



# **INSTITUTE OF LEGAL EXECUTIVES**

The Institute of Legal Executives (Victoria)  
ACN 004 670 928  
ABN 64 004 670 928

## **CODE OF CONDUCT<sup>1</sup>**

This Code applies to any person admitted to any category of membership of The Institute of Legal Executives (Victoria), employed in any capacity (e.g. Legal Executive, Solicitor, Conveyancer, Legal Secretary, Paralegal, Legal Clerk, Accounts Clerk); who shall, for the purposes of this Code, be hereinafter referred to as "Institute member".

### **DEFINITIONS**

Legal Profession Act	<i>Legal Profession Act 2004</i> (Victoria), and/or State and Territory equivalents, and any other relevant Act which is applicable to the member's employment and/or business activities
The Rules	Rules made pursuant to the Legal Profession Act, and to the <i>Conveyancers Act 2006</i> (Victoria) where applicable to the member, and/or State and Territory equivalents
The Institute	The Institute of Legal Executives (Victoria) ACN 004 670 928 (and The Institute of Legal Executives (Australia) Limited ACN 065 191 755)
The Law Institute	The Law Institute of Victoria, and/or State and Territory equivalents
The Legal Services Board	The Legal Services Board of Victoria, and/or State and Territory equivalents
Legal Executive	A Fellow of the Institute of Legal Executives (Victoria) or (Australia) holding a current certificate
Legal Practitioner	Solicitor and/or Barrister holding a current Practising Certificate
Conveyancer	A person not being a Legal Practitioner, who as an individual or under a business name or by a Corporate entity, acts for members of the public in conveyancing transactions for financial reward as provided in the <i>Conveyancers Act 2006</i> (Victoria), and/or State and Territory equivalents
Inconsistency	The applicable Law, whether by statute or common law, will prevail at all times and override this Code of Conduct to the extent of any inconsistency.

<sup>1</sup> The Code was first introduced in 1998. This version of the Code of Conduct, approved by the Council on 3 July 2008 replaces prior versions.  
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*PLEASE NOTE: The following are the minimum requirements of this Institute for membership purposes. Where higher and/or additional legislative requirements exist, such as those specified in the Legal Profession Act 2004 (Victoria), and/or Conveyancers Act 2006 (Victoria), and/or interstate equivalents, those higher and/or additional legislative requirements are adopted as the Institute's minimum requirements.*

**AN INSTITUTE MEMBER SHALL -**

- A. (a) Comply at all times with this Code, the Institute's Memorandum and Articles of Association, and the Legal Profession Act, and the Conveyancers Act where applicable to the member, and familiarise him/herself with the contents of the same.
- (b) Comply at all times with the general principles of professional conduct previously referred to in section 64 of the *Legal Practice Act 1996* and now embodied in the Legal Profession Act Rules, and with the Conveyancers Act Rules where applicable to the member, and/or State/Territory equivalents, notwithstanding the member's employment status.
- B. Provide the Institute with full particulars of employment, and residential details, as and when requested by the Institute, and keep the Institute informed of any change.
- C. Maintain appropriate professional indemnity insurance as required by the Institute, unless covered under an employer's policy of insurance.
  - (1) Institute members in self-employment shall –
    - (a) firstly comply with any legislative requirement applicable to the member;
    - (b) where that self-employment entails the member/s (or the member's business or company and/or employees) providing services to the public for fee or reward, maintain professional liability insurance for cover to the value of not less than \$1,500,000 for any one risk or such other higher amount as a reasonably prudent Institute member would insure for from time to time, save that this requirement shall not apply where the services are provided by the member/s direct to a Legal Practitioner/s and the member is covered by that Legal Practitioner/s policy of insurance; and
    - (c) maintain such deeds registers, lodging books and other records as would reasonably be expected of a professional person acting for the public; and
    - (d) where a Conveyancer, in all instances comply with the *Conveyancers Act 2006* (Victoria), and/or State and Territory equivalents.
- D. Where the Institute member is the person having effective control of a legal practice (where the member is also a Legal Practitioner) or of a business (e.g. where the member is also a Licensed Conveyancer), attend his or her main place of business for a substantial period during normal weekly hours of business, or if absent make appropriate supervisory and/or other arrangements.
- E. Properly and adequately supervise all staff employed by the Institute member.
- F. Give prompt attention to all matters conducted by the Institute member (or if applicable, the Institute member's employees), and communicate effectively and promptly with the Institute member's clients or the clients of the Institute member's employer.
- G. Give proper receipts for all funds received by him or her in the course of business and properly account to clients in respect to such funds, and maintain all proper and necessary records, which shall be submitted to audit at least annually if in self-employment.

- H. (a) Respond as a matter of priority to any request from the Council of the Institute or legally constituted Disciplinary Tribunal or Board of Enquiry of the Institute or the Law Institute or the Legal Services Board, or Consumer Affairs Victoria or the Business Licensing Authority where applicable, for information concerning a complaint made against the Institute member; and
- (b) Respond as a matter of priority to any lawful request for information from a statutory body empowered under the Legal Profession Act, or the Conveyancers Act where applicable.
- I. In the event of a material dispute or conflict between two of the Institute member's clients or Institute member's employer's clients, immediately refer both clients to an independent Solicitor or Institute member (where appropriate at the direction of the Institute member's employer) unless all clients agree in writing that the Institute member or firm (as appropriate) may continue to act for one of the parties and only where the Rules so permit.
- J. In the event that the file of a client goes beyond the expertise or competence of the Institute member immediately seek advice/refer the matter to his/her principal in the first instance, or if self-employed to a Solicitor or an Institute member with appropriate expertise.
- K. Ensure that he or she maintains and/or improves his or her knowledge of Law within his or her area of expertise.
- L. Exercise due diligence in his/her employment duties.
- M. (a) Assist other Institute members and members of the profession where possible in a prompt and courteous manner; and
- (b) Be courteous at all times to others in the course of the member's employment, whether they be clients or other professionals.
- N. Honour all or any undertakings/promises, whether oral or in writing, given to another Institute member, Legal Practitioner, Conveyancer, and any other person with whom the Institute member deals in the course of his/her employment.
- O. Bring to the attention of the Institute any breach or possible breach of this Code by the Institute member or other Institute member.
- P. Surrender his or her membership and membership card and/or Certificates (and where applicable his/her licence or authorisation to practice) upon being found guilty of a breach of this Code and/or the Memorandum and Articles of Association of the Institute by any legally constituted Disciplinary Tribunal or Board of Enquiry of the Institute, or upon being found guilty of a criminal offence (other than a traffic offence) by a Court of competent jurisdiction and being requested to do so by the Institute.
- Q. (a) If a principal, only allow on his/her firm's letterhead the correct description of any principal or employee, and if naming a member of the Institute shall obtain evidence of current membership from the Institute; and
- (b) If the principal of a firm, ensure that the documentation of the firm makes the member's personal membership status clear so as not to mislead any person.
- R. Comply with the Institute's Continuing Professional Development guidelines, and where applicable with any CPD required by the Rules.

NB: CPD activities required by the Rules, where applicable to the member, may also be complying CPD points for Institute membership/renewal purposes.

**PURSUANT TO THIS CODE AN INSTITUTE MEMBER SHALL NOT -**

1. Breach the provisions of the Legal Profession Act, or the Conveyancers Act where applicable to the member.
2. Describe, or permit him or herself to be described so as in any way to mislead members of the public or the profession in relation to the qualifications and membership category held by the Institute member.

Only a Fellow of the Institute (or other Institute of Legal Executives) holding a current certificate may describe him/herself as a "Legal Executive" (Fellows (Retired) and Fellows (Honorary Life Members) are included in this category, the sub-categories being internal to the Institute<sup>2</sup>). A member who is a Fellow of another Institute of Legal Executives, but not a Fellow of the Institute, shall ensure that an appropriate designation (i.e. NZ, WA, UK, Ireland) is appended to her/his description.

Only a paid-up Fellow of the Institute of Legal Executives (Victoria) may exercise the privileges of a Fellow of the Institute of Legal Executives (Victoria).

3. Administer Oaths or take Declarations unless a current (paid up) Fellow of the Institute or otherwise authorised by Law to do so (e.g. admitted to practise as an Australian Legal Practitioner).
4. Engage in unethical conduct whether sanctioned by a principal or otherwise.
5. Engage in conduct that would be regarded by the Institute as likely to bring the Institute, any member of the Institute, or the legal profession generally, into disrepute.
6. Breach standards that would be regarded by the Institute as showing a serious disregard for proper professional behaviour.
7. Act without regard to common standards of courtesy so as to bring the Institute, any member of the Institute, or the legal profession generally, into disrepute.
8. Carry out legal work for gain or reward, as referred in the Legal Profession Act, unless licensed or authorised by Law to do so; and shall not continue to carry out legal work for gain or reward if his or her licence or authority to practise is revoked or required to be surrendered by a body having the legislative right to do so or by a Court of competent jurisdiction.
9. Carry out conveyancing work for gain or reward, as referred to in the Conveyancers Act (or any other work which, by Law, requires a licence and/or authorisation), unless licensed or authorised by Law to do so; and shall not continue to carry out conveyancing work for gain or reward (or any other work requiring a licence and/or authorisation) if his or her licence or authority to do so is revoked or required to be surrendered by a body having the legislative right to do so or by a Court of competent jurisdiction.
10. Share profit costs other than as permitted by Law.
11. Accept any commission or benefit from any Real Estate Agent (or other person) for any recommendation given by the Institute member to a client of the Institute member, or pay any commission or benefit to any Real Estate Agent (or other person) for a client recommendation given to the Institute member, unless permitted by Law and in the best interests of the client, and unless full and complete disclosure is made to the client and consent obtained from that client, and provided always that the Rules permit.

