



AUSTRALIAN WATER BROKERS ASSOCIATION

CODE OF ETHICS AND STANDARDS

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Duties to Clients and Customers

Article 1

When representing a buyer, seller or other client; Brokers pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve Brokers of their obligation to treat all parties honestly.

- **Standard 1.1** As used in this Code of Ethics, "client" means the person(s) or entity (s) with whom a Broker or a Broker's firm has an agency or legally recognised non-agency relationship; "customer" means a party to a water transaction who receives information, services, or benefits but has no contractual relationship with the Broker or the Broker's firm; "and "Broker" means a water Broker acting as an agent or in a legally recognized non-agency capacity.
- **Standard 1.2** Brokers, in attempting to secure bids to buy and bids to sell shall not deliberately mislead clients as to market value.
- **Standard 1.3** Brokers may represent the seller (bid) and buyer (bids) in the same transaction only after full disclosure to both parties.
- **Standard 1.4** Brokers shall submit bids and offers objectively and as quickly as possible.
- **Standard 1.5** When acting as listing Brokers, Brokers shall continue to submit to their client all bids and counter-bids until closing or execution of a trade. Brokers shall not be obligated to continue to market the water after a bid has been accepted by the seller.
- **Standard 1.6** Brokers, acting for buyers, shall submit to their client all offers and counter offers until acceptance but have no obligation to continue to offer water to their clients after an offer has been accepted.
- **Standard 1.7** When entering into listing contracts, Brokers must advise sellers
 - the Broker's company policies regarding cooperation and the amount(s) of any compensation that will be bided to other Brokers
 - any potential for listing Brokers to act as disclosed dual agents, e.g. buyer agents.
- **Standard 1.8** When entering into buyer agreements, Brokers must advise potential clients of:
 - the amount of compensation to be paid by the client;
 - the potential for additional or offsetting compensation from other Brokers, from the seller, or from other parties;
 - any potential to act as a dual agent, e.g. listing Broker
 - the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of bids as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.
- **Standard 1.9** Brokers, in response to inquiries from buyers or cooperating Brokers shall, with the sellers' approval, disclose the existence of bids on the water.

Article 2

Brokers shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the water or the transaction.

Article 3

Brokers shall cooperate with other Brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another Broker.

- **Standard 3.1** When seeking information from another Broker concerning a water parcel, Brokers shall disclose their Broker status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their representational status.

Article 4

Brokers shall not acquire an interest in or buy or present bids from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, without making their true position known to the client or the client's Broker. In selling water they own, or in which they have any interest, Brokers shall reveal their ownership to the purchaser or the purchaser's Broker.

- **Standard 4.1** For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by Brokers prior to the signing of any contract.

Article 5

Brokers shall not undertake to provide professional services concerning a water parcel or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

Brokers shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

- **Standard 6.1** Brokers shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion.

Article 7

Brokers shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their transaction in trust for other persons, such as deposits, clients' monies, and other like items.

Article 8

Brokers, for the protection of all parties, shall assure whenever possible that all agreements related to water transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing.

- **Standard 8.1** For the protection of all parties, Brokers shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of water are kept current through the use of written extensions or amendments.

Duties to the Public

Article 9

Brokers shall not deny equal professional services to any person for reasons of race, colour, religion, sex, handicap, familial status, or national origin. Brokers, in their water broking practices, shall not be parties to any plan or agreement to discriminate against any person or persons on the basis of race, colour, religion, sex, handicap, familial status, or national origin.

Article 10

The services which Brokers provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific water dealings in which they engage. Brokers shall not undertake to provide specialised professional services concerning a type of water or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of water or service, or unless the facts are fully disclosed to the client.

- **Standard 10.1** When Brokers prepare opinions of water value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a bid, such opinions shall include the following:
 - identification of the subject water
 - date prepared
 - defined value or price
 - limiting conditions,
 - any present or contemplated interest
 - basis for the opinion, including applicable market data
 - if the opinion is not an valuation, a statement to that effect
- **Standard 10.2** When Brokers provide consultative services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If Brokerage or transaction services are to be provided in addition to consultative services, a separate compensation may be paid with prior agreement between the client and the Broker.
- **Standard 10.3** The competency required by Article 11 relates to services contracted for between Brokers and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation.

Article 11

Brokers shall be careful at all times to present a true picture in their advertising and representations to the public. Brokers shall also ensure that their professional status (e.g., Broker, Valuer etc.) is clearly identifiable in any such advertising.

- **Standard 11.1** Brokers shall not bid for sale/lease or advertise water without authority. When acting as the listing Brokers, Brokers shall not quote a price different from that agreed upon with the seller.
- **Standard 11.2** Brokers, when advertising unlisted water for sale in which they have an ownership interest, shall disclose their status as both owners and as Brokers
- **Standard 11.3** Only Brokers who participated in the transaction as the listing Broker or cooperating Broker (selling Broker) may claim to have "sold" the water.

