Schedule 1 — Code of conduct

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1. Business integrity and diligence

(1) An industrial agent must not attempt to further a client's matter by unethical or dishonest means.

(2) An industrial agent must treat clients fairly and act in good faith, having regard to a client's position of dependence on the agent and the high degree of trust which a client is entitled to place in the agent.

(3) An industrial agent must be frank and open with a client and others (if the interests of the client allow), and must give a client a candid opinion on a matter in which the agent acts for the client.

(4) An industrial agent must take action that is necessary and reasonably available to protect and advance a client's interests, consistent with the agent's retainer and this code of conduct.

(5) An industrial agent must not give advice to advance an illegal purpose.

2. Breach of code by others

(1) An industrial agent must not knowingly assist or seek to induce another person to breach this code of conduct.

(2) An industrial agent must ensure that any principal officer or employee of the agent does not do or omit to do an act that would be a breach of this code of conduct if done or omitted by the agent.

3. Completing work

(1) An industrial agent must use best endeavours to complete work on behalf of a client within a reasonable time.

(2) If an industrial agent accepts instructions from a client and identifies that the work cannot be done within a reasonable time, the agent must inform the client.

(3) An industrial agent must not take unnecessary steps or do work in a manner that increases costs to a client.

(4) An industrial agent must try to reach a solution by settlement rather than commence or continue proceedings, if it is in the best interests of the client to do so.

4. Record keeping

An industrial agent must keep up-to-date records of matters for which the agent is responsible.

5. Communication with others

(1) An industrial agent must not directly or indirectly communicate with a client of a legal practitioner or another industrial agent, except with the express approval of that legal practitioner or other industrial agent.

(2) An industrial agent must not instruct another person to —

- (a) communicate with an opposing party with a view to obtaining admissions contrary to the interests of that party; or
- (b) engage in illegal conduct; or
- (c) do anything that would be improper for the agent to do themselves.

(3) Subject to subclause (2), an industrial agent may instruct another person to make observations of an opposing party if those observations are directed towards finding evidence that might be tendered at the hearing of a matter.

6. Confidentiality

(1) An industrial agent must not directly or indirectly record, disclose or make use of confidential information without a client's consent except to the extent —

- (a) required by law, rule of court or court order; or
- (b) necessary for replying to or defending any charge of criminal conduct brought against the agent; or
- (c) necessary for responding to an inquiry under section 97O(1) of the Act or a hearing under section 97O(4) of the Act.

(2) An industrial agent must endeavour to establish and maintain a relationship of trust and confidence with each client.

(3) An industrial agent must emphasise to a client that, in order for the agent to serve the client's interests, the client must be honest and open with information, even if the client believes it is embarrassing or harmful.

7. Conflict of interest

(1) An industrial agent must disclose to a client any conflict of interest that the agent has or may have in matters concerning the client.

(2) An industrial agent must not act or continue to act on behalf of a client if to do so would or may give rise to a conflict of interest, unless —

(a) the client has been fully informed of the nature and implications of the conflict; and

(b) the client consents to the agent acting or continuing to act on behalf of the client.

8. Proceedings

(1) An industrial agent must not knowingly deceive or mislead the Commission or a court.

(2) An industrial agent must —

(a) act with courtesy to the Commission or a court; and

(b) avoid unnecessary expense and waste of the Commission's or a court's time; and

(c) on request, inform the Commission or a court of the probable length of the case; and

(d) inform the Commission or a court of the possibility of a settlement, provided the agent can do so without revealing the existence or content of "without prejudice" communications; and

(e) inform the Commission or a court of any development that affects the information already before the Commission or the court, subject to this code of conduct; and

(f) fulfil any undertaking given by them to the Commission or a court.

(3) If an order for discovery is made, an industrial agent must examine all documents within the client's possession, custody or power and ensure that the order is complied with, even if the documents are adverse to the client's interests.

(4) An industrial agent must not put a question in cross-examination that affects the credibility of a witness by attacking the witness's character unless —

(a) the questioning is relevant to the inquiry; and

(b) there are reasonable grounds to do so.

Example for this subclause:

Putting questions to a witness suggesting fraud, misconduct or criminality must be relevant to the facts in issue and not for the sole purpose of attacking the witness's character.

(5) An industrial agent must, during proceedings in the Commission or a court, clearly distinguish between —

(a) statements that are intended to be statements of fact made by the agent; and

(b) statements that are made on the instructions that the agent has received from a client and which depend on the credibility of the client.

9. Advertising

An industrial agent must not engage in promotional conduct or advertising about the agent's skills, experience, fees, or results in a way that is, or is likely to be, misleading or deceptive.

10. Withdrawal

(1) A client may change industrial agent at any time without giving a reason, and the agent must take all reasonable steps to facilitate this change, subject to the satisfaction of any lien the agent might have taken.

(2) If a client engages another industrial agent, that agent must advise the client if they are of the opinion that the conduct of the preceding industrial agent in the matter might constitute grounds for disciplinary action (as defined in section 97P(2) of the Act).

(3) An industrial agent may withdraw from representing a client —

(a) at any time and for any reason, if the withdrawal will not cause significant harm to the client's interests, and the client is informed of the consequences of, and consents to, the withdrawal; or

(b) if the industrial agent reasonably believes that continued engagement in the matter may have an adverse effect on the agent's health; or

(c) if the client breaches a written agreement with the agent regarding fees or expenses; or

(d) if the client makes material misrepresentations about the facts of the matter to the agent; or

(e) if the agent has conflicting or adverse interests to a client in a matter; or

(f) if withdrawal is necessary to avoid the agent breaching this code of conduct; or

(g) for any other good reason.

(4) If an industrial agent withdraws from representing a client, the agent must take reasonable care to avoid foreseeable harm to the client, including by —

(a) giving reasonable notice to the client; and

(b) allowing reasonable time for the engagement of a new industrial agent; and

(c) cooperating with the new industrial agent; and

(d) promptly turning over all papers and property and paying to the client any moneys to which the client is entitled.

11. Fees

(1) An industrial agent must, as soon as possible, inform a client in writing of the agent's costs and the basis for those costs.

(2) During the course of a retainer, an industrial agent must promptly advise the client of circumstances likely to have a substantial effect on the amount, or the basis of calculation, of costs or disbursements.

12. Trust moneys

(1) An industrial agent must not hold, for or on behalf of a client or other party, moneys in trust without the written authorisation of that person.

(2) An industrial agent who receives money for or on behalf of a person must hold the money in trust for that person and must pay or disburse the money as the person directs, subject to the terms of the trust and any lien or lawful claim of the agent.

(3) An industrial agent must deposit the money in a trust account as soon as practicable after receipt.

(4) An industrial agent may withdraw money from the trust account in accordance with an order of the Commission or a court.

(5) An industrial agent must keep detailed accounts of trust money they receive, and of disbursements or other dealings with that money —

(a) to accurately disclose the state of the trust account and dealings with money deposited in the trust account; and

(b) to enable the accounts to be conveniently and properly audited.

13. Trust accounts to be audited

(1) An industrial agent must —

(a) have the agent's trust account audited for each financial year by a chartered accountant at the agent's cost or expense; and

(b) lodge with the Registrar by 31 October in each year a certificate from the auditor which certifies that —

(i) the trust account has been properly kept in the previous financial year; and

(ii) all money received or paid into that account has been properly and lawfully dealt with; and

(iii) persons entitled to the trust money have been paid.

(2) An industrial agent must, within 7 days after a request in writing by an auditor, produce to the auditor all books, documents and accounts that the auditor might require to carry out an audit under this code of conduct.