

# **Ecological Consultants Association (NSW)<sup>1</sup> Code of Business Practice, Professional Conduct and Ethics**

These Code of Business Practice, Professional Conduct and Ethics Rules, inclusive of the Preamble, apply to all ECA members and are made in the belief that:

## **PREAMBLE**

1. The provision of Ecological, Conservation and Environmental Information and Advice in New South Wales is best served by limiting such consulting practice to qualified, experienced and duly accredited practitioners.
2. As Ecological Consultants, practitioners must maintain high standards of professional conduct consistent with sound scientific and ecologically sustainable principles.
3. The role of Ecological Consultants require them to maintain a high professional standard through approved Continuous Education programme and act honestly, fairly, skilfully and diligently.
4. Ecological Consultants owe duties to the profession that includes other bodies and persons in their professional dealings, to their clients, and to their colleagues.
5. Ecological Consultants must exercise their forensic<sup>2</sup> judgements and give their advice independently and for the proper assessment of ecological, conservation and environmental matters, notwithstanding any contrary desires of their clients.
6. The provision of ecological, conservation and environmental assessment for those who need advice is better served if there is an Association whose members:
  - (a) must accept instructions regardless of their personal prejudices;
  - (b) must not refuse instructions except on proper professional grounds; and
  - (c) compete as specialist consultants with each other and with other environmental consultants as widely and as often as practicable.
7. Ecological Consultants should be free to choose how they lawfully practice and that access to consultant's services be enhanced so far that the consultant's conduct is honourable, diligent, especially skilled, disinterested and competitive, except only in those cases where the unchecked exercise of that freedom would threaten harm to the greater public interest and the profession or aiding and abating an illegal act.

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<sup>1</sup> Incorporated as the *Association of Ecological Consultants of NSW Inc.*, hence the *ECA*.

<sup>2</sup> From their experience and based only on scientific theory, data and logic.

8. Ecological Consultants must not advertise or conduct themselves in a manner that will bring disrepute to the profession.

### **DUTY TO CLIENT**

9. A consultant must seek to advance and protect the client's interests to the best of the consultant's skill and diligence, uninfluenced by the consultant's personal view of the client or the client's activities, and notwithstanding any threatened unpopularity or criticism of the consultant or any other person, and always in accordance with these Rules and sound scientific and ecologically sustainable principles.
10. A consultant must seek to assist the client to understand the issues in the matter and the client's possible rights and obligations, if the consultant is instructed to give advice on any such matter, sufficiently to permit the client to give proper instructions, particularly in connection with any compromise or alternative ameliorative action.
11. A consultant must convey accurately to the client the consultant's formal qualifications, expertise and consulting experience and must not mislead or omit to assist the client to understand the relevant ecological and scientific disciplines.

### **HOLDING OUT**

12. A consultant must not hold out to the client or advertised to potential clients to have expertise in, or can conduct any work, they are not qualified for and/or have experience in, to undertake and that are beyond which they can be accredited for by the ECA.<sup>3</sup>

### **DISINTERESTEDNESS AND NON-BIAS**

13. A consultant must not act as the mere mouthpiece of the client, or of the instructing agent, and must exercise the forensic judgements called for throughout all his or her professional dealings, notwithstanding the client's desires.

### **FRANKNESS**

14. A consultant must give the consultant's truthful opinion on any matter submitted to the consultant for advice or opinion.

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<sup>3</sup> Note: Compliance with the Fair Trading Act (NSW) and the Trades Practices Act (C'th) is also mandatory. A consultant must also hold a current NPW Act 1974 s120 (Class A, or Class B for Probationary) or s121 (or endorsed on) license and an Animal Research Act 1985 Animal Research Authority, or any other license requirements where applicable.

15. A consultant must not make a misleading statement to a client, consent authority or court on any relevant conservation, environmental or scientific matter.
16. A consultant must take all necessary steps to correct any misleading or incorrect statement made by the consultant as soon as possible after the consultant becomes aware that mistake.
17. A consultant will not have made a misleading statement simply by omitting or failing to correct an error on any matter stated by any other person.
18. A consultant must inform the client and consent authority of theory, study or data that are available, which the consultant has reasonable grounds to believe to be directly in matter or issue in question.

### **DELINQUENT CLIENTS**

19. A consultant whose client informs the consultant that the he or she<sup>4</sup> intends to carry out an unlawful act in relation to the advice the consultant has provided must:
  - (a) advise the client against that course and warn the client of its dangers;
  - (b) not advise the client how to carry out or conceal that course; and
  - (c) cease to act for the client.
20. A consultant who has reasonable suspicions or know the client intends to carry out an unlawful act in relation to the advice the consultant has provided must act according to Rule 19 (a)-(c).

