

Australian Water Brokers Association (AWBA)

Code of Conduct

OBJECTIVES OF THIS CODE

The objectives of this Code are:

- to ensure high standards of conduct by water market intermediaries who are members of the AWBA, for the long term benefit of the members and their clients;
- to promote a high standard of integrity and efficiency in the work undertaken by water broking professionals;
- to set out appropriate standards for management and accountability in relation to client funds;
- to provide for appropriate protection of clients by ensuring that members are suitably insured;
- to promote accuracy in advertising and promotional materials; and
- to manage potential conflicts of interest between members and clients.

MANAGING CLIENT FUNDS

Sound and transparent management of client funds by members is an integral part of building and maintaining trust in the water market. Specific consideration must be given to the management of client funds, specifically those deposited by clients with members.

1. Handling of client funds held on deposit
 - a) All funds received by a member to hold on behalf of a client must be held in a separate account with a financial institution until those funds are paid to the persons entitled to them.
 - b) All funds held by a member on behalf of a client must be readily identifiable and referable to that client and up-to-date and adequate records setting out all details required to identify funds held on behalf of a client must be kept and maintained. If funds are held by a member on behalf of a client for a period of more than 20 business days, the member must issue a statement to the client on request.
 - c) The account in which funds are held by a member on behalf of a client must be audited at least annually by an independent accountant.
2. Interest earned on clients' funds
 - a) Members can elect to hold funds held on behalf of clients in a non interest bearing bank account; or
 - b) Subject to the member obtaining the written agreement of the client, any interest earned on funds held by a member on behalf of a client can be used for:
 - i. cost recovery of bank fees and audit costs associated with the operation of the bank account in which clients funds are held;
 - ii. should the total amount of interest earned in any given year exceed the bank fees and audit costs detailed above, the additional interest amount should be provided to the AWBA, to fund its educational and administrative functions.

- c) Unless the client has otherwise agreed as above, after all of the funds held by a member on behalf of a client have been paid to the persons entitled to them, the member must pay to the client all interest earned on the funds.

3. Refunding a client's funds held by a member

- a) Subject to clause 3(b), a member must return to its client all funds held by the member on behalf of the client within 5 business days after the member becomes aware that the relevant transaction will not proceed (for example, because it has been withdrawn or the application has been rejected by an approval authority).
- b) Clause 3(a) does not apply if:
 - i. an application is still subject to approval by an approval authority pending the provision of additional information, in which case, with the client's agreement, the member may retain the funds while the additional information is gathered and the application resubmitted and determined; or
 - ii. the client is responsible for an incomplete or inaccurate application which has caused the transaction not to proceed, the member may retain the funds while the application is resubmitted and determined.

PROFESSIONAL INDEMNITY

Professional indemnity insurance is designed to provide protection for businesses which give advice to clients that may result in financial or other losses to the clients. The holding of professional indemnity insurance by members is one way in which a degree of confidence can be ensured while mitigating the risk of financial hardship.

4. Members must hold professional indemnity insurance offering a minimum coverage of at least \$5 million for any single claim.

PROFESSIONAL CONDUCT

An important part of a well functioning market is ensuring the professional and prudential conduct of participants. This Code is intended to guide members in the implementation of the principles of integrity and quality inherent in their professional obligations.

5. A member must act in the best interests of the client, except where it would be unreasonable or improper to do so.
6. A member must continue to satisfy:
 - a) the criteria for membership of the AWBA; and
 - b) the requirements of the AWBA's continuing professional development program.
7. Information provided by a member to clients about the water market and water products must, to the best of the member's knowledge be relevant, accurate and reasonably comprehensive and it must not be misleading or deceptive.
8. A member should recommend that its client seek legal and financial advice from independent qualified advisors when appropriate.
9. Before any transaction takes place, a member must obtain a written service agreement from the client, which includes (but is not limited to) details of the client's liability for the full extent of all known commissions, fees and disbursements that the client will incur in respect of the member's services.
10. A member must keep confidential all client-related information except to the extent:
 - a) necessary or desirable to perform the member's services for the client; or
 - b) that disclosure is authorised by the client or required by law;

11. A member must keep written records pertaining to a transaction between its client and a counterparty.
12. A member must keep the records referred to in clause 11 for 7 years after completion of the transaction and must provide the records to the client on request.
13. A member must provide its services to clients with due care, skill and diligence and must not knowingly submit an incomplete or inaccurate application to an approval authority.
14. A member must not offer services which it is not competent to perform. A member must not provide services which require an Australian Financial Services Licence, unless the member is lawfully entitled to do so.
15. A member's promotional and advertising material:
 - a) must, to the extent that it contains information about the expertise, services and fees of the member, or about the regulation of the water market, be accurate; and
 - b) must not contain false, misleading or deceptive statements.
16. An member must not, in the conduct of its business, take or threaten to take any action, or refrain or threaten to refrain from taking any action, with intent to coerce another person, or with intent to apply undue pressure to another person. Actions which are prohibited by this clause may include, for example, excessive unsolicited offers or information about the member's services, or the member exerting undue pressure on a client to accept or reject an offer.