Article 12

Brokers shall not engage in activities that constitute the unauthorised practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 13

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, Brokers shall place all pertinent facts before the tribunals and shall take no action to disrupt or obstruct such processes.

- **Standard 13.1** Brokers shall not make any unauthorised disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with a tribunal hearing.
- **Standard 13.2** Brokers shall not obstruct the Tribunal's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander or defamation against any party to a tribunal or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal.
- **Standard 13.3** Brokers shall not intentionally impede the Tribunal's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction.

Duties to Brokers

Article 14

Brokers shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

- **Standard 14.1** Brokers shall not knowingly or recklessly file false or unfounded ethics complaints.

Article 15

Brokers shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive Brokerage relationship agreements that other Brokers have with clients.

- **Standard 15.1** Article 15 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other Brokers involving commission, fees, compensation or other forms of payment or expenses.
- **Standard 15.2** Article 15 does not preclude Brokers from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another Broker. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard.
- **Standard 15.3** Article 15 does not preclude Brokers from contacting the client of another Broker for the purpose of bidding to provide, or entering into a contract to provide, a different type of water sales service unrelated to the type of service currently being provided (e.g., water management as opposed to Brokerage) or from bidding the same type of service for water not subject to other Brokers' exclusive agreements.
- **Standard 15.4** Brokers shall not solicit a listing which is currently listed exclusively with another Broker. However, if the listing Broker, when asked by the Broker, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing Broker and the client, the Broker may contact the owner to secure such information and may discuss the terms upon which the Broker might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.
- **Standard 15.5** When Brokers are contacted by the client of another Broker regarding the creation of an exclusive relationship to provide the same type of service, and Brokers have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement.
- **Standard 15.6** The fact that a prospect has retained a Broker as an exclusive representative or exclusive Broker in one or more past transactions does not preclude other Brokers from seeking such prospect's future business.
- **Standard 15.7** The fact that an exclusive agreement has been entered into with a Broker shall not preclude or inhibit any other Broker from entering into a similar agreement after the expiration of the prior agreement.
- **Standard 15.8** Brokers, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of water broking service.
- **Standard 15.9** Brokers, acting as buyer or tenant representatives or Brokers shall disclose that relationship to the seller's representative or Broker at first contact and shall provide written confirmation of that disclosure to the seller's representative or Broker.
- **Standard 15.10** Brokers, acting as representatives or Brokers; shall disclose that relationship to buyers as soon as practicable and shall provide written confirmation of such disclosure to buyers.
- **Standard 15.11** All dealings concerning water exclusively listed, or with buyers who are subject to an exclusive agreement shall be carried on with the client's representative or Broker, and not with the client, except with the consent of the client's representative or Broker or except where such dealings are initiated by the client. Before providing substantive services to prospects, Brokers shall ask prospects whether they are a party to any exclusive representation agreement. Brokers shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects.
- **Standard 15.12** Brokers are free to enter into contractual relationships or to negotiate with sellers, buyers or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent.
- **Standard 15.13** In cooperative transactions Brokers shall compensate cooperating Brokers (principal Brokers).
- **Standard 15.14** Advertising giving notice of water for sale or exchange shall not be placed without consent of the seller.

Article 16

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 16.4; Brokers shall submit the dispute to arbitration in accordance with the regulations of the Tribunal rather than litigate the matter.

In the event clients of Brokers wish to arbitrate contractual disputes arising out of water transactions, Brokers shall arbitrate those disputes provided the clients agree to be bound by the decision.

The obligation to participate in arbitration contemplated by this Article includes the obligation of Brokers (principals) to cause their firms to arbitrate and be bound by any award

- **Standard 16.1** The filing of litigation and refusal to withdraw from it by Brokers in an arbitrable matter constitutes a refusal to arbitrate.
- **Standard 16.2** Brokers, when acting solely as principals in a water transaction, are not obligated to arbitrate disputes with other Brokers absent a specific written agreement to the contrary
- **Standard 16.3** Specific non-contractual disputes that are subject to arbitration pursuant to Article 16 are:
 - Where a listing Broker has compensated a cooperating Broker and another cooperating Broker subsequently claims to be the procuring cause of the sale.
 - Where a buyer's Broker is compensated by the seller or landlord, and not by the listing Broker, and the listing Broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating Broker claims to be the procuring cause of sale.
 - Where a buyer representative is compensated by the buyer and, as a result, the listing Broker reduces the commission owed by the seller and, subsequent to such actions, another cooperating Broker claims to be the procuring cause of sale.
 - Where two or more listing Brokers claim entitlement to commission pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision.