



APWA Code of Conduct and Complaints Process

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A. INTRODUCTION

The Australian Phone Word Association (“APWA”) represents the interests of businesses which commercialise phonewords. Specifically, APWA aims to:

- provide Members with updates of industry specific reforms and developments;
- establish, monitor and enforce an industry Code of Conduct;
- liaise with various government bodies and telecommunication providers on behalf of Members;
- develop systems and products that maximise the benefits of phonewords for APWA Members and phoneword users generally; and
- generally further the interests its Members.

B. APWA'S STATEMENT OF ETHICAL PRINCIPLES

The following principles guide development of the APWA Code of Conduct:

- **Honesty:** Members should act honestly and truthfully in their dealings with their clients and the public.
- **Respect:** Members should act with respect for the dignity of their profession and their organisation and with respect for the dignity of their clients and the public.
- **Integrity:** Members should act openly in their dealings with clients and colleagues and must not mislead their clients, the public or their colleagues.

The Principles that the Complaints Process seeks to apply are:

- **Fairness:** the process should be fair to all parties.
- **Accountable:** the process should report outcomes of hearings and give reasons for its decisions.
- **Accessible:** the process should be available to members in plain language, at no cost.
- **Efficient:** the process should be conducted in a timely manner with adequate assistance provided to complainants to help them prepare a complaint.
- **Effective:** the process should provide sanctions appropriate to an offence committed and provide an opportunity to monitor those sanctions.
- **Maintain professional integrity:** the process should be adequately resourced and ensure sanctions are seen to be effective and enforceable.
- **Data collection:** the process should provide for collection and analysis of complaint data.
- **Process review:** the process should be reviewed periodically to ensure the Code of Conduct is effective and complaints are handled efficiently.

1. **To Whom does this Code of Conduct and Complaints Process apply?**
 - 1.1 This Code of Conduct applies to Members of APWA throughout Australia only. APWA will only monitor this Code and enforce it if necessary against a Member of APWA.
 - 1.2 This Code of Conduct does not replace nor override any law.
 - 1.3 Any person may file a complaint under the Complaints Process alleging a breach of the Code of Conduct by an APWA Member. The person filing the complaint need not be a member of APWA.
 - 1.4 Only the Ethics Committee of APWA may hear and rule on a complaint under the Complaints Process.
 - 1.5 Where a member of the Ethics Committee, the President of APWA or their delegated representative is, or becomes aware that they have an interest that will make it difficult for them to discharge their duties under the Complaints Process or that may bring the Complaints Process into disrepute they must declare that interest and stand aside from the Complaint Process.
 - 1.6 A person who has stood aside under s1.5 may act as a witness.
 - 1.7 The Complaints Process does not replace nor override any rights available to a person at law.
2. **Definitions used in the Code of Conduct and Complaints Process you need to be aware of**
 - 2.1 **APWA** means the Australian Phone Word Association.
 - 2.2 **Active Service** has the meaning given in section 3.75B of Division 7A of Part 5 of Chapter 3 of the Numbering Plan.
 - 2.3 **Active Service Requirement** means the requirement to connect a Smartnumber to an Active Service as provided in section 3.75P of Division 7A of Part 5 of Chapter 3 of the Numbering Plan.
 - 2.4 **Code of Conduct** means this APWA Code of Conduct and subsequent amendments endorsed by the Board of APWA and includes the Complaints Process.
 - 2.5 **Complaint** means a complaint alleging a breach of the Code of Conduct, supported by fact.
 - 2.6 **Complainant** means an individual that has made a Complaint to APWA.
 - 2.7 **Ethics Committee** means that Committee delegated by the Board of APWA having the power to decide on matters related to the Code of Conduct under section 24 of the APWA Constitution.
 - 2.8 **FLRN** means Free and Local Rate Number.
 - 2.9 **Member** means an organisation registered with APWA as a member.

- 2.10 **Numbering Plan** means the Telecommunications Number Plan 1997 established under the *Telecommunications 1997 (Cth)*.
- 2.11 **Phoneword** means an alphabetical keypad translation of a phone number.
- 2.12 **Professional Misconduct** means conduct by a Member that is a violation of the Code of Conduct that has serious consequences to a Complainant or was committed intentionally by the Member or both.
- 2.13 **President** means the President of APWA.
- 2.14 **ROU** means Rights of Use to a FLRN.
- 2.15 **Smartnumber** means a freephone or local rate number allocated under Division 7A of Part 5 of Chapter 3 of the Numbering Plan.
- 2.16 **Unsatisfactory Conduct** means conduct by a member that is neglectful of the Code of Conduct or that has minor consequences to a Complainant or both.

3. **CODE OF CONDUCT**

3.1 **Provision of a Phoneword for which a Member does not hold the ROU**

A Member must not:

- (a) represent that they hold the ROU for a Phoneword; or
- (b) purport to licence the ROU for a Phoneword;

in circumstances where they do not hold the ROU of that Phoneword and do not possess a right from the relevant holder of an ROU (if there is one) to licence that Phoneword.

3.2 **Representation that a Phoneword is not available**

A Member must not represent that a Phoneword is:

- (a) not available;
- (b) currently licensed; or
- (c) currently in use;

in circumstances where they are aware that another person (including a Member) is the holder of the ROU for that Phoneword and that Phoneword is in fact available for commercialisation.

3.3 **Alerting purchasers of Smartnumbers to the Active Service Requirement**

Where a Member sells, conveys or otherwise transfers the ROU in a Smartnumber to another person, the Member must make that person aware of:

- (a) the Active Service Requirement; and
- (b) the last date of connection of that Smartnumber to an Active Service (if any).

3.4 **Compliance with national laws and APWA Code of Conduct**

An APWA Member must not engage in an activity that reasonably appears to be a criminal offence or would constitute Professional Misconduct under the APWA Code of Conduct.

4. **ETHICS COMMITTEE**

- 4.1 Members of the Ethics Committee must be appointed by the Board of APWA.
- 4.2 Membership of the Ethics Committee must constitute:
 - (a) two persons who each represent a separate Member (but not including a Member who is subject to a Complaint); and
 - (b) one person from the Board of APWA.
- 4.3 A person may sit on the Ethics Committee for no longer than 6 months.

5. **COMPLAINTS PROCESS**

- 5.1 Where a Complainant has a Complaint related to a Member under the Code of Conduct, a Complainant must use this Complaints Process.
- 5.2 A Complaint must be in a writing on an authorised 'Code of Conduct Complaint Form' in the form described in Schedule 1.
- 5.3 APWA must provide the Complainant with a Code of Conduct Complaint Form and where requested, a copy of a Code of Conduct at no charge.
- 5.4 To be accepted by the Ethics Committee, the Code of Conduct Complaint Form must include:
 - (a) the Complainant's name, position (if any), address, phone number and be signed by the Complainant;
 - (b) identification of the section of the Code of Conduct alleged to have been breached; and
 - (c) facts to support the Complaint.
- 5.5 The Code of Conduct Complaint Form must be submitted in writing by the Complainant to the President of APWA at the address specified on the Complaint Form.
- 5.6 The President of APWA must examine the Complaint to determine if the complaint:
 - (a) meets the criteria specified under s5.4;
 - (b) has factual information that is sufficient and reliable; and

- (c) is not patently frivolous or vexatious in nature.
- 5.7 The President of APWA must acknowledge receipt of a Code of Conduct Complaint Form within 14 days of receipt, together with their determination under s5.6. In addition to acknowledgement of receipt, the President may also request further information from the Complainant to establish a fact or a section of Code of Conduct alleged to have been breached and, if the Complaints Process is to be continued, must give an estimate of the time when the Ethics Committee will contact the Complainant.
- 5.8 Where the President determines that a Complaint not be referred to the Ethics Committee, the President must provide written reasons for their decision to the Complainant within 14 days of receipt of the Complaint, together with a statement that the Complainant may re-submit their Complaint for further consideration within 14 days.
- 5.9 When the President of APWA determines that a Complaint warrants continuing the Complaints Process, the President must notify the APWA Ethics Committee.
- 5.10 Where a Complainant alleges a breach of the Code of Conduct by the President, or the President has a conflict of interest, the President must immediately refer all duties described under sections 5.6 to 5.9 of this Code of Conduct to another Director of APWA.
- 5.11 The APWA Ethics Committee must examine the Complaint within 30 days of receipt of the Code of Conduct Complaint Form from the President of APWA.
- 5.12 If the Ethics Committee determines that there are facts to support an allegation of a breach of the Code of Conduct, the Ethics Committee must:
- (a) provide the Member with details of the allegation and supporting facts and request the Member to respond within 30 days;
 - (b) notify the Complainant of the status of the Complaint;
 - (c) hold a hearing to determine whether a breach of a Code has occurred; and
 - (d) decide what penalty, if any, is appropriate.
- 5.13 A Member who has received a request by the Ethics Committee under s5.12(a) must co-operate with the request. Failure of a Member to co-operate may be taken into account by the Ethics Committee in any determination it makes.
- 5.14 Prior to a hearing the Ethics Committee must provide each party with copies of the other party's Complaint and response to the Complaint respectively.
- 5.15 The Ethics Committee may decide to call witnesses or rely on statements or both at a hearing.
- 5.16 The Ethics Committee may conduct a hearing in any way that it sees fit but must remain impartial until all parties to the Complaint have had the opportunity to make full representation to the Ethics Committee.

