



Land and Environment Court of New South Wales

Commissioners' Code of Conduct

1. Commencement

This policy commences on 18 January 2010.

2. Application

The policy applies to all Commissioners of the Court, whether full-time Commissioners, part-time Commissioners or Acting Commissioners.

3. Purpose

The purpose of the policy is to adopt principles of conduct with which Commissioners should comply in the exercise of their functions as a Commissioner of the Court as well as in their activities and conduct outside the Court.

4. Guiding principles

4.1 Objectives

The objectives of the principles of conduct are:

- To uphold public confidence in the administration of justice and in the Court in particular;
- To enhance public respect for the institution of the judiciary and the Court in particular;
- To protect the reputation of the individual Commissioners, the Court and the judiciary.

4.2 Basic Principles

The three basic principles against which conduct should be tested to ensure compliance with these objectives are:

- Impartiality;

- Judicial independence; and
- Integrity and personal behaviour.

4.3 *Objectives and principles provide a guide*

These objectives and principles provide a guide to conduct by a Commissioner in the discharge of functions at the Court and in private life. If conduct or activities of a Commissioner is likely to affect adversely the ability of a Commissioner to comply with these principles, that conduct or activity is likely to be inappropriate and should be avoided.

5. Legislative requirements

5.1 *Conflict of interest*

A Commissioner is disqualified from exercising any functions of the Court in relation to proceedings in which the Commissioner has a pecuniary interest, direct or indirect, or is a member, officer, employee or servant of a public or local authority that is a party to the proceedings (s 14 of the *Land and Environment Court Act 1979*).

5.2 *Acting as expert witness or representative of party*

A person appointed as a part-time Commissioner (including an Acting Commissioner) is guilty of misbehaviour if, during the term of the person's appointment, the person appears as an expert witness, or acts as the representative of any party, in proceedings before the Court (s 12(2B) and s 13(3)(b) of the *Land and Environment Court Act 1979*).

5.3 *Full-time work*

A full-time Commissioner is required to devote the whole of the Commissioner's time to the duties of the office of Commissioner, except as the Minister may otherwise approve (cl 1(2) of sch 1 of the *Land and Environment Court Act 1979*).

5.4 *Misbehaviour or incompetence*

A Commissioner may be removed from office by the Governor for misbehaviour or incompetence (cl 6 of sch 1 of the *Land and Environment Court Act 1979*).

6. Codes of Conduct

6.1 Adoption of principles in codes of conduct

The Court adopts the principles of conduct in two guides to the conduct of members of courts and tribunals:

- *Guide to Judicial Conduct* (2nd ed) published for the Council of Chief Justices of Australia by the Australian Institute of Judicial Administration Inc (“the AIJA Guide”) <http://www.aija.org.au/aija-publications/aija-publications-downloads/42-082-guide-to-judicial-conduct-second-edition-2007.html>
- *A Guide to Standards of Conduct for Tribunal Members* published by the Administrative Review Council (“the ARC Guide”) [http://www.ag.gov.au/agd/WWW/arcHome.nsf/Page/Publications_Reports_Downloads_A_Guide_to_Standards_of_Conduct_for_Tribunal_Members - Revised 2009](http://www.ag.gov.au/agd/WWW/arcHome.nsf/Page/Publications_Reports_Downloads_A_Guide_to_Standards_of_Conduct_for_Tribunal_Members_-_Revised_2009)

6.2 Compliance with adopted principles of conduct

Commissioners should comply with the principles of conduct in the AIJA Guide and the ARC Guide in the discharge of their functions at the Court and in their private lives.

7. Performance Review

Compliance with the adopted principles of conduct will be a matter to be taken into account in any performance appraisal of Commissioners. Performance appraisal occurs annually, in accordance with the Commissioners’ Performance Appraisal Policy, and also if a Commissioner seeks re-appointment for a further term of office.

8. Guidance rulings

If a Commissioner has a concern about whether particular conduct or an activity might be inconsistent with the adopted principles of conduct, they can seek a ruling from the Chief Judge. Any disclosure necessary in seeking a ruling may be made on a confidential basis.

The Hon. Justice Brian J Preston
Chief Judge

18 January 2010