

Administrative Review Tribunal Code of Conduct for Non-Judicial Members

I, the Hon Justice Emilios Kyrou AO, President of the Administrative Review Tribunal, determine the following Code of Conduct under section 201 of the *Administrative Review Tribunal Act 2024*.

Dated 14 October 2024

The Hon Justice Emilios Kyrou AO

President

ADMINISTRATIVE REVIEW TRIBUNAL

CODE OF CONDUCT

TABLE OF CONTENTS

CHAPTER 1: OBLIGATIONS	3
Part 1. Introduction	3
Part 2. Definitions and Application	4
Part 3. Compliance with the law and directions by the President.....	6
Part 4. Integrity	7
Part 5. Independence and conflicts of interest	8
Part 6. Impartiality	9
Part 7. Confidentiality.....	10
Part 8. Plagiarism.....	11
Part 9. Improper use of Generative AI.....	11
Part 10. Social Media and Public Activities	12
Part 11. Membership of a regulated profession	13
Part 12. Courtesy and respect	13
Part 13. Sexual harassment.....	14
Part 14. Bullying.....	15
Part 15. Discrimination.....	16
Part 16. Violence	17
Part 17. Victimisation	17
CHAPTER 2: ACTION REGARDING MEMBERS UPHOLDING THE CODE	19
Part 18. Overview	19
Division A: Action to assist Members to uphold the Code.....	19
Part 19. Education and training	19
Division B: Action in relation to a Member who may not uphold the Code	19
Part 20. Introduction	19
Part 21. Process for dealing with possible breaches of the Code.....	21
Part 22. General	24

CHAPTER 1: OBLIGATIONS

Part 1. Introduction

1.1 This Code of Conduct (**Code**) is determined and published by the President under section 201 of the *Administrative Review Tribunal Act 2024 (Act)*. The Code is for general members, senior members and Non-Judicial Deputy Presidents (each a **Member**) of the Administrative Review Tribunal (**Tribunal**).

1.2 This Code has effect from the date it is signed.

1.3 The Code is an important means by which the Tribunal pursues the objective in section 9 of the Act, which provides as follows:

The Tribunal must pursue the objective of providing an independent mechanism of review that:

(a) *is fair and just; and*

(b) *ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the Tribunal permits; and*

(c) *is accessible and responsive to the diverse needs of parties to proceedings; and*

(d) *improves the transparency and quality of government decision-making; and*

(e) *promotes public trust and confidence in the Tribunal.*

1.4 Section 10 of the Act provides that the Tribunal consists of the President, Deputy Presidents, senior members and general members. Accordingly, the Tribunal's objective provides important statutory context for the framing of obligations for Members for inclusion in the Code.

1.5 The Code contains the normative standards of conduct expected of a Member. Where Members meet these standards, the Tribunal will be able to achieve its statutory objective and maintain the public's trust and confidence. Where Members do not meet these standards, the Tribunal's ability to achieve its statutory objective may be compromised and the public's trust and confidence in the Tribunal may be undermined. Compliance with the Code will also assist Members in discharging their oath or affirmation of office under section 213(2) of the Act that they will well and truly serve in the office, and do right to all manner of people according to law without fear or favour, affection or ill-will.

- 1.6 Section 201(2) of the Act stipulates that the Code must provide for the taking of action by the President or a jurisdictional area leader (*JAL*) in relation to Members upholding the Code. The action to which section 201(2) refers may be action to assist Members to uphold the Code as well as action where Members may have breached the Code.
- 1.7 Parts 3 to 17 in Chapter 1 set out the minimum standards of conduct with which Members must comply under the sub-heading ‘Obligations’. The ‘Preamble’ in each of those parts does not form part of the obligations, but serves to provide context for the obligations that follow the Preamble.
- 1.8 Chapter 2 sets out provisions for the taking of action in relation to Members upholding the Code, including the process for dealing with possible breaches of the Code.
- 1.9 As discussed in Division B of Chapter 2, the President may take certain action if the President forms the opinion that a Member may have engaged in conduct that may constitute a breach of the Code, including investigating the conduct. If a Member’s conduct constitutes a serious breach of the Code, the Governor-General may, on the recommendation of the Attorney-General, terminate the appointment of the Member.
- 1.10 It follows that, apart from establishing a normative standard of conduct, the Code is important because of the potentially serious consequences of a breach of the Code.
- 1.11 The Code applies in addition to, and not in place of, any legal obligations to which a Member is subject, including those in the Act.

Part 2. Definitions and Application

2.1 In this Code, the following definitions apply in addition to those set out in Part 1:

Corrupt Conduct has the same meaning as in the *National Anti-Corruption Commission Act 2022*.

