



## ATTACHMENT "A" – CODE OF CONDUCT FOR MEMBERS

1. In carrying out the functions and duties of a member of the National Native Title Tribunal in accordance with the *Native Title Act 1993* ('the Act'), a member must:
  - (i) behave honestly and with integrity;
  - (ii) act with care and diligence, and in a fair and impartial manner;
  - (iii) treat everyone with respect and courtesy and without harassment;
  - (iv) have regard to and behave in a way that upholds the [APS Values](#) and [APS Code of Conduct](#) which require the member to be:
    - (a) impartial;
    - (b) committed to service;
    - (c) accountable;
    - (d) respectful;
    - (e) ethical;
  - (v) comply with any lawful and reasonable direction given by the President in accordance with the responsibilities of the President under the Act (see, for example, s 123);
  - (vi) maintain appropriate confidentiality;
  - (vii) disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with those functions and duties;
  - (viii) use Commonwealth resources in a proper manner;
  - (ix) not provide false or misleading information in response to a request for information that is made for official purposes in connection with those functions and duties;
  - (x) not make improper use of:
    - (a) inside information; or
    - (b) the member's duties, status, power or authority;to gain, or seek to gain, a benefit or advantage for the member or for any other person;
  - (xi) comply with any other conduct requirement prescribed by Australian law, relating to the member's status, functions and/or duties.
2. For the purpose of this Code of Conduct:
  - (i) "Australian law" means:



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- (a) any Act of the Commonwealth, including the *Native Title Act 1993* or any instrument made under an Act; and
  - (b) any law of a State or Territory, including any instrument made under such a law.
3. It is acknowledged directions cannot be given to members about decisions they are empowered to make, where they are specifically appointed to carry out functions under the Act (for example, in the conduct of a future act determination inquiry).



**PROCEDURES FOR DEALING WITH AN ALLEGED BREACH OF THE  
CODE OF CONDUCT FOR  
MEMBERS OF THE NATIONAL NATIVE TITLE TRIBUNAL**

**1. Introduction**

- 1.1. Members of the National Native Title Tribunal (members) have adopted and agreed to be bound by the Code of Conduct for Members of the National Native Title Tribunal (Members' Code of Conduct).
- 1.2. Members have also agreed to procedures for dealing with alleged breaches of the Members' Code of Conduct set out in paragraphs 2 to 7 following.

**2. Complaints by an employee of the Tribunal**

**2.1. *Informal resolution***

- 2.1.1. Where a member of the staff assisting the Tribunal:
  - (a) has a complaint about the conduct of a member; and
  - (b) believes the conduct may constitute a breach of the Members' Code of Conduct; and
  - (c) the nature of the issue is such that informal resolution of the issue with the member is appropriate and may be possible,that staff member should seek informal resolution of the issue with the Tribunal member.
- 2.1.2. Seeking informal resolution is optional and the member of the staff assisting the Tribunal will need to make a judgment on the appropriateness of undertaking it.
- 2.1.3. The member of the staff assisting the Tribunal may wish to discuss the possible informal resolution of the issue with his or her supervisor, manager or deputy registrar.

**2.2. *Written complaints***

- 2.2.1. If:
  - (a) A member of the staff assisting the Tribunal does not wish to seek informal resolution of the issue; or
  - (b) informal resolution has been attempted without success,the member of the staff assisting the Tribunal may discuss the issue with the Registrar and provide a written complaint to the Registrar.
- 2.2.2. The Registrar will advise the President that a matter has been raised about the conduct of a member.



2.2.3. The President may decline to deal with the complaint if it is trivial, vexatious or frivolous.

2.2.4. If the complaint is not trivial, vexatious or frivolous, the President:

- (a) will advise the member concerned; and
- (b) will provide the member with an opportunity to comment; and
- (c) may request a written response from the member.

### **2.3. *Agreed course of action***

2.3.1. If, in light of the nature of the complaint, the President considers it appropriate, the President will ascertain whether the member of the staff assisting the Tribunal and the member will agree to a course of action (an agreed course of action) to deal with the matter.

