

WORKERS COMPENSATION COMMISSION ARBITRATORS' CODE OF CONDUCT (Issued February 2007)

This Code governs the conduct of persons appointed by the President of the Workers Compensation Commission ('the Commission') as Arbitrators pursuant to section 368 of the *Workplace Injury Management and Workers Compensation Act 1998* ('the 1998 Act'). It also provides guidance to Arbitrators in identifying and resolving ethical issues.

Purpose

This Code seeks to guide Arbitrators in carrying out their duties in a manner that is consistent with the objectives of the Commission, and to assist them:

- in ensuring the highest standards of conduct in their relationship with the parties undergoing arbitration;
- in maintaining appropriate standards of professional performance; and
- in identifying and resolving ethical dilemmas or disputes.

Arbitrator's Role

The fundamental role of Arbitrators is to be impartial and independent in carrying out their statutory duties of (1) attempting to bring the parties involved in a dispute to a settlement of the issues appropriately referred for resolution, which is acceptable to all of them, and, where this is not achieved, (2) making a determination to conclude that dispute.

COMPLIANCE WITH COMMISSION OBJECTIVES

Arbitrators must act in accordance with the objectives of the Workers Compensation Commission as set out in section 367 of the 1998 Act. To this end, they must work with the staff and other Members of the Commission to provide:

- a fair and cost effective system for the resolution of disputes,
- a timely service, so as to ensure that workers' entitlements are determined promptly,
- a dispute resolution service that meets worker and employer expectations in relation to accessibility, approachability and professionalism, and
- an independent dispute resolution service that is effective in settling matters, and leads to durable agreements between the parties in accordance with the Workers Compensation Acts.

Complaints in relation to Arbitrators will be dealt with as outlined in the Commission's Access and Equity Service Charter.

General Responsibilities

Arbitrators have the following general responsibilities:

- to demonstrate a respect for the law, in both their professional and private lives, including awareness of and compliance with legislation dealing with such matters as privacy, discrimination, and corruption;
- to uphold the highest standards of integrity, truthfulness, and honesty, and act ethically in accordance with the law;

- to ensure fairness and timeliness in the performance of their duties in dealing with parties involved in Commission proceedings;
- to remain, at all times, independent of the parties in the matter before them and free from any influence external to those proceedings;
- to be scrupulous in the use of Commission resources;
- to respect the confidentiality of all matters raised in proceedings before them;
- to maintain the highest professional standards in their conduct, and in the performance of their duties and functions, in particular by continuing to improve and develop their professional knowledge and skills; and
- to uphold the integrity and reputation of the Commission at all times. To this end, Arbitrators must refrain from engaging in inappropriate activities, or expressing inappropriate opinions, that might diminish the standing of the Commission, or compromise their ability to deal with specific cases.

Fairness

In exercising their powers, Arbitrators must:

- conduct proceedings according to the law, with due regard to equity, good conscience, and the substantial merits of the case;
- abide by the principles of procedural fairness;
- ensure that all parties are given adequate opportunity to participate in proceedings;
- ensure that decisions are based on relevant and logically probative information;
- treat the parties with respect and courtesy;
- take into consideration any special needs, such as language, cultural background, literacy or disability;
- ensure that any communication with the parties and witnesses occurs in an open and transparent way;
- consider any factors that may give rise to an unfair advantage to one party over another;
- act without bias, and in a way that does not give rise to an apprehension of bias; and
- have regard to the Commission's Access and Equity Service Charter at all times, particularly in considering the special needs of any party to Commission proceedings in areas such as language, cultural background, literacy or disability.

Avoidance of Conflict of Interest

With respect to conflicts of interests, Arbitrators should, at the earliest opportunity, advise the Registrar of the Commission and the parties (where necessary) of any actual or perceived conflict of interest that may prevent them from carrying out their duties in accordance with this Code. This includes any factor that may give rise to a reasonable apprehension of bias by a party to the proceedings.

The case law on bias and apprehended bias would suggest that an arbitrator who regularly acts for a particular union, employer, or insurer/agent should ensure that the Commission does not allocate to him/her, and that he/she does not accept, matters involving those clients. Likewise a barrister arbitrator who is regularly briefed by a particular firm of solicitors should not deal with Commission matters conducted by that firm.

Professional Standards

Arbitrators should:

- regularly review their performance to ensure that they are able to meet the objectives of the Commission;
- conscientiously and effectively complete the resolution of each dispute as necessary and appropriate, and in the manner required, with a view to bringing finality to that dispute;
- co-operate fully with performance evaluations, and complaint investigations, conducted by the Commission;
- undertake continuing training to develop and enhance knowledge and skills relevant to

- their role as Arbitrators;
- undertake continuing training, where necessary, in order to function in the electronic environment established by the Commission;
- participate in training programs provided by the Commission; and
- maintain up-to-date knowledge with respect to NSW workers compensation law.

Media and Public Comment

The Commission recognises the important role Arbitrators can play in educating the public on the Commission's role in the Workers Compensation Scheme.

Although Arbitrators have a right to publicly comment on political and social issues, they should ensure that, when making comments on issues affecting the Commission, the audience is aware that their comments are made in their private capacity and in no way represent the official view of the Commission. Obviously an Arbitrator should never make any public comment on Commission matters he/she is dealing with, or has dealt with, in the exercise of his/her duties as an Arbitrator.

Also, personal views on the legislation or Government policy in regard to Commission operations should not appear in any decisions published by Arbitrators or Medical Appeal Panels.

When speaking at conferences an Arbitrator may make general reference to his/her experiences, but must make clear that his/her comments come from the individual and not the Commission. Where speaking invitations are extended to Arbitrators, in that capacity, Arbitrators must consult with the Registrar (who will, in turn, consult with the President) before accepting.

Identifying and Resolving Ethical Disputes

Arbitrators are encouraged to access an appropriate and confidential ethical advisory service (such as the St James Ethics Centre's free and confidential telephone counselling service, Ethi-Call) whenever they feel the need for external assistance in identifying and resolving ethical disputes.

Gifts, Benefits, and Hospitality

As a general rule, Arbitrators should never expose themselves to the possibility of their being accused of using their position or status as Commission appointees to obtain any benefits, preferential treatment, or other advantage.

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

If a gift is proffered in circumstances where it cannot be returned to the donor, it should be handed to the Registrar for inclusion in the Commission's gift register and appropriate disposition (e.g. for a charitable purpose).

Corrupt Conduct

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

Hon Justice Terry Sheahan
President Registrar

Ms Helen Walker
Registrar