Generative AI means a system of artificial intelligence that is capable of generating ‘content’, such as text, images or music in response to prompts and includes, but is not limited to: Google Translate, ChatGPT, Gemini (formerly known as Bard) and DALL-E.

Political Party has the same meaning as in the *Commonwealth Electoral Act 1918*.

Public Activity means any activity by a Member, other than in the performance of the Member’s functions in relation to a proceeding before the Tribunal, which can be heard, observed or accessed by members of the public or a Section of the Public, and includes a Member:

- (a) participating in discussions or debates to which the public or a Section of the Public can have access;
- (b) publishing writings to the public or a Section of the Public;

- (c) writing for publications, including newspapers and websites to which the public or a Section of the Public can have access;
- (d) appearing or featuring in television, radio or other media to which the public or a Section of the Public can have access;
- (e) teaching in a school, university or other educational institution; and
- (f) speaking at, or submitting documents to, conferences or events to which the public or a Section of the Public can have access.

Registered Migration Agent means an individual who is listed as a registered migration agent in the Register of Migration Agents kept by the Office of the Migration Agents Registration Authority in accordance with the *Migration Act 1958*.

Representative means a person who is entitled to represent a party or person in accordance with section 66 of the Act.

Rules has the same meaning as in the Act.

Salaried Member has the same meaning as in the Act.

Section of the Public does not include a group of people where (i) membership of the group is predetermined or is only by invitation or can otherwise be controlled by the Member *and* (ii) where communications within the group are kept private and confidential. Without limiting the generality of the above, a Section of the Public does not include:

- (a) members and staff members of the Tribunal;
- (b) members of the Member's family; or
- (c) friends of the Member.

Social Media means technology applications, platforms and websites which allow users to interact with each other and give, receive, exchange and display information about themselves and others, including but not limited to Facebook, X (formerly known as Twitter), YouTube, Instagram, LinkedIn and TikTok.

staff member has the same meaning as in the Act.

Tribunal Case Event has the same meaning as in the Act.

2.2 Each of the prohibitions in [13.1], [14.1], [15.1], [16.1], and [17.1] applies to a Member:

- (a) undertaking any work-related activities, including when interacting with other members (judicial as well as non-judicial members), staff or other persons who engage with the Tribunal (whether as parties, Representatives, witnesses, interpreters or in any other capacity);

- (b) whether working at the Tribunal or from another location (including from home or while travelling for work);
- (c) attending work-related events such as conferences, training programs or social functions (regardless of whether they occur during normal work hours or outside normal work hours);
- (d) engaging in professional support of staff and other members (judicial as well as non-judicial members), for example in the role of a mentor or referee; and
- (e) participating as a member of a committee or a working group.

Part 3. Compliance with the law and directions by the President

Preamble

It is essential that Members comply with conduct obligations under the Act and with written directions given by the President under section 200(1) relating to the performance of their duties. The Code adopts the conduct requirements imposed on Members by the Act in relation to other paid work, appearances before the Tribunal, disclosure of interests and non-disclosure of Tribunal information. The Code also requires compliance with written directions by the President under section 200(1). Any issue of contravention of these statutory obligations or directions can be dealt with as a possible breach of the Code. Compliance with other laws is also crucial because a breach of the law by a Member can damage the reputation of the Tribunal and compromise the public's trust and confidence in the Tribunal, thus undermining the objective in section 9 of the Act. It is vital that Members uphold the Code.

Obligations

- 3.1 A Member must comply with the Member's obligations under the following provisions of the Act: section 216 (other paid work), section 217 (appearances before Tribunal) and section 218 (disclosure of interests).
- 3.2 Where the President gives a written direction under section 200(1) of the Act to a Member relating to the performance of the Member's duties, the Member must comply with the direction.
- 3.3 A Member must not engage in conduct which constitutes a criminal offence for which a sentence of imprisonment is available.
- 3.4 A Member must not engage in Corrupt Conduct.
- 3.5 A Member must inform the President if the Member is charged with any criminal offence within 5 business days of being notified of the charge.

Part 4. Integrity

Preamble

In order to maintain the public's trust and confidence in the Tribunal, it is imperative that Members are honest and ethical, and can be trusted.

Obligations

- 4.1 A Member must not use the Member's 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.
- 4.2 Without limiting [4.1], a Member must not improperly seek, solicit, accept or retain gifts or benefits in relation to the performance of the Member's Tribunal functions, such as gifts or benefits from a party, Representative, witness or interpreter involved in a Tribunal proceeding.
- 4.3 Unless prohibited by law, a Member must inform the President if the Member is, or is about to become, a defendant or respondent to a proceeding in any court or tribunal in their capacity as a Member or in any other capacity. The Member must do so within 5 business days of becoming aware that the Member is, or is about to become, a defendant or respondent to such a proceeding.

