



Volume 4, November 2001

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Newsletter of the Ecological Consultants Association of NSW Inc.

President's Message

The past 12 months have been particularly challenging for the ECA. I hear reports of price-cutting, GST imposts, insurance hikes and a post Olympics recession. I took advantage of a quiet period early this year to spend several weeks lobbying government departments (NPWS, DLWC, DUAP), the Premier and the Ministers for Environment, Land and Water, and Urban Affairs and Planning to provide the ECA with a start up grant. Funds were requested to support a part time executive officer over two years to coordinate preparation of codes of practice and accreditation standards. But despite a considerable effort, supported by the Member for Northern Tablelands Richard Torbay, I have so far been unable to secure any direct financial assistance for the ECA. DUAP supports the concept of accreditation and has offered non-financial assistance. Both NPWS and DUAP note that they are preparing their own survey and assessment guidelines and the Minister for Environment notes that we do not fit into any of the criteria for funding under existing programs within the Environment portfolio.

External funding is not essential for maintenance of the ECA but without it progress in development of accreditation procedures, standards of conduct and codes of ethics and other functions of the ECA will be all the more difficult so your patience, and wherever possible volunteer assistance, will continue to be required. Above all we need members to promote the ECA and grow membership to a size of around 200 at which point subscriptions should be sufficient to fund central administrative services. In order to provide members with at least one major benefit I have focused on finalising the ECA accreditation policy. A draft of this policy was discussed at a meeting of the ECA Council was held in Sydney in September and a final draft should be available for discussion and ratification at the next annual general meeting. A summary of the accreditation policy will be available on ECA's website soon. This is an important step for the ECA which will need your considered input and support.

The ECA experienced problems with the maintenance and renewal of its membership listing

following the resignation of the membership officer Craig Anderson early this year. No membership renewal notices were sent out and some membership records appear to have been lost or incompletely recorded. We apologise profoundly for any inconvenience and uncertainty this has caused. All current memberships have been extended and a new renewal date has been set based on the calendar year. In order to prevent this problem re-occurring the membership officer and Treasurers responsibilities have been combined and the Council has also approved funding for a centralised mailing address, mail forwarding service and web facility. A new Treasurer, Elizabeth Denny was elected at the September meeting of Council. I wish to thank the Secretary, John Travers, for filling this position until a volunteer Treasurer could be found. The ECA Council now has a full complement and a healthy operating procedure.

Andrew Smith 9 Nov 01

ECA Council 2001

Last year's AGM saw a few changes in the make up of the ECA Council. The current composition of the Council is:

President: Andrew Smith

Vice Presidents: Martin Denny and Phil Conacher

Secretary: John Travers

Treasurer: Liz Denny

Council Members:

Leong Lim

ltlamc@magna.com.au

Peggy O'Donnell

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Ian Tait

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Paul Burcher

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landmark@nrg.com.au

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Deryk Engel

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Nick Skelton

nicksk@mail.usyd.edu.au

David Thomas

thomasdalmj@bigpond.com

Martin Fallding

naa@hunterlink.net.au

Members of the Executive have offered to help develop and resolve issues in their areas of interest. The Ethics sub committee consists of Leong Lim, Nick Skelton, David Thomas, Jason Anderson and Martin Fallding. The Accreditation subcommittee consists of Andrew Smith, Deryk Engel, Phil Conacher, David Milledge and Nick Skelton. The Membership Officer is Liz Denny

(Lizdenny@ozemail.com.au).

Feel free to contact members of the Executive Council to discuss an issue of concern, or to disseminate information relevant to their area of interest. All Council members prefer to receive input via e-mail. Note that one way to initiate discussion on an issue is to submit an article to the newsletter editor, Peggy

O'Donnell.

(pod@theecologylab.com.au)

for inclusion in the next issue.

Website Update

The ECA web site has arrived! Born of simple origins and basic design, it is posted on the web and ready to advertise our existence. Its temporary address is:

<http://www4.tpgi.com.au/cowper/eca>

It will remain at this address until such time as an Internet Service Provider can be found at a reasonable price to host the site, our registered domain and provide a few of the services to make contacting the ECA and its members a bit easier. The site is in the process of being registered with internet search engines to increase the likelihood of the public finding us and to provide a better presence for generating interest in the Association.

