

Non-Judicial Members' Code of Conduct

State Administrative Tribunal Act 2004

Non-Judicial Members' Code of Conduct under section 121

Authority for making Code of Conduct

- 1 This Code of Conduct (this Code) is made by the President of the State Administrative Tribunal (the Tribunal) pursuant to s 121 of the [State Administrative Tribunal Act 2004 \(WA\)](#) (the Act) and is to be read subject to the Act.

Binding nature of this Code

- 2 This Code applies to each person performing functions as a non-judicial member of the Tribunal and, by operation of s 119(3) of the Act, each person performing functions as a non-judicial member is to comply with this Code.

Purpose

- 3 This Code seeks to guide non-judicial members in the performance of their functions and duties in a manner that is consistent with the objectives of the Tribunal and to assist them:
 - (a) in identifying and resolving ethical disputes;
 - (b) in ensuring the highest standards of conduct in relation to parties to proceedings before the Tribunal, and staff and others engaged by the Tribunal; and
 - (c) in maintaining appropriate standards of professional performance.

Compliance with the Tribunal's objectives

- 4 A non-judicial member must act in accordance with the objectives of the Tribunal, the main objectives of which are set out in s 9 of the Act. To this end, the member must work with the staff of the Tribunal and other members, both non-judicial and judicial:
 - (a) to achieve the resolution of questions, complaints or disputes, and make or review decisions, fairly and according to the substantial merits of the case;
 - (b) to act as speedily and with as little formality and technicality as is practicable, and minimise the costs to the parties; and
 - (c) to make appropriate use of the knowledge and experience that the member and other Tribunal members have, particularly those other

members who may sit with them in the hearing and determination of an application.

Fundamental values

5 This Code reflects values identified by the Administrative Review Council (Cth) in its Guide to Standards of Conduct for Tribunal Members, published in September 2001:

(a) considered to be critical elements of an administrative review and decision-making system and, by extension, an administrative tribunal; and

(b) considered to underpin principles of conduct for tribunal members.

6 The five values considered to be critical elements of an administrative review and decision-making system and, by extension, an administrative tribunal are:

(a) lawfulness;

(b) fairness;

(c) rationality;

(d) openness (sometimes called transparency); and

(e) efficiency.

7 Having regard to those values, the seven values considered to underpin this Code are:

(a) respect for the law;

(b) fairness;

(c) independence;

(d) respect for persons;

(e) diligence and efficiency;

(f) integrity; and

(g) accountability and transparency.

8 The values and principles referred to in this Code are stated in a context where:

(a) obligations are placed on non-judicial members under the general law and by virtue of their position as public/statutory officers; and

(b) legislation and administrative regulations also stipulate the objects of the Tribunal and the role of its non-judicial members.

9 This Code is also premised on an understanding that there is often a substantial overlap between both the values and the principles of

conduct underlying them. For example, "integrity" may be seen as a prerequisite to "fairness", "diligence", "accountability" and "respect for the law"; elements of "fairness" have connections with "independence" and "transparency"; and aspects of "respect for the law" have links to "diligence" and "accountability".

Non-judicial members' role

- 10 The fundamental role of a non-judicial member is to be impartial and independent in carrying out their function of mediating, conferring, and hearing and determining applications made to the Tribunal.

General responsibilities

- 11 A non-judicial member has the following general responsibilities:

- (a) to uphold the highest standards of integrity and honesty and to act ethically in accordance with the law;
- (b) to ensure fairness in dealing with parties to proceedings before the Tribunal;
- (c) to remain independent from the parties involved in the proceedings before them;
- (d) to act respectfully towards parties to proceedings before them and other members and staff of the Tribunal;
- (e) to maintain the highest professional standards, in particular by continuing to improve and develop their professional knowledge and skills;
- (f) to uphold the integrity and reputation of the Tribunal at all times. To this end, a non-judicial member must refrain from engaging in activities, or expressing opinions that might diminish the standing of the Tribunal or compromise their ability to deal with a specific case; and
- (g) to act openly and accountably as required by the Act in dealings with parties to proceedings before them.

