



Certification Scheme for Ecological Consultants in NSW



1 Introduction

1.1 History

In September 2005, the Ecological Consultants Association of NSW (ECA) formalised the association's rules and identified six key objectives. These objectives continue to provide guidance and direction for the ECA's operations and services. Included in the six key objectives of the ECA was the objective:

To prepare and support guidelines and standards relevant to the practice of ecological consultants in New South Wales, including but not limited to:

- (a) accreditation of consultants;*
- (b) standards for the practice of methods used by ecological consultants;*
- (c) peer review of work by ecological consultants; and*
- (d) a code of ethics to be followed by practicing ecological consultants.*

In late 2007, the NSW Threatened Species Conservation Act 1995 was amended to include Part 10s/42B which was:

The Director-General may institute arrangements for the accreditation of suitably qualified and experienced persons to undertake and prepare surveys and assessments for use in connection with:

- (a) biodiversity certification of land under Part 7A, or*
- (b) any assessment of the matters referred to in section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the Planning Act, or*
- (c) the biobanking scheme established under Part 7A.*

In 2009, the merits of and justification for an accreditation scheme for ecological consultants was presented at the ECA's Annual General Meeting (AGM). After discussion it was resolved, amongst other things, that a subcommittee of the ECA be formed to consider such a scheme.

Following on from this resolution, a draft outline of the accreditation scheme was prepared by the ECA's accreditation subcommittee and was presented to members of the association at ECA's AGM in 2010. At this AGM it was resolved that "the model proposed be accepted in principle".

2. Certification scheme for ecological consultants

2.1 Objectives

A Certified Practising Ecological Consultant (CPEC) will be recognised by the industry, government authorities and the community as competent to undertake ecological assessment. A CPEC will be able to display the appropriate logo and certificate to demonstrate their accreditation.

2.2 Outcomes

The scheme will result in a CPEC that has appropriate knowledge and experience to provide advice and opinions that are:

- consistent with current NSW and Commonwealth legislation and relevant guidelines;
- cognisant of legal precedent;
- up to date with current industry views and scientific information; and
- based on sound ecological data, or in the absence of sound ecological data, are based on logical extrapolations of known data, having regard to the Precautionary Principle.

2.3 Responsibilities of a CPEC

A CPEC will:

- act in a responsible and professional manner, extending courtesy to clients, colleagues, public authorities and legal practitioners;
- provide unbiased and objective advice;
- have proper regard to confidentiality agreements, and the sensitivity of client information;
- understand and abide by contracts;
- conduct work in a safe manner, and be compliant with work safety laws;
- be capable of providing oral and written advice that is defensible at all levels; and
- report correctly, truthfully, clearly and so far as is possible in the circumstances, fully and convey their findings objectively.

Note CPEC is awarded to an individual and shall not be represented as an award pertaining to a company or organisation.

3. Certification procedures

3.1 Application for certification

- 3.1.1 Application forms and guidelines are available via the ECA website.
- 3.1.2 Application forms include the appropriate return email address of the CPEC Administration Office.
- 3.1.3 Closing dates for submission of applications will be provided on the ECA website.
- 3.1.4 Applications for CPEC shall be checked by the Administration Officer to ensure the required information is complete and the application fee has been received.
- 3.1.5 If the application is incomplete, the applicants will be notified and the required additional information requested.
- 3.1.6 Applications that are complete shall be collated and forwarded to the CPEC Accreditation Panel prior to the scheduled meeting.
- 3.1.7 The application fee will be processed and is not refundable despite the outcome of the assessment made by the CPEC Accreditation Panel.
- 3.1.8 CPEC application fees are as shown in Fees & Charges (Appendix A).
- 3.1.9 The CPEC Accreditation Panel shall consider the application and deem the applicant to be “not yet eligible” or “eligible”.
- 3.1.10 Eligible applications for CPEC shall be advertised on the ECA website for a period of 30 days seeking public submissions.
- 3.1.11 In the event of a public submission, relating to an application, applicants may be asked to provide additional information beyond what was provided in their application.
- 3.1.12 After the 30 day advertising period, the CPEC Accreditation Panel shall review all public submissions (if any) and deem the application to be “unsuccessful” or “successful”. Applicants will be advised in writing of the final decision of the CPEC Accreditation Panel.
- 3.1.13 Applicants deemed to be “unsuccessful”, after all public submissions are considered by the CPEC Accreditation Panel, will have 14 days to appeal the decision.
- 3.1.14 On payment of CPEC Accreditation fee successful applicants shall be registered as Certified Practising Ecological Consultants and will be entitled to use the acronym “CPEC” after their name and will be entitled to use the CPEC logo in association with their name.
- 3.1.15 CPEC Registration shall be valid for a 2 year period from the date of registration.

A description of the application process is provided in Table 1 below.