A few basic links are provided on the site including a list of the current office bearers, past newsletters, abstracts from past conferences, an application form for membership, links to some related sites and a short description of the history and objectives of the Association.

Any suggestions for increasing the content or improving the site in any way can be forwarded to Peter Cowper on cowper@tpgi.com.au.

Some of the options being investigated for inclusion in future versions of the website include a notice board or forum for members, contact

lists of members, e-mail accounts and other such features to be made available only to members.

In order to determine what facilities ECA members would like to have associated with the website, Ian Tait has prepared a questionnaire attached to the end of this newsletter. Please take a few minutes to complete the short survey, and return it to the Membership Officer along with your subscription form.

Peter Cowper & Ian Tait



Why Professional Indemnity Insurance?

Professional Indemnity is one of the insurance policies (along with Public Liability) that all practitioners in our field should have. The purpose of Professional Indemnity is to indemnify you against a client seeking damages for "bad" advice. For instance, a developer could sue you in an instance where a development application was not successful due to the consent's authority's concerns with ecological impacts. It must be remembered that even with some small-scale developments there can be a lot of money riding on them and if the applicant is unsuccessful he may look elsewhere to regain losses.

Although this may seem unlikely, it has happened. One case in NSW occurred when a consultant prepared a Species Impact Statement that may have been inadequate and the Land & Environment Court rejected the development. The developer then sued the individual ecological consultant and the rather large consultant company for the loss of earnings.

The other reason for having PI is that most large organisations, including councils and government authorities, require a certain amount of cover as part of the contract. Usually the amount required is of the order of \$1 million to \$10 million. Prices vary greatly amongst insurance companies. Here are some examples from a straw poll of practising ecologists.

GIO

Cover: \$5 million
Premium: \$2500

North Coast Insurance

Brokers Cover: \$10 million
Premium: \$2600

RE Brown

Cover: \$2million
Premium: \$2200

Marsh Pty Ltd

Cover: \$2 million
Premium: \$1544

AMP

Cover: \$1million
Premium: \$1155

AON

Cover: \$2 million
Premium: \$1210

The ECA is looking to develop a relationship with an insurance company which will give us better premiums based on a group discount, such as that offered to members of the Environment Institute of Australia. The more members we can get to undertake this option, the cheaper it will be. If anyone has any suggestions in this regard or would like contact details for the companies listed above contact Paul Burcher at: pburcher@ozemail.com.au.

What to do with Introduced Animals?

Unethical Obligations of the Animal Research Authority

Any one involved in fauna surveys knows about the requirement to have an 'Animal Research Authority' from the Director-General of NSW Agriculture. This authority is approved by the Animal Care and Ethics Committee of NSW Agriculture and ensures the animal research is carried out in accordance (ie. ethically) with the Code of Practice for animal welfare.

In recent years, the application form for this authority has noted that it is illegal to release non-native animals into the wild. This means that if a non-native animal is captured in a

trap during an ecological study, though it was “wild” (ie. occurring naturally) at the time, it cannot be rereleased, and by default, must be killed. Some consultants have been querying this on grounds of ethics (personal and professional), liability/responsibility and appropriateness, and Jason Berrigan of Darkheart Eco-Consultancy at Port Macquarie has questioned the issue and asked other ECA members for comment.