- 5.17 In relation to a Complaint against a Member the Ethics Committee has the power to make a finding of:
- (a) no case to answer; or
 - (b) Unsatisfactory Conduct; or
 - (c) Professional Misconduct.
- 5.18 Where the Ethics Committee makes a finding of Unsatisfactory Conduct against a Member it may impose as it sees fit:
- (a) a letter of censure; or
 - (b) a letter of censure and fine (providing the fine does not exceed 50% of the relevant Member's annual subscription).
- 5.19 Where the Ethics Committee makes a finding of Professional Misconduct against a Member it may impose as it sees fit:
- (a) suspension of APWA membership for a stated period;
 - (b) a fine not exceeding 100% of the highest annual membership subscription for any Member (regardless of the current annual membership subscription for the Member who is subject to Complaint); or
 - (c) permanent expulsion from APWA membership.
- 5.20 The Ethics Committee must provide the Complainant and the Member with a written notice of determination within 14 days of making a finding giving its decision and reasons for its decision.
- 5.21 Where a written notice of determination provided by the Ethics Committee under subsection 5.20 provides for the permanent expulsion of a Member from the APWA, that written notice of determination must also include a statement to the effect that:
- (a) a person who has been expelled from the APWA may submit a written request to the Board for formal reinstatement of membership;
 - (b) such a written request for reinstatement must provide evidence to demonstrate that the issues giving rise to breach of the Code of Conduct and reasons given by the Ethics Committee for expulsion of that person have been rectified; and
 - (c) prior to the Board formally reinstating a person to membership, that person must provide a bond equal to one year of membership to be held by the APWA and refundable to that member at the expiration of 24 months.

- 5.22 The Ethics Committee must publish the decision and reasons for the decision, as follows:
- (a) Unsatisfactorily Conduct - the decision and reasons for the decision must be published on the APWA website and circulated to Members, but must not identify the Member subject to the breach;
 - (b) Professional Misconduct - the decision and reasons for the decision must be published on the APWA website and circulated to Members and include identification of the Member subject to the breach.
- 5.23 The Ethics Committee must:
- (a) monitor compliance by a Member with any fine or censure imposed against them; and
 - (b) monitor conduct of a Member who has been expelled by the Ethics Committee from membership of the APWA but has been reinstated by the Board.
- 5.24 Despite anything else in this section 5 the Ethics Committee may in its discretion make a summary finding of Professional Misconduct against a Member in the following circumstances:
- (a) Where a Member has failed to pay a fine or comply with a censure imposed against them as a consequence of a finding of Unprofessional Conduct; or
 - (b) Where a finding of Unprofessional Conduct has been made by the Ethics Committee against a Member more than 2 times over a period of 2 years.
- 5.25 The Ethics Committee must undertake a review of Complaints received under this Complaints Process at such times as it deems necessary and no later than every 3 years to determine if amendments need to be made to the Code of Conduct or to this Complaints Process.

SCHEDULE 1 COMPLAINTS FORM

CONFIDENTIAL

COMPLAINT FORM - ALLEGED BREACH OF A CODE OF CONDUCT

Any individual may file a complaint alleging a breach of an APWA Code of Conduct by a Member of the APWA. This form must be completed in full and signed by the person lodging the complaint. Complaints must be filed within 12 months of the alleged breach of the Code of Conduct. A copy of the APWA Code of Conduct can be obtained from the APWA.

Complainant's Details

Name:

[Please Print your Name]

Address:

Contact Number(s):

[] _____ [] _____

Member's Details

Name:

[Please Print your Name]

Organisation Address:

Organisation Contact Number:

[] _____

Date of alleged Offence:

I affirm that to the best of my knowledge the information above is true, accurate, and complete.

SIGNATURE OF COMPLAINANT

DATE

Return marked "Confidential" to:
Att: President
Australian Phone Word Association
C/- Professional Association Management
Services Pty Ltd
First floor, 613 Canterbury Road
SURREY HILLS VIC 3127
Fax: (03) 9898 0249

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