Note: The obligation in [4.3] does not apply where a Member is named as a respondent to an appeal or a judicial review proceeding against a Tribunal decision made by the Member.
- 4.4 A Member must not knowingly use Tribunal resources for a purpose that is unconnected with the Member's Tribunal functions.
- 4.5 A Member must not knowingly take advantage of, or benefit from, information not generally available to the public that is obtained in the course of the performance of the Member's Tribunal functions.
- 4.6 A Member must perform the Member's Tribunal functions unimpaired by alcohol or drugs.
- 4.7 Except where expressly permitted by the Member's terms and conditions of appointment, a Member must not commence any leave (whether paid or unpaid) without obtaining prior approval to do so, unless due to an emergency or other reasonable cause the Member is unable to obtain prior approval.

Note: Section 221(1) of the Act provides for termination of the appointment of a Member who is absent, except on leave of absence, for more than a certain number of days.

Part 5. Independence and conflicts of interest

Preamble

Under section 9 of the Act, the Tribunal must pursue the objective of providing an *independent mechanism* of review. Members are only able to perform their statutory functions in accordance with section 9, their oath or affirmation of office and the community's expectations if they are free of any loyalties, duties or interests that might inappropriately influence or interfere with the performance of those functions.

The appropriate disclosure, management and avoidance of conflicts of interest by Members enhances the public's trust and confidence in the independent mechanism of review provided by the Tribunal.

The following obligations are additional to the obligations in Part 3 and under the following provisions of the Act: section 216 (other paid work), section 217 (appearances before Tribunal) and section 218 (disclosure of interests).

Obligations

5.1 Where, to the extent permitted to do so in accordance with section 216 of the Act, a Member engages in a professional practice (whether in a paid capacity or as a volunteer) in addition to being a Member, the Member cannot:

- (a) advise or act for individuals or bodies concerning Tribunal proceedings or potential proceedings involving those individuals or bodies;
- (b) act for or against or provide services to individuals or bodies who are litigants before them in the Tribunal, except to the extent that the Member is permitted to do so in accordance with section 217 of the Act; or
- (c) advise or act for any party in an appeal or judicial review proceeding against a Tribunal decision made by another member, where the party to the appeal or judicial review proceeding was a party in the Tribunal proceeding giving rise to the Tribunal decision or whose rights or interests are affected by the Tribunal decision.

Note: An example of where the obligation in [5.1(c)] might apply is where a Member who engages in a professional practice receives instructions to advise or act for the Secretary of the Department of Social Services in an appeal or judicial review proceeding involving a Tribunal decision in which the Secretary was a party (whether or not the Member is assigned to the social security jurisdictional area).

5.2 Except with the written approval of the President, a Member must not be a Registered Migration Agent.

- 5.3 Except with the written approval of the President, a Member must not have a pecuniary interest in an immigration advisory service, whether or not that service is conducting business or is dormant.
- 5.4 Except with the written approval of the President, a Member who is a Salaried Member must not have a pecuniary interest in a legal firm, whether or not that firm is conducting business or is dormant.
- 5.5 Except with the written approval of the President, a Member must not advise or act for any Commonwealth tax or revenue authority.
- 5.6 A Member who practises as a principal or employee of a legal firm must not have any involvement in any matters before the Tribunal in respect of which that firm is providing legal services.
- 5.7 Save in exceptional circumstances and only to the extent necessary, a Member must not have private communications with a party or representative of a party involved in the hearing of an application for review by the Member (other than when conducting the hearing with only one—or only some—of the parties present or is consistent with the Act and the Tribunal’s usual practices and procedures), while the application for review is being determined by the Member, or the Member’s decision is reserved.

Part 6. Impartiality

Preamble

In accordance with section 213(2) of the Act, when a Member takes an oath or makes an affirmation, the Member promises to ‘do right to all manner of people according to law without fear or favour, affection or ill-will’.

The involvement of a Member in Political Party activities which are public in nature can damage the reputation of the Tribunal and compromise the public’s trust and confidence in the Tribunal, thus undermining the objective in section 9 of the Act.

Obligations

- 6.1 Without limiting Part 10, a Member must not engage in any activity involving a Political Party which can be heard, observed or accessed by members of the public or a Section of the Public where, because of the nature or purpose of the activity, the identity of other persons engaging in that activity or for any other reason, there is a reasonable prospect that the Member’s engagement in the activity will:
 - (a) detract from the Member’s impartiality or independence as a member of the Tribunal;
 - (b) detract from the independence of the mechanism of review established by the Act; or

- (c) damage public trust and confidence in the Tribunal.

Note 1: The President may provide guidelines identifying the types of activities falling within or outside the obligation in [6.1].

Note 2: If a Member is uncertain about whether engagement in a proposed activity would contravene the obligation in [6.1], the Member may seek guidance from the President in relation to the proposed activity.