One argument that Jason Berrigan has offered to NSW Agriculture is that House Mice and Black Rats may now form part of the diet of native predators, such as owls, hawks and snakes. In agricultural environments or areas subject to frequent disturbance, particularly those close to the urban fringe, non-native small mammals may have displaced or replaced (due to local extinction) native species (eg. Bush Rats). Native predators may be utilising, if not relying upon, non-native rodents as a substitute food base. As he has said “Thus the quandary. Should we remove/reduce an element ie. a food source, from the habitat requirements of native and potentially threatened species such as the Masked Owl or Quoll in principle with legislation, or conservation? Could that not be seen as a detrimental impact on the viability of threatened species?” As another consultant quipped “Will this mean we will have

to produce 8-Part Tests for our surveys?” Or, in terms of personal ethics, do we each feel we can and should kill these animals as part of our activities? Are we all hard-hearted to accept that as a part of our vocation (and assumedly, as conservationists), we have to ring the neck of a plethora of small mammals? To many of us, its one thing to drop a feral cat to the Vets, but another to kill a hundred rats in a week. When queried the response of the Director-General’s Animal Care and Ethics Committee was that it was a National Parks and Wildlife Service matter and that the Committee was obligated to support the current legislation and require that only native species are to be re-released.

A further query to NPWS to clarify the matter elicited a rather interpretable letter stating that it is an offence under the National Parks and Wildlife Act 1974 (Section 109) to release an animal unless (other than a homing pigeon or a captured animal that is native to New South Wales) under and in accordance with a license under section 127. The second point of this letter states: “*A person shall not liberate, elsewhere than in the locality of capture, any captured animal which is not native to NSW unless under and in accordance with a license under section 127.*” The letter goes on further to state: “*It is the intent of Section 109 of the Act to stop people catching*

and then releasing animals at a location other than the original capture site and to stop people breeding animals in captivity for release of the progeny to the wild. A restriction on the release of animals helps protect biological diversity and maintain the genetic integrity of species in a particular area”

On first read, this appears to say, that for our purposes, it is acceptable to re-release non-endemic fauna at point of capture. Presumably this is what most of us currently do, and state so in our license application forms, and thus there should be no problem, and no need for us to euthanase rodents. In a verbal response to a clarification of this position, given the scenario of an ecological survey, the senior licensing officer at NPWS said that it was technically an offence to re-release non-endemic fauna, regardless.

Hence nothing is resolved. So, you can still release any homing pigeons that you catch, but not any House Mice, Black Rats, Feral Cats, Feral Dogs (and dingoes), foxes, squirrels, ferrets etc.

So what do you do with these unwanted animals? Accordingly, you are supposed to euthanase them. In the case of mice, the Ethics Committee advises that cervical dislocation of any animal up to 150g, and concussion for rodents up to one kilogram, is acceptable. How are cats, dogs or foxes

supposed to be euthanased – with a hammer? Probably most of us would attempt euthanasia by shooting (if you have a gun and license), or by taking the animal to a veterinarian.

All this raises a number of significant issues:

1. As Jason has pointed out, killing captured introduced rodents may have a potentially negative effect on native predators, including threatened species. Perhaps this effect is not by itself significant, but in combination with other threats, could be a contributing factor to long term decline. Effects also may also be seen not on the predator, but on other prey species. What if predators then switch to other threatened species such as the Eastern Chestnut Mouse, Hastings River Mouse or Common Planigale?
2. Personal ethics: do we wish to have the responsibility of killing animals? If we can't do it, do we wish to risk violating conditions of our licenses, and risking our businesses?
3. Physical risk: the recommended killing methods require increased personal contact with a stressed and defensive animal, risking injury and possible disease infection eg. by rodent bites. Do we

4. need this risk on top of what we already accept?
4. On a more general note, are we fauna surveyors or managers? Most projects involve finding out what lives in an area, not managing or modifying the fauna. That task is either not our immediate responsibility, or it comes later, when there is sufficient information to develop management plans. Usually such a task requires specialised input.
5. More practically, are we in an ethical, professional and personal position to be able to euthanase any animal? Perhaps mice or rats, but for most of us, definitely not a cat or fox.

This problem needs to be addressed by members of the ECA and a representation should be made by the ECA as a professional body to the NPWS. Any suggestions are welcomed as to how the approach should be made. Most likely it will be as a submission to NPWS and NSW Agriculture. One idea is to have a special dispensation as part of our NPWS Scientific Investigation License, that allows the holder to re-release non-native fauna. An alternative could be simply a recognition that ecological surveys should be exempted from the consideration by stating in the license applications that all fauna are re-released at point of capture.

