

VSCCS J&P code of conduct

for licensed certifiers

May 2015

This is the VSCCS J&P code of conduct. It includes information on:

- The purpose of the code
- Code of conduct requirements.

Contents

About the VSCCS J&P	3
Code of Conduct for licensed certifiers	3
Introduction	3
Purpose of the Code	3
Relationship of the Code to legislation	4
Code of Conduct requirements.....	4
Acting in the public interest.....	4
Regard for interests of customers and others	4
Treatment of others.....	5
Acting professionally	5
Duty of care.....	5
Making decisions and taking actions	5
Protecting and using information	6
Acting within their competence	6
Proper exercise of power.....	7
Gifts and benefits	7
Conflict of interest	7
References.....	7

About this document

This document is the Code of Conduct that VSCCS J&P licensed certifiers are required to follow as part of their conditions of licence.

Disclaimer

This publication may include some of your obligations under various applicable pieces of legislation. To ensure you comply with your obligations you must refer to the appropriate legislation. Information on the latest legislation can be obtained on the NSW legislation website (www.legislation.nsw.gov.au). This publication does not represent a comprehensive statement of the law as it applies to particular problems or individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

About the VSCCS J&P

The Vehicle Safety Compliance Certification Scheme J&P (VSCCS J&P) licenses competent individuals to inspect modified vehicles and certify compliance with the relevant vehicle safety standards.

Modified vehicles that may require certification include vehicles subject to body fit and tow coupling/fifth wheel modifications, also referred to as J and P code modifications.

The VSCCS J&P is second tier to the existing Vehicle Safety Compliance Certification Scheme.

Code of Conduct for licensed certifiers

Introduction

The Vehicle Safety Compliance Certification Scheme J&P Code of Conduct for Licensed Certifiers (the Code) presents the standards of conduct and professionalism expected from licensed certifiers when performing certification functions on behalf of Roads and Maritime Services (Roads and Maritime).

Licensed certifiers must exhibit, and be seen to exhibit, the highest ethical standards in carrying out their duties so as to maintain public confidence in the integrity of the certification system.

By following the Code licensed certifiers will demonstrate behaviour that is honest, ethical, responsible and accountable.

If a licensed certifier is in doubt as to the propriety of any course of action, the licensed certifier should seek the guidance of Roads and Maritime.

Licensed certifiers may be bound by other codes of ethics or professional conduct issued by their respective professional associations/institutes. While those requirements will supplement the principles within this Code, they do not have any legal status under the Road Transport (Vehicle Registration) Regulation 2017 (the Regulation).

Where there is an apparent conflict between principles in this Code and in another code of professional conduct, particularly where the public interest is concerned, this Code will prevail for the purposes of the Regulation. The Code applies equally and to each person licensed by Roads and Maritime as a certifier.

Purpose of the Code

The purpose of the Code is to:

- Set standards of conduct and professionalism expected from licensed certifiers when performing their certification functions
- Assist licensed certifiers to:
 - Undertake their regulatory functions
 - Act in a way that enhances public confidence in the process of the certification of vehicles
- Inform the community of the standards of conduct and professionalism expected from licensed certifiers.

The Code cannot address all possible circumstances that certifiers may face in their role as a public official.

The Code does not attempt to:

- Replicate the requirements placed on licensed certifiers by legislation, or
- Provide standards in relation to business practices or the application of vehicle standards.

Relationship of the Code to legislation

Compliance with the code of conduct is a condition of licence issued under clause 90 of the Regulation.

A breach of the Code may result in disciplinary or legal action being taken against a licensed certifier, and may result in Roads and Maritime forming the opinion that the certifier is not a 'fit and proper' person to hold a licence, in accordance with the Roads and Maritime Fit and Proper Policy Statement.

The Code does not stand alone. Licensed certifiers must follow the law, including legislation specific to their responsibilities, including but not limited to the *Road Transport Act* and the Regulation, the conditions of licence, other relevant road transport law, the *Anti-Discrimination Act 1977*, the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*. Nothing in the Code overrides or affects any law.

Code of Conduct requirements

When working as a licensed certifier and carrying out certification functions, a licensed certifier must comply with requirements of the Code listed below.

Acting in the public interest

A licensed certifier is a public official within the meaning of the *Independent Commission Against Corruption Act 1988*. Public officials occupy positions of public trust and the public has a right to be assured they will operate in an open and honest way and make decisions based on high ethical standards.

A licensed certifier must carry out their functions and duties, and exercise any discretionary powers, in ways that promote or preserve the public interest.