- 6.2 A Member must not nominate for election as a member of the Commonwealth or a State or Territory Parliament or as a local councillor while they are a member of the Tribunal.
- 6.3 A Member must not support any candidate for election as a member of the Commonwealth or a State or Territory Parliament or as a local councillor in a manner that can be heard, observed or accessed by members of the public or a Section of the Public.

Part 7. Confidentiality

Preamble

While undertaking Tribunal work, Members will come into contact with confidential and sensitive information provided to the Tribunal by parties and others. Failing to keep such information confidential can damage the reputation of the Tribunal and compromise the public's trust and confidence in the Tribunal, thus undermining the objective in section 9 of the Act.

Obligations

- 7.1 A Member must ensure that any confidential material provided to the Member in the course of the Member's Tribunal work is kept confidential.
- 7.2 A Member must not disclose any confidential information obtained in connection with the performance of the Member's functions, unless the disclosure is made:
 - (a) where the person from whom the information was obtained can lawfully consent to the information being disclosed - with the consent of that person;
 - (b) for the purpose of the administration or execution of the Act or any other legislation conferring jurisdiction on the Tribunal;
 - (c) for the purpose of any legal proceedings arising from the Act or any other legislation conferring jurisdiction on the Tribunal or of any report of such proceedings; or
 - (d) with any other lawful excuse.

- 7.3 If a Member is authorised to work from home, the Member must ensure that the working from home environment is secure, both in terms of physical security as well as cyber security, and capable of preventing unauthorised access to information.

Part 8. Plagiarism

Preamble

Plagiarism by a Member can damage the Tribunal's reputation for high quality and independent decision-making and compromise the public's trust and confidence in the Tribunal, thus undermining the objective in section 9 of the Act.

Obligations

- 8.1 A Member must attribute any sources of information used in a decision of the Member (other than evidence, information and submissions presented by the parties) if failure to do so would create a false or misleading impression that the analysis and reasoning in the decision represents the original thinking of the Member.

Note 1: The obligation in [8.1] does not require a Member to attribute information sourced from standard template paragraphs (such as a paragraph summarising a provision of a statute) which the President or a JAL has authorised members to use.

Note 2: The obligation in [8.1] does not apply to a source which the Member is prohibited by law from disclosing.

Note 3: Although the obligation in [8.1] does not require a Member to attribute evidence, information and submissions presented by the parties, depending on the circumstances some form of attribution may be required by law in order to adequately and transparently explain the Member's reasons for a decision.

Part 9. Improper use of Generative AI

Preamble

Generative AI is a rapidly developing technology which presents some unique and evolving challenges. While Generative AI may be useful as a research tool, there are issues regarding its accuracy as well as the extent to which information entered into Generative AI applications is kept confidential and secure. Like every research tool, research produced by Generative AI requires careful checking to ensure it is accurate.

Members should be mindful that they do not compromise the confidentiality of information by entering sensitive information into Generative AI applications.

Members should also be aware that they are required personally to make the decision when they hear an application for review. Using Generative AI to obtain guidance on the outcome of a proceeding or to produce parts of the Member's reasons for a decision has the potential to compromise this fundamental function and undermine the objective in section 9.

Obligations

- 9.1 A Member must not use Generative AI to obtain guidance on the outcome of a proceeding, to produce any part of the Member's reasons for a decision or to obtain any form of feedback or assistance on any part of the Member's reasons for a decision which the Member has already prepared.
- 9.2 A Member must not enter any Tribunal information, data or records, including case or party data, emails, reports, chat logs, code and system errors, into any Generative AI application.
- 9.3 Where a Member uses Generative AI as a general research tool without breaching the obligations in [9.1] and [9.2], the Member must check any research generated by Generative AI and verify its accuracy before relying on that research.

Part 10. Social Media and Public Activities

Preamble

Public Activities by Members can be appropriate if they inform the public of the Tribunal's role in the Commonwealth system of administrative review. However, Members should be mindful that, when they participate in any Public Activity, their views may be (correctly or incorrectly) attributed to the Tribunal, which may affect the way in which the Tribunal is viewed by the public.

Members should be mindful not to post anything on Social Media which might damage the integrity or independence of the Tribunal, and thus compromise the public's trust and confidence in the Tribunal and undermine the objective in section 9 of the Act.

Members should treat anything that they publish on Social Media as being able to be accessed publicly and permanently.

Obligations

- 10.1 Without limiting Part 6, a Member must not engage in a Public Activity where, because of the nature or purpose of the activity, the identity of other persons engaging in that activity or for any other reason, there is a reasonable prospect that the Member's engagement in the activity will:
 - (a) detract from the Member's impartiality or independence as a member of the Tribunal;
 - (b) detract from the independence of the mechanism of review established by the Act; or
 - (c) damage public trust and confidence in the Tribunal.