Fairness in proceedings

- 12 With respect to their duty to ensure fairness, a non-judicial member in exercising their powers or performing their functions should:

- (a) conduct proceedings according to the law, fairly and according to the substantial merits of the case and generally as required by the Act;
- (b) abide by principles of procedural fairness, as required by s 32(1), (2) and (6) of the Act;

- (c) ensure that all parties are given adequate opportunity to participate in proceedings;
- (d) ensure that decisions are based on relevant and logically probative information;
- (e) be patient, dignified and courteous to parties, witnesses, representatives, Tribunal staff and officials, and others with whom the member deals, and should require similar behaviour of those who may be subject to their direction and control or should encourage similar behaviour of the Tribunal's staff assisting in any proceedings;
- (f) take into consideration any special needs, such as language, cultural background, literacy or disability of the parties involved in proceedings;
- (g) ensure that any communication between the member and the parties or witnesses occurs in an open and transparent way;
- (h) consider any factors that may give rise to an unfair advantage to one party over another, as required by s 48 of the Act;
- (i) not accept gifts of any kind where this could reasonably be perceived to compromise the impartiality of the member or the Tribunal.

Avoidance of conflict of interest

- 13 A non-judicial member should, at the earliest opportunity, advise the Executive Officer or President of the Tribunal and the parties (where necessary) of any actual or perceived conflict of interest that may prevent the member from mediating, conferring or hearing and determining a matter referred to or listed before the member. This includes any factor that may give rise to a reasonable apprehension of bias, as distinct from actual bias, by a party to the proceedings.

Outside employment prohibited

- 14 Consistently with the requirement in s 118 of the Act, a non-judicial member who is appointed on a full-time basis is not allowed to engage in the practice of any profession or in any paid employment (whether or not within Western Australia) outside the duties of office as a member of the Tribunal, except with the consent of the President and in accordance with any conditions attached to that consent.
- 15 A non-judicial member who is appointed on a part-time basis is allowed to engage in the practice of any profession or any paid employment (whether or not within Western Australia) outside the duties of office as a member of the Tribunal only if:
- (a) the member has first advised the President in writing; and

- (b) the President has not advised the member that, in the President's opinion, to do so would or may conflict with the proper performance of the member's duties of office.
- 16 Despite anything in s 118 of the Act, a non-judicial member is not allowed to engage in any paid employment as a public sector employee, save to the extent that the Act allows such engagement.
- 17 A non-judicial member who is appointed on a part-time basis is not allowed to represent another person in a matter that is before the Tribunal.
- 18 A non-judicial member who is appointed as a sessional member, and as a result is neither a full-time member nor a part-time member is not affected by paragraphs 14 to 17 and, subject to having an actual or perceived conflict of interest that precludes them from hearing or dealing with a particular proceeding in the Tribunal as a non-judicial member of the Tribunal, is not prohibited from maintaining employment outside the Tribunal or from appearing in the Tribunal on behalf of a party to proceedings in the Tribunal either as a representative of the party or as an expert witness.

Professional standards

- 19 A non-judicial member should:
- (a) regularly review their own performance to ensure they are able to meet the objectives of the Tribunal;
 - (b) co-operate fully, as required, with performance evaluation conducted by or on behalf of the President of the Tribunal;
 - (c) undertake continuing training offered by or on behalf of the President of the Tribunal to develop and enhance knowledge and skills relevant to their role as members;
 - (d) undertake continuing training offered by or on behalf of the President of the Tribunal, where necessary, in order to function in the electronic and information technology environment established by the Tribunal;
 - (e) participate in any training programmes provided by or on behalf of the President of the Tribunal;
 - (f) maintain up-to-date knowledge with respect to the law they usually deal with in the jurisdiction of the Tribunal;
 - (g) in the performance of their functions have full regard to the Act, Regulations, Rules, Practice Notes and any informal policies governing the practice and procedure of the Tribunal;
 - (h) have full regard to the internal policies of the Tribunal as they may apply from time to time affecting the performance of their functions and

duties, including but not limited to privacy, internet use, e-mail use, telephone use, security and occupational health and safety;

- (i) treat fellow Judicial and nonjudicial members, staff and members of the public with courtesy and respect at all times;
- (j) interact with fellow judicial and nonjudicial members in a manner which is open and transparent and upholds the integrity and reputation of the Tribunal;
- (k) in the case of nonjudicial members who are senior members, advise the President immediately in the event of any communications difficulties between nonjudicial members (senior or otherwise) within their list, which if not addressed, may affect collegiality.