Whatever the approach, it is clear that this matter must be dealt with by EPA.

Martin Denny and Jason Berrigan



The Ecological Consultant's Bible

Recently, there have been a number of guidelines to undertaking flora and fauna surveys for environmental assessments. The NSW Department of Land and Water Conservation have released their 'Interim Guidelines for targeted and general flora and fauna surveys under the Native Vegetation Conservation Act 1997' (contact Centre for Natural Resources, NSW DLWC, 10 Valentine Ave, Parramatta, 2150), and the NPWS have sent out an electronic version of their 'Threatened Species Survey and Assessment: Guidelines for Developments and Activities' (can be requested from biodiversity.survey@npws.nsw.gov.au). These, and other guidelines, provide details on the extent of survey effort and survey techniques. However, what is missing are the basic principles behind any flora and fauna survey – those principles that once guided an approach to rigorous research

and still hold you in good stead. Many of these principles stem from scientific method, and all are considered to be 'good common sense'!

When undertaking a flora or fauna survey the following points should be taken into consideration:

Methodology

1. Methodology should be fully described and supported by documentation (ie. references) if used and/or developed in other studies, particularly if the methods have been peer reviewed.
2. Methodology should include sampling design and type of equipment.
3. Where possible, methodology should follow guidelines set out by determining authorities eg. NPWS, DLWC, DUAP, Fisheries, State Forest, Councils. Where there is variation, need to give reasons and descriptions of variation.
4. Precision, accuracy and repeatability of methodology must be applicable to all methods and analysis of data. Standardisation of methodology is an important aspect here.
5. Survey effort must be commensurate with ecological values, conservation values, animal welfare considerations, degree of potential impacts and community expectations.

Approach and Aims

6. An approach to a study should be clearly explained with reasons for a particular approach ie. each study requires an individual approach, survey effort etc.
7. An important aim is to provide adequate data to satisfy legislative, as well as provide a description of the survey area and an assessment of ecological values. All aims have equal importance.

Other Aspects

8. Not only must local and State requirements be addressed, but also a range of Federal and other requirements must be accommodated. These include National Strategy of Australia's Biological Diversity; Australian Natural Heritage Charter; Environment Protection and Biodiversity Act, Treaties (eg. migratory species), Ecological Sustainable Development.
9. Results must be presented in sufficient detail to allow independent analysis. This may be via appendices or a request to the author, but ideally within a publicly available report.
10. Interpretation of results is a separate process from collection and presentation of results. Interpretation of results may require an element of personal judgement, as well as statistical/objective analysis. Where professional judgement is

used, this should be acknowledged.

11. Adequate referencing is important when using and/or comparing other studies.
12. Principles of scientific methodology must be followed in the survey design and implementation eg. null hypothesis, control of extraneous factors, accuracy of observations, deduction etc.

By following such guidelines, you may not win every contract, but at least your report will be rigorous and defensible.

Martin Denny



Sharpen Up Your Techniques!

All of us need to freshen up on our techniques every now and again. For ecological consultants with a bent towards fauna, there are several clubs and societies that provide the opportunity to work with experts in their field. Two examples are the NSW Bird Atlasers Inc and the NSW Field Ornithologists Club Inc.

Both of these groups undertake surveys for birds in unusual as well as common areas. Most surveys are for a

day, but some extend over longer periods eg. Easter camps at remote areas. These 'outings' allow you to mix with expert "birdos", learn techniques, obtain advice and catch up with the latest information about bird sightings (particularly from 'twitchers').

Typical excursions have been to Kooragang NR, Cowra, Bi-Centennial Park and Lila Springs, north of Bourke. In addition, the NSW FOC holds talks and meetings each month, with invited speakers focussing on relevant issues, such as Regent Honeyeater Recovery Plans, Australian Bush Heritage Fund, and the Australian Bird Atlas.

Both groups produce periodic newsletters that contain observations, articles and most importantly lists of recent unusual sightings. Such information is always of use to ecological consultants.