Note 1: The President may provide guidelines identifying types of Public Activities falling within or outside the obligation in [10.1].

Note 2: If a member is uncertain about whether engagement in a proposed Public Activity would contravene the obligation in [10.1], the Member may seek guidance from the President in relation to the proposed Public Activity.

10.2 A Member must not purport to represent the views of the Tribunal in a Public Activity or on Social Media without the prior written approval of the President.

10.3 Once reasons for a Member's decision have been finalised and given to the parties, the Member must not make any comments on the reasons in a manner that can be heard, observed or accessed by members of the public or a Section of the Public.

Note: The obligation in [10.3] does not apply to the preparation of an accurate summary of a decision.

10.4 A Member must not, in participating in a Public Activity, criticise the Tribunal, a member of the Tribunal (judicial as well as non-judicial) or any Tribunal decision.

10.5 A Member must not publish anything on Social Media that criticises the Tribunal, a member of the Tribunal (judicial as well as non-judicial) or any Tribunal decision.

10.6 A Member must not publish anything on Social Media that is offensive, insulting, humiliating or degrading towards any person or groups of people.

Part 11. Membership of a regulated profession

Preamble

Members of the Tribunal who are also members of a regulated profession, whether or not the profession is regulated by a government body or a private body, should adhere to the requirements of that regulatory body. A failure to adhere to the requirements of that regulatory body may compromise the public's trust and confidence in the Tribunal and undermine the objective in section 9 of the Act.

Obligations

11.1 If a Member is a member of a regulated profession (such as the legal profession or the healthcare profession), the Member must not engage in any conduct which results in a regulatory body for that profession imposing upon the Member a reprimand, fine, suspension, restriction on the right to engage in that profession or any other sanction.

Part 12. Courtesy and respect

Preamble

A Member should be courteous and respectful to everyone with whom the Member interacts in the capacity as a Member. Courtesy and respect by Members enhance the Tribunal's reputation and bolster its standing in the community.

Obligations

12.1 A Member must ensure that the Member's communications with, and behaviour towards, other members (judicial as well as non-judicial), staff and other persons who engage with the Tribunal (whether as parties, Representatives, witnesses, interpreters or in any other capacity) are courteous and respectful, and that the Member avoids offensive language or conduct.

Part 13. Sexual harassment

Preamble

The Tribunal has no tolerance for sexual harassment. All members (judicial as well as non-judicial), staff and other persons who engage with the Tribunal (whether as parties, Representatives, witnesses, interpreters or in any other capacity) have a right to be free from sexual harassment.

A Member should be mindful of how factors such as gender and power imbalances between Members and staff can impact on how people respond to unwelcome sexual advances.

Obligations

13.1 A Member must not:

- (a) make an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or
- (b) engage in other unwelcome conduct of a sexual nature in relation to another person;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the other person would be offended, humiliated or intimidated

(collectively 'Sexual Harassment').

13.2 For the purposes of [13.1], the circumstances to be taken into account include, but are not limited to, the following:

- (a) the age, sex, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- (c) any disability of the person harassed; and
- (d) any other relevant circumstance.

13.3 For the purposes of [13.1] and [13.2], conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

13.4 For the purposes of [13.1] and [13.2], the motivation or intention of the Member is irrelevant.

13.5 Examples of Sexual Harassment include, but are not limited to:

- (a) unwelcome physical contact of a sexual nature;
- (b) comments or questions of a sexual nature about a person's private life or their appearance;
- (c) sexually suggestive behaviour, such as leering or staring or offensive gestures;
- (d) brushing up against someone, touching, fondling or hugging;
- (e) sexually suggestive comments or jokes;
- (f) displaying offensive screen savers, photographs, calendars or objects;
- (g) repeated dating requests;
- (h) unwanted displays or declarations of affection;
- (i) requests for sex;
- (j) sexually explicit emails, text messages or posts on social networking sites and Social Media;
- (k) sexual assault, indecent exposure, physical assault and stalking; and
- (l) actions or comments of a sexual nature in a person's presence.

Part 14. Bullying

Preamble

Bullying undermines collegiality in the workplace and is unacceptable. The Tribunal does not tolerate Members bullying other members (judicial as well as non-judicial), staff or any other persons who engage with the Tribunal (whether as parties, Representatives, witnesses, interpreters or in any other capacity).

A Member should be mindful of how factors such as the unique position of power that members occupy towards other persons who engage with the Tribunal can impact those persons.