2.3.2. The President may, following consultation with an agreement of the parties, use internal or external mediation services in an attempt to resolve the matter.

2.3.3. If resolution is achieved, all documentation in relation to the complaint and the resolution is to be destroyed.

### **2.4. *Formal investigation***

2.4.1. If the member of the staff assisting the Tribunal and the Tribunal member have not resolved the matter informally or established an agreed course of action, the President may appoint an appropriate person (not being a member, the Registrar, or member of the staff assisting the Tribunal) to investigate the complaint in accordance with the process set out below.

2.4.2. The member of the staff assisting the Tribunal and the member shall have the right to decline to have the matter dealt with under these procedures or to request variations to the procedures which they consider appropriate to the circumstances of the matter:

- (a) if the member of the staff assisting the Tribunal and the Tribunal member decline to have the matter dealt with under these procedures, the procedures have no further application; and
- (b) If variations are agreed to by the President, the member of the staff assisting the Tribunal and the member, the procedures followed will be varied accordingly.

2.4.3. If the President appoints a person to investigate the complaint, the investigator will:

- (a) undertake a fair and unbiased investigation, giving all persons involved an adequate opportunity to present their case;



- (b) conduct the investigation in accordance with the principles of procedural fairness;
- (c) maintain confidentiality and release information on a 'need to know' basis only;
- (d) interview all relevant people and provide each person with a record of the interview with that person;
- (e) prior to the interview, give each person the opportunity to nominate an independent person (a friend, or a legal or employee representative) to accompany them at the interview
- (f) following the interview/investigation give each party the right of reply, but not the right of cross examination; and
- (g) provide the President with a full report of the investigation including recommendations about the action (if any) that the President should take.

2.4.4. The report and its recommendations will be forwarded in writing to the President for action which will be taken as soon as possible to finalise the process.

2.4.5. Possible outcomes may include the following actions:

- (a) referral to the Attorney-General;
- (b) referral to the Australian Federal Police;
- (c) acknowledgment of fault and/or apology;
- (d) change in work practices; or
- (e) no further action.

2.4.6. The complainant and member will be advised of the action (if any) proposed by the President. Depending on the outcome of the investigation it may also be appropriate to advise other relevant persons.

2.4.7. Documentation relating to the investigation is confidential to the President unless disclosure is required by law.

## **2.5. *Protection for complainants***

2.5.1. The Tribunal expects all members of the staff assisting the Tribunal and Tribunal members to be treated in a fair and equitable manner. Accordingly, where a complaint is made in good faith under these procedures:

- (a) the protection provided under s. 16 of the *Public Service Act 1999*, Chapter 3 of the *Fair Work Act 2009* and Part 6 of the *Work Health and Safety Act 2011* will apply to the complainants; and



(b) any equivalent statutory protection afforded the member, including the provisions of the Native Title Act 1993, will apply to the member.

2.5.2. There is no specific protection against liability for defamation in respect of complaints. Where a complaint or a response to a complaint is made in good faith and to an authorised person there may be some protection available under the various State/Territory laws. The defences available vary from jurisdiction to jurisdiction.

2.5.3. If a complaint has been made in good faith and the complainant considers that he/she is suffering discrimination or harassment both personally and professionally as a result of the complaint, a review of action may be lodged under the *Public Service Regulations 1999* detailing the concerns. Claims will be investigated and appropriate action will be taken.

## **2.6. External review of a complaint**

2.6.1. Notwithstanding the internal processes which have been established, and in the absence of agreement to the contrary:

(a) member of the staff assisting the Tribunal may decide to make an application for review of a member's actions through processes external to the Tribunal; and/or

(b) a member may take action through other processes.

In that event, to the extent that the external application for review or the other external process deals with issues raised by the complaint, all internal processes for the resolution of those parts of the complaint subject to an external process may be suspended pending the outcome of the external process.