To get in touch with the NSW Field Ornithologists Club Inc. contact the membership secretary, Barrie Ayres (97121180) or visit their web site (www.ozemail.com.au/~nswbirds).

To get in touch with the NSW Bird Atlassers Inc, contact Jen Southern (67533242 or old_dromana@northnet.com.au).



Guide to Bird Habitats in NSW

An excellent publication by the NSW Bird Atlassers Inc is a small, well-illustrated book describing the various bird habitats in NSW. As members of this group record sightings of birds systematically throughout NSW (in 10 minute grids) there is need for each member to provide a consistent description of habitats. This book describes, with a colour illustration, more than 70 habitats (natural, disturbed and artificial), as well as a list of typical bird species in each habitat type.

A very handy book that can be used in the field to describe and categorise an area.

The book is called "A Guide to Bird Habitats in New South Wales" by R.M. Cooper and I.A.W. McAllan and is published by the NSW Bird Atlassers Inc.

The price for non-members is \$35.45.

For members it is \$27.75. It is worth while joining this group (see previous other article in this newsletter).

The book can be purchased from Jen Southern (67533242) or old_dromana@northnet.com.au.

DRAFT Code of Ethics

A draft code of Ethics for consideration by ECA members has been drafted by Leong Lim and amended after comment from other members. While it is presented here in language that suggests it has been implemented, it is in fact in draft form, and comments are sought to improve it in any way. The final version, as adopted by ECA members, will be an important document: it lays out what members of the ECA feel are ethical and fair and what we stand for as professionals. You are encouraged to read it, think about it and consider how it could guide both new and existing members. Please forward your feedback to Leong Lim via email: tlamc@magna.com.au.



DRAFT Code of Ethics

These 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 reserving the practice of consultancy 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 judgements and give their advice independently and for the proper assessment of ecological, conservation and environmental matters, notwithstanding any contrary desires of their clients.

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 practise 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.

A consultant must 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.

Duty to Client and Holding out

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 the law (including these Rules) and sound scientific and ecologically sustainable principles.

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.

A consultant must convey accurately to the client the consultant's formal qualifications, expertise and consulting experience and must not misled or omit to assist the client to understand the relevant discipline.

A consultant must not hold out to the client to be experts they are not qualified to be and/or have experience they do not really have beyond their accreditation.

Disinterestedness and Non-bias

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 during the case independently, after appropriate consideration of the client's desires where practicable.

A consultant will not have breached the consultant's duty to the client, and will not have failed to give reasonable consideration to the client's simply by choosing, contrary to those desires, to exercise the forensic judgements called for during the case so as to:

- (a) confine any matter to those issues which the

consultant believes to be the real issues;
 (b) present the client's case as quickly and simply as may be consistent with its robust advancement; or, inform the consent authority, in the normal course of assessment and discussion, of any persuasive authority against the client's case.

Frankness

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

A consultant must not make a misleading statement to a client, consent authority or court on any environmental matter.

A consultant must take all necessary steps to correct any misleading statement made by the consultant as soon as possible after the consultant becomes aware that the statement was misleading.

A consultant will not have made a misleading statement simply by omitting or failing to correct an error on any matter stated by the opponent or any other person.

18A 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 point, for or against the client's case.

Delinquent Clients

A consultant whose client informs the consultant that the client 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,

inform the appropriate authority of the client's intention.

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 18 (a)-(c).

Responsible Use of Data and Confidential Information

A consultant must, when exercising the forensic judgments called for throughout a matter, take care to ensure that decisions by the consultant or on the consultant's advice to omit or invoke an action that is optimal for the management of the environment.

A consultant must not open as a fact any theory which the consultant does not then believe on reasonable grounds will be capable of support by the evidence which will be available to support the client's case.

Integrity of Data and Information

A consultant will not provide data different from the information that the consultant believes to be true and accurate.

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 Opposing Consultant

A consultant must not knowingly make a false statement to the opposing consultant in relation to any ecological, conservation or environmental issue at hand.

A consultant must take all necessary steps to correct any false statement unknowingly made by the consultant to the opponent as soon as possible after the consultant becomes aware that the statement was false.