Table 1: CPEC Application Process

STAGE 1: SUBMISSION OF APPLICATION	
CPEC Application Criteria	Documentation Required
1. Sign the ECA (NSW) Code of Business Practice, Professional Conduct and Ethics.	Listed as practising member of the ECA.
2. Have at least five years of consulting experience in a relevant ecological field.	Provide a full <i>Curriculum Vitae</i> showing evidence of 5 years of consulting experience within a 10 year period leading up to the date of application.
3. Demonstrate your knowledge of and ability to undertake ecological assessments.	Provide an example of the applicant's work, either as a report (produced within the last 5 years) or published peer-reviewed document (published within the last 10 years). Relevant sections of any report may be deleted to ensure confidentiality of the client. An estimate of the percent contribution by the applicant to the writing of the report or publication must be provided. Accreditation will depend on the applicant delivering work that is of a quality that is acceptable to the authorities responsible for assessment of their work/reports. With the application for CPEC examples should be provided which demonstrate a commitment to professional development and maintaining an appropriate understanding of current sound ecological assessment methodologies (see Information Sheet 1: Ongoing Professional Development for examples of acceptable activities). Please note accrual of points only applies with biannual application for recertification
4. Be respected by peers within the ecological consulting industry.	Provide two references from full members of the ECA and two from within the applicant's area(s) of particular interest that provide verification of the applicant's expertise (these shall not include the employer of the applicant or an employee of the applicant). Four references in total that outline the ways in which the applicant is suitably qualified and able to meet the responsibilities of a CPEC.
5. Have good written and oral communication skills, and have a good understanding of ecological processes within Australia, particularly NSW.	Provide a written statement of 500 words summarising career and relevant interests and an example of the applicant's work (see Point 3). Attendance at a meeting with the review panel maybe requested on a case by case basis.
6. Hold appropriate licences and approvals to undertake work in fields listed as areas of professional expertise and have Professional Indemnity Insurance applicable to their area of consulting.	Provision of copies of appropriate licences and approvals, and Certificate of Currency for insurance.
7. Agree to the terms of the 'Certification Scheme for Ecological Consultants in NSW', including all disciplinary procedures designed to uphold the integrity of the profession.	Completed and signed application form
8. Payment of the application fee.	Receipt of payment

STAGE TWO: ASSESSMENT OF APPLICATION BY THE PANEL	
Step	Action
The applicant will be assessed by a panel on written and oral communication skills, and an understanding of ecological processes within Australia, particularly NSW. The assessment will be based on the information provided above and an interview may be required.	<p>A panel comprising the President and one representative from the ECANSW, one representative from OEH, and two independent members.</p> <p>If considered necessary, an independent expert in a field not familiar to the panel members will be consulted to ensure a correct assessment of the applicant's work is undertaken.</p> <p>If considered necessary, an interview with the applicant may be request by the committee.</p>
STAGE THREE: PUBLIC NOTIFICATION	
Step	Action
Public appraisal of application	Following determination of eligibility by the panel public notification of intention to accept this person as a CPEC will be shown on the ECA website, with public appraisal period of 30 days.
Final decision by panel	After the 30 day advertising period, the CPEC Accreditation Panel shall review all public submissions (if any) and deem the application to be "unsuccessful" or "successful".
STAGE FOUR: FINALISATION OF CERTIFICATION	
Step	Action
Granting of certification	A certificate and relevant logo will be issued to the successful CPEC and their name and details will be added to a specific listing on the ECA website on payment of the final accreditation fee.
STAGE FIVE: RENEWAL OF CERTIFICATION	
Step	Action
On-going Professional Development	<p>At the end of each two years, a CPEC will seek renewal by submitting:</p> <ol style="list-style-type: none"> I. an On-going Professional Development log that provides evidence of ongoing professional development, such as receipts, certificates; and II. evidence of on-going professional indemnity insurance and relevant licences and approvals. III. Payment of CPEC renewal fee. <p>A minimum of 50 professional development points will need to be accumulated over a two year period (details are given in Information Sheet 1).</p>

3.2 Renewal of Certification

- 3.2.1 Certification shall be valid for 2 years from the date of issue.
- 3.2.2 CPECs will be advised that renewal is required 2 months prior to the expiry date of their certification.
- 3.2.3 Renewal forms and guidelines will be made available via the ECA website and will require the completion of the details of their on-going professional development over the previous 2 years. The criteria used to determine on-going professional development are provided in Section 5 and Information Sheet 1.
- 3.2.4 Renewal forms received shall be checked by the Administration Officer to ensure that professional development criteria have been met and the application fee has been received.
- 3.2.5 Renewal fees shall be as shown in Fees & Charges (Appendix A).
- 3.2.6 If the renewal application is incomplete, applicants will be notified and the required additional information requested.
- 3.2.7 Where certification has expired for a period of in excess of 12 months and a completed renewal form and fee have not been received within this period, the certification cannot be renewed. In these situations, the applicant will need to re-apply for certification.
- 3.2.8 The renewal application fee will be processed and is not refundable despite the outcome of the assessment made by the CPEC Accreditation Panel.
- 3.2.9 The CEPC Accreditation Panel shall consider the renewal application and deem the applicant to be “no longer a CPEC” or “a CPEC”. Applicants will be advised in writing of the decision of the CPEC Accreditation Panel.
- 3.2.10 Where the CEPC Accreditation Panel deems the applicant to be “no longer a CPEC”, the applicant will be provided with a summary of the areas where they did not meet the on-going professional development criteria.
- 3.2.11 Applicants who are deemed by CPEC Accreditation Panel to be ‘recertified’ will be notified in writing and will be provided with a CPEC certificate valid for 2 years.

