

Member Code of Conduct

This Code of Conduct is issued by the President of the NSW Civil and Administrative Tribunal pursuant to section 20 of the *Civil and Administrative Tribunal Act 2013* (the NCAT Act) and applies to all Members of the Tribunal, including occasional Members.

Purpose

This Code seeks to provide guidance to Members in the performance of their statutory functions as Members of the Tribunal and to assist Members in identifying and resolving ethical issues as they may arise.

A further purpose of this Code is to provide Tribunal users with information by reference to which to assess Members' conduct.

Upholding the Objects of the NCAT Act

The objects of the NCAT Act include:

- ensuring that the Tribunal is accessible and responsive to the needs of all of its users;
- enabling the Tribunal to resolve the real issues in proceedings justly, quickly, cheaply and with as little formality as possible;
- ensuring that the decisions of the Tribunal are timely, fair, consistent and of a high quality;
- ensuring that the Tribunal is accountable and its processes are transparent and open;
- promoting public confidence in Tribunal decision-making and the conduct of Tribunal Members.

Members are to perform their duties and conduct themselves consistently with these objects.

General Responsibilities

Tribunal Members have the following general responsibilities both in their activities as a Member and in their personal activities:

- to uphold the law, including being aware of and complying with legislation dealing with privacy, discrimination and corruption;

- to uphold the highest standards of integrity, truthfulness, and honesty.

Tribunal Values

In performing their duties, Members should at all times strive to give effect to the following values (which are derived from “A Guide to Standards of Conduct for Tribunal Members” (Revised August 2009) of the Administrative Review Council).

Respect for the Law

Members should while acting as a Tribunal Member and while performing functions associated with membership demonstrate respect for the law in all its aspects.

In particular, Members should:

- at all times while performing Tribunal duties comply with the law in relation to the conduct of hearings, the determination of matters and interactions with other Members, Tribunal staff and Tribunal users;
- ensure that all decisions and determinations are legally well founded.

Fairness

Fairness requires a Tribunal Member to make unbiased, impartial decisions and to give all parties the opportunity to put forward their positions.

More specifically, Members are to:

- apply the law equally and act in an impartial manner in the performance of their decision making functions so that their actions do not give rise to a legitimate apprehension of bias or amount to actual bias;
- advise the parties of any matter or circumstance which might give rise to bias or conflict of interest or a perception of bias or conflict of interest and determine whether in the circumstances it is appropriate to continue to conduct or determine the proceedings;
- refrain, other than during a hearing or in exceptional circumstances, from any communication (either oral or in writing) or association during the course of proceedings with a party, legal representative or witness in the absence of the other party or parties or their representatives.
- abide by the principles of procedural fairness, in particular, by ensuring that parties have a reasonable opportunity to present their case and to answer the case against them;
- be aware of and address appropriately barriers such as language, cultural background, lack of literacy or disability which are likely to impede parties in presenting their case;

In addition, Members should:

- if engaged in another profession, occupation or business, take care to ensure that those activities do not conflict with or undermine the discharge of their responsibilities as a Member;
- refrain from engaging in partisan political activity which is directly related to the work of the Tribunal or which may impinge upon the perception of impartiality of the Member or the Tribunal.

Independence

Tribunal Members are to perform their duties independently, free from external influence and free from the fear of adverse consequences.

Members should not allow themselves to be put in a position where their independence may be compromised or be perceived to be compromised.

Where part time Members have a professional practice in addition to being Members of the Tribunal, they:

- cannot appear before the Tribunal as a representative of a party or other person;
- cannot advise individuals or bodies concerning Tribunal proceedings or potential proceedings involving those individuals or bodies; and
- cannot act for or against or provide services to individuals or bodies who are litigants before them in the Tribunal.

Respect for Persons

Members are to conduct proceedings in a manner that is patient, courteous and respectful of all parties, witnesses, representatives, staff and others with whom the Members has to deal.

In particular, Members are to:

- demonstrate patience, courtesy and respect in their own conduct and demeanour;
- communicate in a clear, plain manner so as to be understood by the parties;
- control the proceedings in such a way as to create an environment in which participants can and are encouraged to treat other participants courteously and respectfully;
- be aware of and responsive to cultural and other sensitivities in relation to forms of address, conduct and dress.

Diligence and Efficiency

Members are to be diligent and timely in the performance of their duties. They should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary to the performance of their duties.