A consultant will not have made a false statement to the opponent simply by failing to correct an error on any matter stated to the consultant by the opponent.

Integrity of Process

A consultant must not publish, or take steps towards the publication of, any material concerning any current application in which the

consultant is engaged or has been engaged to undertake.

A consultant will not have breached Rule 28 simply by advising the client about whom there has been published a report relating to the case, and who has sought the consultant's advice in relation to that report, that the client may take appropriate steps to present the client's own position for publication.

Consultant's Work

A consultant must confine the consultant's professional work to:

- provide the client environmental advice for negotiating with the opponent to reach a compromise;
- provide the client environmental advice for negotiating with the opponent in a mediation;
- conduct biological and ecological surveys;
- carry out wildlife management, including pest control, reintroduction, habitat enhancement and captive breeding;
- giving environmental and ecological advice;
- advising on documents to be used in the client's case;
- acting as a referee, arbitrator or mediator on environmental matters; and;
- carrying out work properly incidental to the kinds of work referred to in (a)-(g), eg. experimental design and research.

A consultant must not, in the consultant's professional work:

- file application on behalf of the client in the consultant's name;
- conduct correspondence on behalf of the client in the consultant's name or deal on behalf of the client with any other person, unless:
 1. the correspondence is to seek data and information from a potential expert; or
 2. the dealing is a conference with a potential expert; or
 3. it is for the purposes of work under Rule 30.

Other Referrals to Consultant

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:

- of the effect of Rules 30 and 31 as they relevantly apply in the circumstances; and;
- that if it be the case, other experts are capable of providing those services to that person.

Independent Practitioner's Rule

A consultant must be an independent practitioner, and must only practise:

- in partnership with another ecological consultant; or
- as the employer of an ecological consultant; or

- as the employee of any ecological consultant.

Fee Arrangements and Third-line Forcing

A consultant must disclose all fees, associated costs and payment terms to the client before commencing any work, except when the inclusive total is less than \$ 1100-00 including GST.

A consultant must not accept a fee that is less than the average gross gratuity for post-graduate in their respective disciplines.

A consultant must not accept a brief under a conditional costs agreement unless it is with a statutory administrator.

A consultant must not require that any other particular party be instructed or briefed, so as in any way to impose that requirement as a condition of the consultant accepting any brief or instructions.

A consultant must not set the level of fee higher than the consultant would otherwise set if the consultant were willing to accept the brief, with the intent that the client may be deterred from continuing to offer the brief to the consultant.

Briefs Which Must Be Refused

A consultant must refuse a brief or instructions if :

- the consultant has information which is confidential to any other

person other than the prospective client, and:

- the information may, as a real possibility, be helpful to the prospective client's case; and
- the person entitled to the confidentiality has not consented to the consultant using the information as the consultant thinks fit in the case;
- the consultant has reasonable grounds to believe that the consultant's own personal or professional conduct may be attacked in the case;
- the consultant has a material financial or property interest in the outcome of the matter, apart from the prospect of a fee costs agreement;

A consultant need not refuse a brief notwithstanding Rule 39(b) if:

the consultant believes on reasonable grounds that:

- 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 brief; and
- those allegations can be met without materially diminishing the consultant's disinterestedness; and
- a member of a Professional Conduct Committee of the ECA who is a Councillor approves of the consultant accepting the brief after the consultant has informed

that Councillor of the circumstances.

A consultant must refuse a brief to advise if the consultant has information which is confidential to any person with different interests from those of the prospective client if:

- 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;
- the person entitled to the confidentiality has not consented beforehand to the consultant using the information as the consultant thinks fit in giving advice.

Return of Briefs

A consultant who wishes to return a brief must do so in enough time to give another legal practitioner a proper opportunity to take over the case.

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 appear or to do the work required by the brief in the time stipulated by the brief or within a reasonable time if no time has been stipulated.

A consultant may return a brief if, after acceptance of the brief:

the client has refused the consultant's request that appropriate attendances 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 brief;
- (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;
- (v) the consultant's advice as to the preparation of the report or assessment including its compromise, has been rejected or ignored by the client, as the case may be; or
- (vi) 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 return the brief for that reason.