4. Conduct and disciplinary regulations & procedures

4.1 Expectations of CPEC

4.1.1 The Ecological Consultants Association of NSW has developed a Code of Business Practice, Professional Conduct and Ethics that sets standards of professional conduct consistent with sound scientific and ecologically sustainable principles. All CPEC's are bound by this Code and any non-compliance can be considered as a breach of the Code. The Code is provided in Appendix B.

4.1.2 A CPEC will:

- act in a responsible and professional manner, extending courtesy to clients, colleagues, public authorities and legal practitioners;
- provide unbiased and objective advice;
- have proper regard to confidentiality agreements, and the sensitivity of client information;
- understand and abide by contracts;
- conduct work in a safe manner, and be compliant with work safety laws;
- be capable of providing oral and written advice that is defensible at all levels; and
- report correctly, truthfully, clearly and so far as is possible in the circumstances, fully and convey their findings objectively.

4.1.3 The Complaints Procedures set out in **Information Sheet 2** are intended to provide the framework to:

- consider allegations or evidence in a manner that is fair and reasonable to all concerned;
- draw conclusions based on the evidence;
- if disciplinary actions are thought to be required the disciplinary actions will follow those detailed in the ECA Articles of Association;
- if appropriate, remove certification from a CPEC who has breached the Code of Business Practice, Professional Conduct and Ethics and the obligations as an accredited CPEC; and
- provide for hearing appeals.

4.2 Grounds for Taking Disciplinary Action

- 4.2.1 Disciplinary action may be taken by the Council against a CPEC if it is determined that the CPEC:
- Has breached or persistently refused to comply with the Rules of Association or any By-law of this Association; or
 - Has breached or otherwise failed to comply with the Code of Ethics; or
 - In the reasonable opinion of the Association no longer supports the Rules of Association; or
 - Is found guilty of a criminal offence or otherwise has engaged in conduct prejudicial to the Association.

4.3 Disciplinary Process

- 4.3.1 Information Sheet 2 details the process involved in the Disciplinary Process including:
- Composition of the Disciplinary and Appeals Panel;
 - The process required to be undertaken by the Complainant;
 - The responsibility of the CPEC in the process;
 - Formal hearing in which the CPEC is given the opportunity to address the Disciplinary Panel; and
 - Timing.

4.4 Penalties

- 4.4.1 The Disciplinary Panel may:
- Take no further action against the CPEC; or
 - Counsel the CPEC on the Code of Business Practice, Professional Conduct and Ethics; or
 - Require undertakings of the CPEC in such terms as it considers fit; or
 - The certification of the CPEC may be suspended for a set period of time, or withdrawn; or
 - Any combination of the above.
 - The final decision and the reasons will be published on the ECA web site.

5. Professional development

5.1 Ongoing professional development

- 5.1.1 With any application for CPEC renewal, a demonstrated commitment to maintaining an appropriate level of Ongoing Professional Development (OPD) must be provided through an OPD log. The requirement is to demonstrate a minimum of 50 points of OPD over a two-year period. The OPD log must be submitted at the time of re-certification.
- 5.1.2 Each CPEC must keep adequate records of evidence as OPD will be subject to audit from time to time.
- 5.1.3 Information sheet 1 provides categories of OPD, examples of evidence that would demonstrate the OPD and the number of points relevant to each OPD activity.
- 5.1.4 A fee will be charged with each CPEC renewal application, see Fees & Charges (Appendix A).

6. Appendices

Appendix A - fees & charges 2015 - 2016

Stage required	Nature of Fees & Charges	Amount plus GST
1	CPEC Application Fee	\$350.00
4	CPEC Accreditation Fee	\$300.00
5	Renewal fee (every two years)	\$300.00

Appendix B – Ecological Consultants Association (NSW)¹ Code of Business Practice, Professional Conduct and Ethics 1 November 2002 Version 2.1 2

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 forensic² judgments 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.
8. Ecological Consultants must not advertise or conduct themselves in a manner that will bring disrepute to the profession.

¹ Incorporated as the *Association of Ecological Consultants of NSW Inc.*, hence the ECA.

² From their experience and based only on scientific theory, data and logic.

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 advertise 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 ECA³.

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.

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 of 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.

³ 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.

DELINQUENT CLIENTS

19. A consultant whose client informs the consultant that the he or she⁴ 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 believes that 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

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.

⁴ Includes a corporation, partnership and any government instrumentalities.

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 consultant⁵; or
- (b) as the employer of another ecological consultant; or
- (c) as the employee of any ecological consultant.

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

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 person⁶ 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:

(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.

⁶ Including corporations and all government instrumentalities

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 information is confidential 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

(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:

(a) the information has been published by the copyright and intellectual property holder;

(b) 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.