### **RESPONSIBLE USE OF DATA AND THEORY**

21. A consultant must, when exercising the forensic judgments called for throughout a project, ensure that recommendations by the consultant or decisions based on the consultant's advice to invoke or omit an action, is optimal for the management of the environment.
22. A consultant must not state as a fact to support the client's case any theory that will not be capable of support by available data.

### **INTEGRITY OF DATA AND INFORMATION**

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<sup>4</sup> Includes a corporation, partnership and any government instrumentalities.

23. A consultant must not provide data different from the information which the consultant believes or knows to be true and accurate.
24. A consultant must not take any step to prevent or discourage any prospective expert from conferring with any party with regards to any environmental issue except simply telling a prospective witness expert that he/she need not agree to confer or to be interviewed.

### **DUTY TO STAKEHOLDERS**

25. A consultant must not knowingly make a false statement to an opposing consultant in relation to any ecological, conservation or environmental issue at hand.
26. A consultant must take all necessary steps to correct any false statement unknowingly made by the consultant to any stakeholder as soon as possible after the consultant becomes aware that the statement was false.
27. A consultant will not have made a false statement to any stakeholder simply by failing to correct an error on any matter stated to the consultant by the another party.

### **INTEGRITY OF PROCESS**

28. A consultant must not publish, or take steps towards the publication of, any material concerning a current application in which the consultant is engaged or has been engaged to undertake without the client's agreement.

### **CONSULTANT'S WORK**

29. A consultant must confine the consultant's professional work to:
  - a) provide the client environmental advice for negotiating with the consent and concurrent authorities to reach a compromise;
  - b) provide the client environmental advice for negotiating with the consent and concurrent authorities in a mediation;
  - c) conduct biological and ecological surveys;
  - d) carry out wildlife management, including pest control, reintroduction, habitat enhancement and captive breeding;
  - e) giving environmental and ecological advice;

- f) advising on relevant material to be used in the client's case;
  - g) acting as a referee, arbitrator or mediator on environmental matters; and
  - h) carrying out work properly incidental to the kinds of work referred to in (a)-(g), eg. experimental design and research.
30. A consultant must not, in the consultant's professional work:
- a) file any development or planning application on behalf of the client in the consultant's name;
  - b) conduct correspondence on behalf of the client in the consultant's name or deal on behalf of the client with any other person, unless:
    - (i) the correspondence is to seek data and information from another expert or consultant; or
    - (ii) the dealing is a conference with another expert or consultant; or
    - (iii) it is for the purposes of work under Rule 29.

### **OTHER REFERRALS TO CONSULTANT**

31. A consultant who is asked by any person to do work or engage in conduct which is not consultants' work, or which appears likely to require work to be done which is not consultants' work, must promptly inform that person:
- (a) of the effect of Rules 29 and 30 as they relevantly apply in the circumstances; and
  - (b) that, if it be the case, other parties are capable of providing those services to that person.

### **INDEPENDENT PRACTITIONER'S RULE**

32. A consultant must be an independent practitioner, and must only practice:
- (a) in partnership with another ecological consultant<sup>5</sup>; or
  - (b) as the employer of another ecological consultant; or

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<sup>5</sup> Include parties defined in Rule 2 (1) (b) of the Statement of Objects and Rules of the Association of Ecological Consultants of NSW Inc.

- (c) as the employee of any ecological consultant.

### **FEE ARRANGEMENTS AND THIRD-LINE FORCING**

33. A consultant must disclose all fees, associated costs and payment terms to the client before commencing any work.
34. – deleted –
35. A consultant must not accept any instruction under a conditional costs agreement (bonuses or payment based on a percentage of any part of a project value) unless it is with a statutory administrator.
36. A consultant must not require that any other particular party be instructed or briefed, so as in any way impose that requirement as a condition of the consultant accepting to act for a client.
37. A consultant must not set the level of fee higher than the consultant would otherwise set if the consultant were willing to accept the work, with the intent that the client may be deterred from continuing to offer the work to the consultant.

### **INSTRUCTIONS WHICH MUST BE REFUSED**

38. A consultant must refuse the instructions offered if:
- (a) the consultant has information which is confidential to another person<sup>6</sup> other than the prospective client, and:
    - (i) the information may, as a real possibility, be helpful to the prospective client's case; and
    - (ii) the person entitled to the confidentiality has not consented to the consultant using the information as the consultant thinks fit in the case;
  - (b) the consultant has reasonable grounds to believe that the consultant's own personal conduct or professional reputation may be attacked for acting on behalf of a client;
  - (c) the consultant has a material financial or property interest in the outcome of the matter, apart from the prospect of a fee costs agreement;
39. A consultant need not refuse an instruction notwithstanding Rule 38(b) if:

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<sup>6</sup> Including corporations and all government instrumentalities.