Obligations

- 14.1 A Member must not engage in conduct towards other members (judicial as well non-judicial), staff or any other persons who engage with the Tribunal (whether as parties, Representatives, witnesses, interpreters or in any other capacity), which a reasonable person would, having regard to all the circumstances, perceive as belittling, humiliating, insulting, victimising, aggressive or intimidating.
- 14.2 For the purposes of [14.1], what is reasonable is to be assessed with regard to the following factors:
- (a) the functions of the Member;
 - (b) the subject or target of the conduct;
 - (c) the tone or nature of the conduct;
 - (d) whether the conduct is momentary or sustained;
 - (e) the location, including the jurisdiction and type of application for review in which the conduct occurs; and
 - (f) the overall context of the conduct.
- 14.3 For the avoidance of doubt, the prohibition in [14.1] extends to conduct by a Member towards other members (judicial as well non-judicial), staff and any other persons who engage with the Tribunal (whether as parties, Representatives, witnesses, interpreters or in any other capacity), during the course of a Tribunal Case Event.

Part 15. Discrimination

Preamble

The Tribunal does not tolerate unlawful discrimination. Every individual who works at the Tribunal or engages with it is entitled to be treated no less favourably than others due to the individual's personal attributes.

Obligations

- 15.1 A Member must not treat any other member (judicial as well as non-judicial members), staff or any other person who engages with the Tribunal (whether as a party, Representative, witness, interpreter or in any other capacity) less favourably on the ground of, or because of, that person's:
- (a) gender identity;
 - (b) sex;
 - (c) sexual orientation;

- (d) physical or mental disability;
- (e) age;
- (f) marital or relationship status;
- (g) national or ethnic origin;
- (h) religion;
- (i) race, colour or descent; or
- (j) family or carer responsibilities.

Note: The obligation in [15.1] is subject to any contrary provision in the law the Member is required to apply in performing the Member's functions.

15.2 A Member must not impose a requirement or practice which (unreasonably in all the circumstances) disadvantages one group of persons more than another by reason of one or more of the grounds listed in [15.1(a)] to [15.1(j)] above.

Part 16. Violence

Preamble

The Tribunal does not tolerate Members engaging in violence towards any person with whom the Member interacts at the Tribunal.

Obligations

16.1 A Member must not engage, or threaten to engage, in any act of violence towards other members (judicial as well as non-judicial members), staff or any other persons who engage with the Tribunal (whether as parties, Representatives, witnesses, interpreters or in any other capacity).

Part 17. Victimisation

Preamble

In order to ensure the integrity of this Code, it is important that a Member does not take adverse action against any person who raises an allegation that the Member has breached the Code or otherwise made a complaint.

Obligations

17.1 A Member must not subject, or threaten to subject, another person to any detriment ('victimise') because:

- (a) the person has made an allegation that the Member has:

- (i) engaged in sexual harassment;
 - (ii) engaged in bullying;
 - (iii) engaged in discrimination;
 - (iv) engaged in an act of violence; or
 - (v) otherwise breached the Code;
- (b) the Member believes that the person has made an allegation referred to in [17.1(a)] or will make such an allegation;
 - (c) the person has assisted someone else to make an allegation referred to in [17.1(a)];
 - (d) the person gave or will give evidence or information in support of another person's allegation referred to in [17.1(a)]; or
 - (e) the person has refused to do some act which would amount to victimisation of another person who has made an allegation referred to in [17.1(a)].

CHAPTER 2: ACTION REGARDING MEMBERS UPHOLDING THE CODE

Part 18. Overview

- 18.1 Section 201(2) of the Act provides that the Code must make provision for the taking of action by the President or a JAL in relation to Members upholding the Code.
- 18.2 The action dealt with by Chapter 2 falls into two broad categories. The first category is action to assist Members to uphold the Code, which is dealt with in Division A. The second category is action in relation to a Member who may not uphold the Code, which is dealt with in Division B.

Division A: Action to assist Members to uphold the Code

Part 19. Education and training

- 19.1 The Tribunal's induction, education and training programs will include sessions to inform Members of the contents of the Code and the types of conduct which would breach the Code and therefore must be avoided. The sessions will also inform Members of the consequences of not upholding the Code and the procedures to be followed to deal with possible breaches of the Code.

Division B: Action in relation to a Member who may not uphold the Code

Part 20. Introduction

- 20.1 Under section 193(d) of the Act, the President's functions include 'to manage the performance and conduct of [M]embers'. Under section 200(1) of the Act, the President may give a written direction to a Member relating to the performance of the Member's duties.¹
- 20.2 Section 197(5)(d) of the Act provides that the functions of a JAL include 'to assist the President to manage the performance and conduct of [M]embers assigned to the jurisdictional area' of the JAL. Section 195(1)(b) provides that the functions of a senior member include 'to assist each [JAL] of each jurisdictional area to which the senior member has been assigned in the performance of the [JAL's] functions'.