MANAGING POTENTIAL AND EXISTING CONFLICTS OF INTEREST

This Code seeks to assist members in making robust, fully informed trading decisions as well as assisting members by promoting a rigorous and transparent approach in managing potential and existing conflicts of interest.

17. A member must not, without the client's fully informed consent, accept an engagement to act, or continue to act, where to do so would place the member's interest (or the interest of an immediate family member, employer, employee or associate of the member) in conflict with that of the client. Members (or their immediate family, employer or employee) must not buy or sell allocation or entitlements from clients without full prior disclosure to the client. This disclosure and the clients consent must be recorded in writing.
18. A member must not refer its client to another business for services (for example, legal, accounting or financial advisory services) without disclosing to the client any interest of the member in the other business and any commission or other consideration the member or immediate family member, employer, employee or associate of the member may receive in respect of the referral.
19. A member must not represent both the buyer and seller in a transaction without:
 - a) prior full disclosure to both parties, including disclosure of all fees that the member will be entitled to receive from each party; and
 - b) the prior written consent of both parties.
20. A member must disclose their relationship with a client when seeking information from a third party on behalf of the client.

TRADE FACILITATION

In the context of this Code, trade facilitation refers to assisting efficient and timely trading. Trade facilitation is integral in ensuring a well managed water market.

21. A member must:

- a) ensure that when listing a water parcel for sale, the quantity and price listed reflects the client's instructions;
- b) communicate all bids and offers to the client;
- c) inform the client, in a timely manner, about material changes in the status of a transaction being undertaken on behalf of the client;
- d) inform the client of any reasons for an approval authority rejecting, or delaying the processing of, an application; and
- e) when representing a seller, provide information regarding a transaction to potential buyers upon request, including, without limitation:
 - i. the notional volume of the water right and its price;
 - ii. the reliability of the water right;
 - iii. the water source to which the water right relates;
 - iv. any known restriction on changing the water source; and
 - v. any present or contemplated interest.

COMPLAINTS HANDLING

22. If a complaint is made by a client or other stakeholder about a member, the member must:

- a) provide a written acknowledgment to the complainant of the receipt of the complaint within 5 business days;
- b) provide a substantive written response to the complainant as soon as reasonably practicable and no later than 10 business days after receipt of the complaint, and must attempt to resolve the complaint directly with the complainant; and
- c) notify the complainant that it may have further rights to redress under the Australian Consumer Law or other legislation or regulations.

23. If a complaint is made by a client or other stakeholder about a member to the AWBA, the AWBA must:

- a) provide a written acknowledgment to the complainant of the receipt of the complaint within 5 business days;
- b) request a substantive written response from the member which must be provided by the member no later than 10 business days;
- c) the AWBA President should then attempt to resolve the complaint directly with the complainant and the member on a confidential basis;
- d) if no mutual resolution can be reached a meeting of the full AWBA Executive Committee must be called with a view to discuss the members conduct and any potential sanction under Rule 17 of Constitution.

COMPLIANCE SYSTEMS AND TRAINING

24. A member must implement adequate systems and procedures to ensure that it will be, and at all times remain, able to comply with, and uphold the standards of, this Code.

25. A member must ensure that its employees are made aware of the existence and terms of this Code and receive compliance training.

EXISTING COMMONWEALTH LAWS AND BROADER MARKET RULES AND REGULATIONS

26. A member must have a working knowledge of its legal obligations and must comply with them.
27. A member must, when entering into a service agreement with a client, notify the client that the member is bound by the Code and is subject to the obligations placed upon members under the Code.
28. The Australian Competition and Consumer Commission (**ACCC**) has published guides which may assist members and their clients to understand fair trading obligations under the Australian Consumer Law. These are available at: <http://www.accc.gov.au/content/index.phtml/itemId/862697>.

DEFINITIONS:

In this Code, unless the contrary intention appears:

approval authority means, in relation to the proposed trade of a water right, means an organisation whose approval is required for the trade to proceed (not being the buyer, seller, a person who holds the water right jointly with the seller, or a person with a security interest in the water right);

financial advice means advice in relation to financial products which would require an Australian Financial Services Licence under the *Corporations Act 2001* (Cth); and

member means a member of the AWBA and includes an employee or contractor of a member.