A licensed certifier must take appropriate and prompt action in relation to complaints made by customers, or received by Roads and Maritime from customers, in relation to certification functions carried out by the licensed certifier. A licensed certifier must take reasonable steps to promptly inform the complainant of the action they have taken in response to the complaint.

Examples of performing certification functions to promote or protect the public interest:

- If a vehicle is presented for certification, but does not meet the applicable vehicle standards, then advising the customer of the areas of non-compliance, and refusing to certify the vehicle until the non-compliance has been rectified
- If in the course of certifying a vehicle the licensed certifier identifies other modifications that also require certification, then advising the customer of this. Note that responsibility for obtaining a certificate for these additional modifications rests with the vehicle owner/operator, not the licensed certifier
- Ensuring that where a vehicle is rejected for certification, relevant records are made and provided to Roads and Maritime and the customer. This will assist Roads and Maritime in identifying circumstances where the vehicle may be later certified without the rectification work having been properly completed.

Regard for interests of customers and others

A licensed certifier must not misinform, or otherwise mislead, a customer or any regulatory agency about any matter relating to the performance of the licensed certifier's certification functions.

A licensed certifier must provide their professional services conscientiously, competently and in a timely manner. A licensed certifier should enter into a clear agreement with the customer outlining all relevant aspects of the work to be provided and act in accordance with this agreement.

Examples of a licensed certifier not having regard for the interests of others:

- Not taking reasonable steps to return customers' phone calls promptly
- Agreeing to oversee a modification of a vehicle, even though they will be unable to provide agreed certification functions due to other existing work commitments or licence conditions
- Not taking appropriate action to give customers prior notice of their intention to no longer provide certification functions for any reason
- Advising customers that they will receive their certificate within a certain time frame then not meeting that commitment and failing to take reasonable steps to advise the customer before, if practicable, or soon after as to the reasons why the commitment cannot be met.

Treatment of others

A licensed certifier must act with honesty, respect, good faith and equity, and without discrimination, towards any person in the community.

To act without discrimination, a licensed certifier must not harass or discriminate against their colleagues or members of the public on the grounds of sex, marital status, race, age, disability or sexual preference. Such harassment or discrimination may constitute an offence under the *Anti-Discrimination Act 1977*. A licensed certifier is not taken to have discriminated against a person, however, merely because the certifier has declined to accept an engagement (contract) from that person where any ground of discrimination set out above has not occurred.

Acting professionally

A licensed certifier must maintain ethical and professional standards in connection with the delivery of their certification functions. A licensed certifier must act responsibly, accountably, with courtesy towards others and in a way that promotes public trust and confidence in the integrity of the scheme.

A licensed certifier must not make any public comments that may bring the VSCCS J&P into disrepute or make any public comments on Roads and Maritime policy without the express prior written permission of Roads and Maritime.

Duty of care

A licensed certifier must exercise reasonable care and attention in carrying out their duties, and in the exercise of their functions.

If in the course of issuing a certificate, a licensed certifier needs to make other determinations, such as whether relevant conditions of import approvals have been met, the licensed certifier will be subject to the ordinary principles of the law of negligence in carrying out their functions and must exercise a reasonable standard of care in making these determinations.

Example of a licensed certifier's duty of care in performing certification functions

Taking reasonable steps to ensure that the information included in compliance certificates they issue is correct and complies with the requirements of the Regulation, licence and supporting documentation.

Making decisions and taking actions

A licensed certifier must take all reasonable steps to obtain all relevant facts when making decisions and carrying out certification functions.

A licensed certifier must ensure that their decisions and actions are:

- Reasonable
- Fair and appropriate to the circumstances
- Based on consideration of all the relevant facts they have obtained

- Supported by adequate documentation.

Examples of a licensed certifier taking all reasonable steps to obtain all relevant documentation and ensuring a decision is supported by adequate documentation:

- Personally inspecting the vehicle, ensuring that all relevant/necessary tests are run and the test results retained on file, making all necessary calculations and retaining them on file, etc
- Undertaking whatever inspection is necessary to ensure that the vehicle can be appropriately certified. Responsibility for involving a licensed certifier at appropriate stages of a vehicle's modification or construction rests with the vehicle owner/operator
- Not relying on the word of the customer for information about the vehicle, but rather confirming this information directly. For example (and where relevant), the vehicle identification number, gross vehicle mass, number plate, details of an import approval, or any other relevant details.