In particular, Members should:

- conduct proceedings and make decisions with due rigour, diligence and intellectual honesty;
- perform their duties in the Tribunal so as to resolve matters in a timely and appropriate manner with a view to ensuring that the Tribunal's proceedings are efficient, effective and inexpensive;
- provide oral reasons for decision where appropriate and deliver reserved decisions within the NCAT Divisional standards, except where the complexity or difficulty of the matter requires otherwise;
- undertake and participate in professional development and training programs aimed at enhancing knowledge and skills relevant to their duties;
- keep informed of developments in substantive and procedural matters within the jurisdiction of the Tribunal relevant to their duties;
- support and encourage where possible the professional development of colleagues;
- become proficient in the use of, and use where appropriate, technology including the Tribunal's computerised case management system, digital provision of documents, the Tribunal's intranet, digital sound recording facilities, and other technological developments implemented by the Tribunal.

In order to promote the efficient conduct of proceedings, Members should:

- clearly identify the issues and orders in dispute;
- facilitate the resolution or narrowing of issues in dispute, where appropriate;
- adjourn proceedings only when necessary in the interests of justice and fairness;
- ensure that any interlocutory orders and applications do not unnecessarily delay the final determination of proceedings;
- ensure that evidence is confined by reference to the issues in dispute and is given as concisely as reasonably possible.

Integrity

Members, in carrying out their duties as Members, are to act honestly and truthfully.

In particular, Members must:

- not knowingly take advantage of or benefit from information, not publicly available, obtained in the course of performing their Tribunal functions;

- not use their position as a Member improperly to gain or seek to gain any advantage or benefit for themselves or any other person;
- be scrupulous in the use of Tribunal resources;
- not disclose any confidential information otherwise than as permitted by law;
- refrain from conduct which would bring the Tribunal into disrepute.

Accountability and Transparency

Members are accountable for their decisions and actions taken as Members and have a responsibility to be open and frank about their decisions, action and inaction in relation to their duties.

In particular, Members are to:

- participate in performance evaluations conducted by the Tribunal;
- co-operate fully in complaint investigations carried out by the Tribunal.

Responsibility of the Tribunal Head and Heads of Divisions

It is the responsibility of the President together with the Heads of each of the Divisions to assist Members to comply with the Code of Conduct and to perform their responsibilities as Tribunal Members through the provision of appropriate training, leadership and support.

Particular Issues

Gifts, Benefits and Hospitality

Where gifts or benefits are offered, or social invitations extended, by parties or representatives in Tribunal proceedings, to Members in their capacity as such, these should, as a general rule, be declined.

If a gift is proffered to a Member, in his or her capacity as a Member, in circumstances where it cannot be or it is inappropriate for it to be declined, it should be handed to the Principal Registrar for inclusion in the Tribunal's gift register and appropriate disposition, such as for a charitable purpose or for public display in the Tribunal's premises.

Corrupt Conduct

If a Member becomes aware of an instance of behaviour that could be corrupt conduct, maladministration, or criminal conduct, relating to the Tribunal, the Member should report it promptly to the Principal Registrar or the President, and also, if appropriate, to the Independent Commission Against Corruption.

Post Service Conduct

After ceasing to be a Member of the Tribunal it is expected that a former Member:

- would continue to behave in a way that upholds the integrity and good reputation of the Tribunal;
- would not appear before the Tribunal as a representative where to do so would contravene the Barristers' Rules, the Solicitors' Rules or any other similar applicable professional rules;
- would not use or take advantage of confidential information obtained in the course of his or her duties as a Member.

Complaints

Complaints in relation to Members will be dealt with as outlined in the Tribunal's Complaints protocol.

Compliance with the Code

If a Member does not comply with the Code, the President may direct the Member to take specified action to rectify his or her conduct or determine that further work not be allocated to the Member until the breach is rectified. In cases of serious breach the President may refer a matter to the Attorney General or recommend that the Member not be reappointed at the expiration of their term. Whether such action will be taken will depend on factors such as the seriousness of the conduct in question, whether there is a pattern of such conduct, the intent of the Member concerned and the effect upon the Tribunal or others of the conduct.

The Code of Conduct does not stand alone but forms part of the accountability framework within which both the Tribunal and the Members operate. It is complementary to the Tribunal's procedures and policies, including the Member professional development framework and the Tribunal's complaints process. The Code may be reviewed from time to time to ensure its relevance.

The Hon Justice Robertson Wright
President

20 April 2018