Integrity

20 A non-judicial member:

- (a) should act honestly and truthfully in the performance of their Tribunal responsibilities;
- (b) should not knowingly take advantage of or benefit from information not generally available to the public obtained in the course of the performance of their Tribunal responsibilities;
- (c) should not use their position as a member to improperly obtain or seek to obtain benefits, preferential treatment or advantage for the member or for any other person or body;
- (d) should be scrupulous in the use of the resources of the Tribunal;
- (e) in private life should behave in a way that upholds the integrity and good reputation of the Tribunal.

Accountability and transparency

21 A non-judicial member:

- (a) is accountable for decisions and actions taken as a Tribunal member and should participate fully in all applicable accountability or scrutiny regimes implemented by or on behalf of the President of Tribunal, as well as any of the accountability or scrutiny regimes applicable under the general law;
- (b) should be as open as possible about all decisions and action (including lack of action) taken in the performance of their Tribunal responsibilities.

Involvement in proceedings and decision-making

22 A non-judicial member will:

- (a) attend Tribunal hearings when scheduled to do so;
- (b) prepare for hearings by reading all relevant documents relating to the hearing, at least where the documents have been provided sufficiently in advance of the hearing by Tribunal staff;
- (c) participate in hearings to the best of their ability, listening carefully to the evidence and making notes as appropriate to assist their decision-making;
- (d) ask questions as appropriate during proceedings to ensure that a proper understanding of matters in issue is obtained from parties, their witnesses and representatives;
- (e) discuss and raise any concerns that they have about the issues and the evidence with the presiding member and with other tribunal members involved in a hearing;
- (f) where a decision is reserved, be prompt in deliberating and preparing reasons for decision in conformity with the requirement of s 76 of the Act that such reserved decision be delivered within 90 days;
- (g) ensure that reasons are given for a final decision in accordance with s 77(1) of the Act and that those reasons include the Tribunal's findings on material questions of fact, referring to the evidence or other material on which those findings are based, as required by s 77(2) of the Act;
- (h) treat all documents supplied to them for the purpose of Tribunal proceedings as confidential to the proceedings and the parties involved in them and keep them in safe custody during a proceeding and return them to the custody of an appropriate Tribunal staff member at the conclusion of a proceeding.

Media communications

23 A non-judicial member will not make any official media statements on behalf of the Tribunal unless specifically authorised to do so by the President.

24 Generally speaking, it is not appropriate for a member to discuss publicly Tribunal issues relating to:

- (a) organisational issues that the member knows or should know are sensitive;
- (b) issues not in the member's area of expertise;

- (c) issues where a member has limited knowledge;
- (d) matters relating to individual members of the Tribunal or staff members;
- (e) proceedings before the Tribunal.

25 However, this does not preclude a member participating in an appropriate way in public discussion on matters of public interest and in relevant professional, industry, occupational and user-group seminars and conferences. If a member is in doubt as to what participation may be considered appropriate in any case, he or she should seek guidance from the President or a Deputy President.

Consequences of non-compliance with this Code

26 The consequences of a non-judicial member not complying with the terms of this Code are as follows:

- (a) where the President becomes aware that a non-judicial member has not complied with this Code (to a non-trivial extent), the President will take such action as the President considers appropriate;
- (b) where a non-judicial member has breached this Code in a way that constitutes misbehaviour for the purposes of the Act, and the President believes that the member may be unfit to hold office because of that misconduct, the President may suspend the member from office in accordance with s 122 of the Act.

This Code of Conduct was made by the Hon Justice Michael Laurence Barker on 27 June 2005.

This Code of Conduct was amended by the Hon Justice Jeremy Curthoys on 29 July 2014.