- (a) the consultant believes on reasonable grounds that:
    - (i) allegations involving the consultant in such a way as to apply one of those Rules have been raised in order to prevent the consultant from accepting the instruction; and
    - (ii) those allegations can be dismissed without materially diminishing the consultant's disinterestedness; and
  - (b) a member of a Professional Conduct Committee of the ECA who is a Councillor approves of the consultant accepting the instruction(s) after the consultant has informed that Councillor of the circumstances.
40. A consultant must refuse to continue to advise a client if the consultant has information which is confidential to any person with different interests from those of the prospective client if:
- (a) the information may, as a real possibility, be helpful to the advancement of the prospective client's interests in the matter on which advice is sought;  
and
  - (b) the person to whom the confidentiality has not consented beforehand to the consultant using the information as the consultant thinks fit in giving advice.

### **REFUSAL OF INSTRUCTIONS**

41. A consultant who wishes to refuse an instruction must do so in enough time to give another consultant a proper opportunity to take over the work.
42. A consultant must promptly inform the client, as the case may be, as soon as the consultant has reasonable grounds to believe that there is a real possibility that the consultant will be unable to do the work required in the time stipulated agreed upon or within a reasonable time, if no time has been stipulated.
43. A consultant may refuse the work if, after acceptance of the work:
- (a) the client has refused the consultant's request that appropriate attendance's by the client representative will be arranged from time to time for the purposes of:
    - (i) ensuring that the consultant is provided with adequate instructions to permit the consultant properly to carry out the work required by the instructions;
    - (ii) ensuring that the client adequately understands the consultant's advice;

- (iii) avoiding any delay in the conduct of any survey, data collection or compromise negotiations; or
    - (iv) protecting the client or the consultant from any disadvantage or inconvenience which may, as a real possibility, otherwise be caused;
  - (b) the consultant's advice as to the preparation of the report or assessment including its compromise and ameliorating recommendations, has been rejected or ignored by the client, as the case may be; or
  - (a) fees have not been paid reasonably promptly or in accordance with the costs agreement, and have remained unpaid after reasonable notice by the consultant to the client of the consultant's intention to terminate the service for that reason.
- 44. A consultant who has reasonable grounds to believe that there is a real possibility that the consultant may cease:
  - i) to be solely a disinterested party or
  - ii) to be a defender of the consultant's own personal or professional conduct against criticism or
  - iii) a conflict of interest has arisen according to Rule 38 or Rule 40,must refuse the work as soon as it is possible to do so without unduly endangering the client's interests, unless:
  - (a) the consultant believes on reasonable grounds that:
    - (i) allegations which involve the consultant in that way have been raised in order to remove the consultant from the project; and,
    - (ii) those allegations can be met without materially diminishing the consultant's disinterestedness; and
  - (b) a member of a Professional Conduct Committee of the ECA who is Councillor approves of the consultant keeping the instruction(s) after the consultant has informed that Councillor of the circumstances.
- 45. A consultant must not undertake environmental consultants' work for the consultant's parent, sibling, spouse or child.

## **CONFIDENTIALITY & CONFLICTS**



46. A consultant must not disclose (except as compelled by law) or use in any way in the course of practice, confidential information obtained by the consultant concerning any environmental matter unless or until:
- (b) the information has been published by the copyright and intellectual property holder;
  - (c) the information is later obtained by the consultant from another person who is not bound by the confidentiality owed by the consultant to the first person and who does not give the information confidentially to the consultant; or
  - (c) the person has consented to the consultant disclosing or using the information generally or on specific terms.
47. A consultant who is instructed to undertake work for two or more parties in any project must determine as soon as possible whether the interests of the clients may, as a real possibility, conflict and, if so, the consultant must then refuse the work:
- (a) all the clients in the case of confidentiality to which Rule 44 would apply;  
or
  - (b) in other instances, one or more of the clients:
    - (i) giving preference to the earliest work if the consultant was offered the work at different times; and
    - (ii) so as to remove that possibility of conflict.
48. A consultant who, during the course of following the client's instructions, becomes aware that the interests of the clients, or some of them, do or may, as a real possibility, give rise to a conflict of interests, must cease to work for:
- (a) all the clients in the case of confidentiality to which Rule 44 would apply;  
or
  - (b) in other cases, one or more of the clients:
    - (i) giving preference to the earliest instruction(s) if the consultant was instructed at different times; and
    - (ii) so as to remove that possibility of conflict.
49. A consultant need not refuse the work under Rules 44 or 48, if the consultant has informed the clients of the consultant's view as to the clients' conflicting interests, and the client's agent, as the case may be, inform the consultant that the clients nonetheless wish the consultant to continue to conduct the work for them.

**DISCIPLINARY ACTIONS**

50. A consultant who breaches any of these Rules will face disciplinary action as determined by the ECA for unsatisfactory conduct or professional misconduct.