¹ Under section 200(3) of the Act, the President's direction must not relate to a particular proceeding. This means, for example, that the President cannot direct a Member about the outcome of a proceeding.

20.3 Under section 203 of the Act, if the President forms the opinion that a Member may have engaged in conduct that may constitute a breach of the Code, the President may take the following action:

- (a) under section 203(2):
 - (i) investigate the Member's conduct;
 - (ii) report on an investigation of the Member's conduct;
 - (iii) deal with a report of an investigation of the Member's conduct;
 - (iv) refer the Member's conduct to a person or body;
 - (v) direct a person or body to investigate the Member's conduct;
 - (vi) authorise, in writing, a person or body to do any of the above;
 - (vii) take any measures in relation to the Member that the President believes are reasonably necessary to maintain public trust and confidence in the Tribunal; or
 - (viii) take no action or no further action in relation to the Member's conduct.
- (b) under section 203(3): temporarily restrict the Member's duties if the President reasonably believes that doing so is in the public, or the Tribunal's, interest.

20.4 Action under section 203 of the Act relating to Members upholding the Code will be taken by:

- (a) the President;
- (b) a delegate of any powers under section 203 that have been delegated by the President in accordance with section 279; or
- (c) a person authorised by the President or a delegate for the purposes of section 203(2)(a)(vi).

Note: Section 279 does not permit the President to delegate certain functions, including those under sections 200 (President may give directions to members), 201 (code of conduct), 202 (performance standard), 203(3) (President may restrict member's duties) and 222 (President must notify Minister about grounds for termination).

20.5 References to the President in the paragraphs that follow include:

- (a) a delegate of the President to the extent that a delegation permitted by section 279 of the Act has been made; and

- (b) a person who is authorised by the President or a delegate for the purposes of section 203(2)(a)(vi).
- 20.6 Under section 221(1) of the Act, the Governor-General may, on the recommendation of the Attorney-General, terminate the appointment of a Member on a number of grounds, including on the ground that the Member has engaged in conduct that constitutes a serious breach of the Code. Section 221(2) provides that conduct that may constitute a serious breach of the Code includes:
- (a) repeatedly breaching the Code;
 - (b) breaching the Code in a way that is having, or is likely to have, a damaging effect on public trust and confidence in the Tribunal; and
 - (c) breaching the Code and failing to comply with a direction by the President under section 200(1) in relation to the breach.
- 20.7 Section 222 of the Act provides that, if the President reasonably believes that there are grounds for terminating a Member's appointment under section 221, the President must notify the Attorney-General as soon as possible.
- 20.8 The President may form the opinion that a Member may have engaged in conduct that may constitute a breach of the Code for the purposes of section 203 of the Act either because a complaint has been made about the Member's conduct or on the basis of information that has otherwise come to the attention of the President.
- 20.9 The General Counsel will coordinate the processes in the Code for dealing with possible breaches of the Code and may provide advice and make recommendations as set out below. The General Counsel may also exercise any powers of the President that the President delegates to the General Counsel or that the General Counsel is authorised to exercise by the President or a delegate for the purposes of section 203(2)(a)(vi).

Part 21. Process for dealing with possible breaches of the Code

- 21.1 A person (including a member, a staff member or a party) who wishes to make a complaint alleging that a Member has engaged in conduct that may constitute a breach of the Code should do so to the General Counsel.
- 21.2 If the President becomes aware of information from any source that might be relevant to whether a Member may have engaged in conduct that may constitute a breach of the Code, the President may refer that information to the General Counsel.
- 21.3 Upon receipt of a complaint under [21.1], the General Counsel will assess the complaint and may take the following action:
- (a) seek further information from the person who made the complaint ('complainant') for the purpose of clarifying any aspect of the complaint;

- (b) where the General Counsel forms the view that the conduct alleged against the Member is of such a nature that it cannot possibly constitute a breach of the Code - advise the complainant that the conduct alleged against the Member falls outside the scope of the Code and, if relevant, provide information to the complainant about where the complaint should be directed; and
 - (c) make recommendations to the President about the steps to be taken in relation to the complaint.
- 21.4 Upon receipt of information from the President under [21.2], the General Counsel will assess the information and may take the following action:
 - (a) seek further details regarding the information from any person to whom the information relates for the purpose of clarifying any aspect of that information; and
 - (b) make recommendations to the President about the steps to be taken in relation to the information.
- 21.5 For the purposes of [21.3] and [21.4], the steps that may be recommended include:
 - (a) those set out in section 203(2) of the Act, which are summarised in [20.3];
 - (b) the President temporarily restricting the Member's duties under section 203(3) of the Act; and
 - (c) the giving by the President of a direction to the Member under section 200(1) of the Act relating to the performance of the Member's duties.
- 21.6 In determining the recommendations to make to the President, the General Counsel will take into account the nature and seriousness of the allegations against the Member and be guided by the principles of natural justice as described in Part 22.
- 21.7 One of the steps summarised in [20.3] is to refer the Member's conduct to a person or body. Such a person or body may include:
 - (a) the National Anti-Corruption Commission;
 - (b) a law enforcement authority;
 - (c) a professional regulatory body; or
 - (d) the Australian Human Rights Commission.
- 21.8 Other steps summarised at [20.3] include authorising a person or body to investigate the Member's conduct and prepare a report on the investigation. Such a person or body may include:

- (a) the Principal Registrar;
- (b) a member of staff of the Tribunal, such as a staff member with human resources expertise, or a registrar; and
- (c) an external person or body (such as a lawyer or workplace consultant) with expertise and experience in investigating and reporting on allegations of the type alleged against the Member.

21.9 Where the allegations against the Member, if substantiated, could constitute a serious breach of the Code (as to which, see [20.6]), the President may choose to authorise an external person or body to investigate the Member's conduct and prepare a report on the investigation.

21.10 In deciding what steps to take upon forming the opinion that a Member may have engaged in conduct that may constitute a breach of the Code in accordance with section 203 of the Act, the President need not first receive a recommendation from the General Counsel and need not accept any recommendation that is made by the General Counsel. In deciding what steps to take, the President will take into account the nature and seriousness of the allegations against the Member and be guided by the principles of natural justice as described in Part 22.

21.11 Where the President is satisfied that a Member has breached the Code but is not satisfied that the breach constitutes a serious breach, the measures that the President may determine are reasonably necessary to take in relation to the Member in order to maintain public trust and confidence in the Tribunal may include:

- (a) counselling the Member;
- (b) recommending that the Member be assisted by a person acting as the Member's mentor for a specified period;
- (c) reprimanding the Member;
- (d) directing the Member under section 200(1) of the Act to undertake counselling of a particular type;
- (e) directing the Member under section 200(1) of the Act to undertake training or further education of a particular type;
- (f) directing the Member under section 200(1) of the Act to consider providing an apology to a person adversely affected by the Member's conduct that breached the Code; and
- (g) temporarily restricting the Member's duties under section 203(3) of the Act until such time as the Member complies with any direction referred to above if the

President reasonably believes that doing so is in the public, or the Tribunal's, interest.

- 21.12 The circumstances in which the President may determine to take no action in relation to the Member include where the President is not satisfied that the Member has breached the Code or where, despite being satisfied that the Member breached the Code, the President believes that no action is reasonably necessary to maintain public trust and confidence in the Tribunal.
- 21.13 In accordance with section 222 of the Act, if the President reasonably believes that there are grounds for terminating the Member's appointment under section 221 – including where the President is satisfied that the Member's conduct constitutes a serious breach of the Code – the President will notify the Attorney-General as soon as possible.
- 21.14 In accordance with section 221(2)(c) of the Act, where the President gives a direction to the Member under section 200(1) in relation to a breach of the Code and the Member fails to comply with the direction, the failure may constitute a serious breach of the Code. If the President becomes aware on the basis of any information that the Member may have failed to comply with a direction, the President may refer that information to the General Counsel to deal with in accordance with Part 21 with any necessary modifications.

Part 22. General

- 22.1 In implementing the process in Part 21 for dealing with possible breaches of the Code by a Member, the General Counsel and the President will be guided by the principles of natural justice. In accordance with those principles, the process will be implemented in a manner that is fair to the Member and the complainant (if any).
- 22.2 The principles of natural justice will determine whether and at what stage of the process the Member is notified of the allegations against the Member and is given an opportunity to address them. By way of example:
- (a) In some cases, it may not be necessary to notify the Member, such as where a complaint is withdrawn immediately after it is made or where a complaint does not proceed because it falls outside the Code.
 - (b) In some cases, the General Counsel may decide that it is appropriate to notify the Member of the allegations against the Member as part of the action undertaken under [21.3]. Such notification would not be for the purpose of investigating the allegations but in order to seek preliminary information or clarification from the Member before the General Counsel determines the recommendations to be made to the President. If the allegations proceed to an investigation of the Member's conduct, the Member will be given a reasonable opportunity to address the allegations in detail during the investigation.

22.3 Nothing in this Code limits the President's powers or functions in the Act, the Rules or any other legislation, including:

- (a) the President's power under section 200(1) of the Act to give a written direction to a Member relating to the performance of the Member's duties;
- (b) any of the President's powers under section 203(2) of the Act; and
- (c) the President's power under section 203(3) of the Act to temporarily restrict a Member's duties if the President forms the opinion mentioned in section 203(1) and reasonably believes that doing so is in the public, or the Tribunal's, interest.