any panel should take into account relevant considerations and extenuating circumstances and ignore irrelevant considerations
- justice should be seen to be done. If members are satisfied justice has been done, they will continue to place their faith in the procedure.

Code of Ethics and Professional Service Standards

These are as specified by the association and are available from the association's website.

Comfortably satisfied

Panel members should uphold a complaint only when they are convinced there are no outstanding relevant matters to be considered and the balance of evidence presented at the hearing clearly supports the panel's finding.

Complainant

The person or organisation making a complaint.

Subject of the complaint

The member about whom a complaint is being made.

HaSPA Members

This publication was developed by members of HaSPA:

Australasian Faculty of Occupational and Environmental Medicine

The mission of the faculty is to be recognised as the leading authority on occupational and environmental medicine (OEM) in the Australasian region, and to strive towards an education, assessment and oversight program recognised nationally and internationally as providing the highest standards in OEM, demonstrably by its trainees and fellows.

Australian and New Zealand Society of Occupational Medicine

ANZSOM is a professional organisation which provides a focal point for the advancement of knowledge for those registered medical practitioners who are actively involved in or who are interested in occupational medicine. The society also has an occupational nursing chapter.

Australian Institute of Occupational Hygienists

The overall objective of the institute is to help ensure workplace health hazards are eliminated or controlled. It seeks to achieve this by promoting the profession of occupational hygiene, improving the practice of occupational hygiene and the knowledge competence and standing of its practitioners. It also achieves this by providing a forum for the exchange of occupational hygiene information and ideas, promoting the application of occupational hygiene principles to improve and maintain a safe and healthy working environment for all and representing the profession nationally and internationally.

Congress of Safety and Health Association Presidents

COSHAP was formed to address issues of national and common concern to member organisations. Membership is restricted to those who are or have been, national president of their organisation. COSHAP is a strategic body, designed to give governments a common interface to the profession.

Human Factors and Ergonomics Society of Australia

HFESA represents the discipline of ergonomics and human factors in Australia. The Society is dedicated to the application and promotion of ergonomics and human factors and its members will represent the various domains of specialization within the discipline. The Society is an active and respected member of the international ergonomics and human factors community.

La Trobe University

Conducts undergraduate and postgraduate education programs and undertakes research in ergonomics and occupational health and safety.

Monash University

Conducts undergraduate and postgraduate education programs and undertakes research in occupational medicine, health and safety.

RMIT University

Conducts undergraduate and postgraduate education programs and undertakes research in occupational health and safety.

HaSPA members

Safety Institute of Australia

The objective of the Institute is to promote the health and safety of people. The Institute believes the distinctive advice of qualified and experienced health and safety practitioners is a prerequisite to the specification of the health and safety responsibilities of government, employers and community organisations.

The Australian College of Toxicology and Risk Assessment

The College advances the study and applications of toxicology and health risk assessment as professional scientific disciplines and cultivates and maintains the highest standards of professional practice and ethics in people engaged in the sciences of toxicology and health risk assessment.

University of Ballarat

Conducts undergraduate and postgraduate education programs and undertakes research in occupational health and safety.

Contacts

Australasian Faculty of Occupational & Environmental Medicine

145 Macquarie Street
Sydney, NSW 2000
AUSTRALIA
(02) 8247 6219
afom.racp.edu.au

Australian and New Zealand Society of Occupational Medicine

PO Box 717
East Bentleigh
VIC 3165
(03) 9570 1859 or 1300 666 515
anzsom.org.au
Email: anzsom@westnet.com.au

Australian Institute of Occupational Hygienists

PO Box 1205
Tullamarine
VIC 3043
(03) 9335 2577
aioh.org.au
Email: secretary@aioh.org.au

Human Factors and Ergonomics Society of Australia

Suite 18, Hills Corporate Centre
11 Brookhollow Avenue
Baulkham Hills NSW 2153
(02) 9680 9026
ergonomics.org.au
Email: secretariat@ergonomics.org.au

Safety Institute of Australia

PO Box 2078
Gladstone Park
VIC 3043
(03) 8336 1995
sia.org.au
Email: [garyls@sia.org.au](mailto:garyl@sia.org.au)

WorkSafe Victoria

222 Exhibition Street
Melbourne
VIC 3000
(03) 9641 1444
worksafe.vic.gov.au
Email: info@worksafe.vic.gov.au