## **3. Complaints by another member**

3.1. Where a complaint is made by another member against a member, the complaint will be referred directly to the President.

3.2. The President may decide to deal with the complaint in accordance with the procedures adopted for dealing with complaints made by an employee (see paragraph 2) insofar as they can be applied.

## **4. Complaints by any other person**

### **4.1. Content of complaint**

4.1.1. Any person may make a complaint about the conduct of a member, in the course of providing mediation assistance or otherwise.

4.1.2. A complaint cannot be made about a member's decision, or the decision making process. If a person does not agree with a decision in which they



have an interest, they may be entitled to appeal or seek a review of the decision.

#### **4.2. *Lodging a complaint***

4.2.1. A person wishing to make a complaint, can:

- (a) email [DeputyRegistrar@nntt.gov.au](mailto:DeputyRegistrar@nntt.gov.au);
- (b) phone the Deputy Registrar's Office on (08) 9425 1088;
- (c) attend in person at the nearest Tribunal office (although if the matter is complex, the Tribunal may ask that it be put in writing).

4.2.2. If the complaint relates to the conduct of a member providing mediation services, a person wishing to make a complaint, can also contact the Registered Mediation Accreditation Body under which the mediator is accredited. For more information, please contact us on Freecall 1800 640 501 or visit the Mediator Standards Board at [www.msb.org.au](http://www.msb.org.au).

#### **4.3. *Investigation of a complaint***

4.3.1. Where a complaint is made by a person against a member, the complaint will be referred directly to the President.

4.3.2. The President may decide to deal with the complaint in accordance with the procedures adopted for dealing with complaints made by an employee (see paragraph 2) insofar as they can be applied.

4.3.3. At minimum, the Tribunal will act as soon as possible to:

- (a) acknowledge the complaint in writing;
- (b) try to resolve the matter informally;
- (c) investigate the matter, having regard to the appropriate standards;
- (d) if the outcome involves the appointment of an independent investigator, undertake this as quickly as possible;
- (e) contact the person who raised the matter and advise them of the outcome, either verbally or in writing.

#### **4.4. *Review of a complaint***

4.4.1. If a person is dissatisfied with the response to their complaint, they can seek an internal review by the President of the Tribunal.

4.4.2. If a person feels their complaint has not been dealt with adequately following an internal review, then they can contact the office of the [Commonwealth Ombudsman](#).



## **5. Complaints to be dealt with expeditiously**

All complaints will be dealt with by those involved, including the Registrar and the President, expeditiously. It is in the interests of all parties to endeavour to resolve matters as expeditiously as possible to ensure there can be an ongoing working relationship after the matter has been resolved.

## **6. Delegation of President's functions under these procedures**

The President may, by signed instrument, delegate to one or more of the Presidential members, all or any of the President's functions under these procedures.

## **7. Complaints against the President**

Where an employee of the Tribunal has a complaint about the conduct of the President and the employee believes the conduct may constitute a breach of the Members' Code of Conduct, the President will delegate to the longest serving Presidential member the President's functions under these procedures for the purposes of dealing with the complaint.

## **8. Tribunal to resource procedures**

The President will ensure that resources will be made available to ensure that complaints are dealt with expeditiously.

## **9. Principles of Procedural Fairness**

- 9.1. All members have the right to have complaints against them objectively and professionally investigated in a confidential manner.
- 9.2. For the purpose of this Code of Conduct, principles of procedural fairness require the President or presidential member or delegate undertaking the investigation to:
  - 9.2.1. Inform the member against whom an adverse decision may be made, as fully as possible of any allegations against them;
  - 9.2.2. Provide the member with an opportunity to put their case, whether an oral hearing or otherwise, wherever possible;
  - 9.2.3. Hear all parties to a matter and consider all arguments, where a decision has to be made between competing interests;
  - 9.2.4. Ensure that no person judges their own case or a case in which they have a direct interest; and
  - 9.2.5. Act fairly, promptly and without bias in making decisions.