Protecting and using information

A licensed certifier must take care to maintain the integrity and security of confidential documents or information in their possession, or for which they are responsible, and must not use confidential information gained by virtue of their position as a public official for the purpose of securing a private benefit for themselves or another person or for any other reason.

When applicable, a licensed certifier must act in accordance with the National Privacy Principles under the *Privacy Act 1988* or any other relevant legislation.

Examples of information that needs to be protected (note that this is not an exhaustive list):

- Customer details, including name, address, contact numbers, e-mail address
- Vehicle details, including vehicle identifiers
- Copies of any insurance policy that may be arranged by Roads and Maritime
- Documents sent in draft by Roads and Maritime for confidential review and comment.

Acting within their competence

Licensed certifiers must act within the terms of their licence. Licensed certifiers must continually refer to the requirements of the Regulation and the scheme to ensure that they act within the terms of their licence.

A licensed certifier must also carry out certification functions only within their competence, even if the certification falls within the category(s) for which a certifier has been licensed.

Examples of when work may be within the terms of a certifier's licence but still be beyond their competence:

- The work itself may be of such a highly innovative, specialised or complex nature that the licensed certifier may not have the technical expertise to assess the work for compliance with the relevant requirements
- The licensed certifier may not have any experience in assessing the proposed work or similar works for compliance with the relevant requirement.

In such circumstances, it would be appropriate for the licensed certifier to take one of the following actions:

- Rely upon documentary evidence that the subject matter complies with relevant requirements provided from another licensed certifier who has the appropriate competence and is also licensed for that category (noting that the person ultimately certifying the vehicle remains responsible for the certificate and information upon which it is based)

- Not carry out certification functions for that vehicle, and instead refer the customer to an appropriately-qualified certifier.

Part of carrying out certification functions within a licensed certifier's area of competence requires the licensed certifier to maintain that competence. Maintaining competence requires licensed certifiers to commit to a process of continuing professional development to ensure they constantly keep informed of developments within the industry and the law relevant to carrying out certification functions. Failure to do so may result in a breach of this Code and a breach of the licence conditions.

Proper exercise of power

A licensed certifier must exercise their powers only for proper purposes. A licensed certifier must not take advantage of their status, position, power or duties for the purpose of obtaining, either directly or indirectly, any preferential treatment or improper benefit or advantage.

Protect yourself and others

Roads and Maritime is aware that circumstances could potentially arise where a licensed certifier may feel pressured by individuals or groups of people to exercise their power in a way that is inappropriate. If this occurs then the certifier should contact Roads and Maritime as soon as possible. Depending on the circumstances, Roads and Maritime may choose to refer matters of this nature to the NSW Police for investigation. If threats to a certifier's personal safety are made then they should refer the matter immediately to the NSW Police.

Gifts and benefits

A licensed certifier must not seek or accept a gift or benefit that is intended to, likely to, or could be perceived by an impartial observer as likely to, cause him or her to act in a biased or unfair manner in the course of their duties.

A licensed certifier must also take all reasonable steps to ensure that a person related to the licensed certifier does not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure, or have the effect of influencing or securing, a favour from the certifier. A person is related to a licensed certifier for the purposes of this section if the person is a spouse, de facto partner, sibling, parent or child of the licensed certifier.

Conflict of interest

Where a licensed certifier has an affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that the licensed certifier may have a conflict of interest in carrying out an aspect of their professional role, they must not carry out that aspect of their role.

A licensed certifier must not display favour or bias toward or against any person in the course of carrying out their duties, even if there is no payment or return favour as a result.







When a licensed certifier considers that they have a conflict of interest, they should:

- Notify Roads and Maritime of the conflict of interest
- Refuse to undertake the work, or any remaining work, in relation to which the conflict of interest arises.

A conflict of interest is permitted by this Code where the certifier of a vehicle is permitted by Roads and Maritime to self certify vehicles they have modified or vehicles they own.

References

For further guidance, licensed certifier should refer to the following documents:

-  Department of Local Government, The Model Code of Conduct for Local Councils in NSW, December 2004
-  Independent Commission Against Corruption, Gifts, Benefits or Just Plain Bribes? Guidelines for Public Sector Agencies and Certifications, June 1999
-  Independent Commission Against Corruption, Code of Conduct, February 2007
-  NSW Ombudsman, Bad Faith, Bias and Breach of Duty, Public Sector Agencies fact sheet No. 2, July 2003
-  NSW Ombudsman, Good Conduct and Administrative Practice: Guidelines for state and local government (2nd edition), May 2006
-  Office of the Federal Privacy Commissioner, Guidelines to the National Privacy Principles, September 2001