A consultant who has reasonable grounds to believe that there is a real possibility that the consultant may cease to be solely a disinterested party or be a defender of the consultant's own personal or professional conduct against criticism must return the brief as soon as it is possible to do

so without unduly endangering the client's interests, unless:

- 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
- a member of a Professional Conduct Committee of the ECA who is Councillor approves of the consultant keeping the brief after the consultant has informed that Councillor of the circumstances.

A consultant must return a brief involving the consultant's parent, sibling, spouse or child or a member of the consultant's household.

Confidentiality & Conflicts

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 person unless or until:

- (a) the information has been published;
- (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.

A consultant who has accepted a brief must return the brief as soon as possible after the consultant becomes aware that the consultant has information confidential to a person other than the client which may, as a real possibility, be helpful to the client's case or to the advancement of the client's interests, being information which the consultant is prohibited from disclosing unless the person entitled to the confidentiality consents to the consultant disclosing or using the information as the consultant thinks fit.

A consultant who is briefed 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 return the brief for:

- (a) all the clients in the case of confidentiality to which Rule 47 would apply; or
- (b) in other cases, one or more of the clients:
 - (i) giving preference to the earliest brief if the consultant was briefed at different times; and
 - (ii) so as to remove that possibility of conflict.

A consultant who, during the study, becomes aware that

- the interests of the clients or some of them do or may, as a real possibility, conflict, must return the brief for:
- (a) all the clients in the case of confidentiality to which Rule 47 would apply; or
 - (b) in other cases, one or more of the clients:
 - (i) giving preference to the earliest brief if the consultant was briefed at different times; and
 - (ii) so as to remove that possibility of conflict.

A consultant need not return any brief under Rules 49 or 50, if the consultant has informed the clients of the consultant's view as to the clients' conflicting interests, and the instructing solicitor or the clients, as the case may be, inform the consultant that all the clients nonetheless wish the consultant to continue to appear for them.

Disciplinary Actions

A consultant who breaches any of these Rules will face disciplinary action as determined by the ECA.

Upcoming Events

Draft Accreditation Policy

Next Conference and AGM;

See website for details.



Please take a minute to complete this survey and return it with your Annual Subscription Fees and Updated Membership details.

**Currently ECA has a trial website at www4.tpgi.com.au/cowper/eca
It is expected that the final website will have two sections: a public section and a password protected, members only section.**

Do you think the website should publish a list of accredited members of the Association? This listing would be in a standard format for all members, containing Members name, associated company, contact details, areas of expertise. If Yes: It should be in the public section It should be in the members section	Yes No Public Members
The website could provide e-mail forwarding as a service to members. With e-mail forwarding you would have an e-mail address like membername@ecansw.asn.au . This would then be forwarded to any e-mail address you wish. This means you can change your internet service provider as often as you like but you can always keep the same e-mail address on your letterhead etc. Would you be likely to use this service?	Yes No
If the members only section contained any of the following	I am likely to use this facility
	Never or rarely Sometimes A lot
An archive of association business papers eg. minutes, newsletters etc for downloading.	
An archive of papers, reports, etc of interest to our industry available for downloading.	
A database of survey and other data for sharing between members.	
A bulletin board for messages and open discussion of matters between members	
A calendar of important dates and events.	
A list of links to internet sites of interest to members.	
A chatline for direct conferencing between members (instant text messaging).	
A voice conferencing facility (internet phone).	
Peer to Peer software that allows file sharing between individual members. See note 1 below	
P2P – Software that allows co-operative project work to be undertaken See note 2 below	

1. P2P software is based on the Napster model. This allows individual members to nominate "shared folders" on their own computer which contains files available to other members with the appropriate security access. - may be useful for those altruistic types who are willing to share their files/data.
2. A variant on the above allows groups of people working on a common project to amend shared files. This may be a useful facility for groups of members that subcontract or work together on a project basis.

Please make any other comments or suggestions here and overleaf.