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<sup>2</sup> for subscription and other purposes  
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12. Engage in false or misleading conduct.
13. Give or seek an Undertaking in the course of employment which relies upon performance by a third party.
14. Knowingly make a statement which purports to be a statement of fact and which the Institute member knows to be false –
  - (a) to a person in the course of a relationship of Institute member and Institute member's client; or
  - (b) to any legally constituted Disciplinary Tribunal or Board of Enquiry of the Institute or the Law Institute or the Legal Services Board, or Consumer Affairs Victoria or the Business Licensing Authority if applicable; or
  - (c) to a person, whether an Institute member or Conveyancer or Legal Practitioner or not, if the statement was made by the Institute member,
 

in the course of the Institute member's conveyancing or legal practice or the Institute member's employer's conveyancing or legal practice and related to a matter in respect of which the Institute member/employer acts or holds him or herself out as acting on behalf of his or her client.
15. Fail to comply with any undertaking given to the Council of the Institute or legally constituted Disciplinary Tribunal or Board of Enquiry of the Institute or the Law Institute or the Legal Services Board, or Consumer Affairs Victoria or the Business Licensing Authority if applicable.
16. Operate a trust account unless authorised by Law to do so.
17. Where applicable, receive money belonging to another person in the course of the member's business other than where authorised by Law to do so.
18. Knowingly, directly or indirectly, borrow moneys from a client of the Institute member or the firm by which the Institute member is employed, or a family member or partner of a client (other than as may be permitted by the Rules).
19. Defraud or act in the defrauding of any person.
20. Act for both parties to a transaction unless each party to the transaction executes, prior to the commencement of the transaction or as soon as practicable thereafter, an acknowledgment that he, she or it is aware that the Institute member/employer acts on behalf of all parties in the transaction and that should a conflict arise between the parties, the Institute member will not act for either party unless authorised in writing to do so by the other and unless the Rules permit.
21. Agree to engage in employment duties for which he/she is not qualified or competent other than at the direction and under the direct training and supervision of a Legal Practitioner and/or Legal Executive and/or Licensed Conveyancer.
22. Engage in conduct which would result in a conflict between clients or between the personal interests of the Institute member and a client, or allow such situation to continue.
23. Encourage the client of another to engage the Institute member.
24. Directly contact the client of another unless with the prior consent of the person acting on behalf of that client, or where sanctioned by an appropriate body such as the Law Institute where the client is a client of a Legal Practitioner and/or where sanctioned by Consumer Affairs Victoria where the client is a client of a Licensed Conveyancer.

25. Exercise any lien over documents or monies belonging to a client, unless admitted to practise as a Legal Practitioner, and/or otherwise permitted by Law.
26. Knowingly employ any person who has been disqualified from Institute membership or from practising as a Legal Practitioner or Licensed Conveyancer or legal services provider, and not subsequently reinstated or pardoned (except where permitted by law or by a body or Court of competent jurisdiction to be so employed), within the Commonwealth of Australia.
27. If a principal, allow any person to be described on his/her letterhead as a 'Legal Executive' unless a (paid-up) Fellow of this or any similar Institute of Legal Executives (and provided that an ex-Victorian or Australian designation shall be shown where applicable).
28. Commit any legal offence (minor road traffic offence excepted).
29. Discriminate against any person on the basis of ethnic origins, religious beliefs, sex, sexual orientation, or disability.
30. Take unfair or unconscionable advantage of any person due to their lack of education or any disability.



NB:

- Where this Code refers to a member acting on behalf of clients or being responsible for the management of files in the context of the provision of legal work or legal advice, this shall be read together with the words "under the supervision and on the instructions of a Legal Practitioner, unless otherwise permitted by Law".
- In order to clarify any unintended interpretation, the words 'legal services', included many years ago in Memorandum Clause 2(iii), are to be read as meaning any services, ancillary to legal services, which are permitted to be performed by non-legal practitioners; and are not to be read as meaning legal services as defined in the *Legal Profession Act 2004*, which can only be provided by Legal Practitioners. *Only* Legal Practitioners admitted to practise and holding a current Practising Certificate are permitted by Law to give legal advice, do legal work, engage in legal practice, and/or provide legal services<sup>3</sup>.
- The Institute cannot assist any person in relation to the setting up of a Conveyancing business or obtaining a Licence - the applicable organisations for information are the Business Licensing Authority and Consumer Affairs Victoria; and the Legal Services Board in regard to breaches of the *Legal Profession Act*.

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<sup>3</sup> pursuant to the *Legal Profession Act*  
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## CONDUCT DETERMINATIONS

In order to fairly consider any complaint made against a member, if required in the particular circumstances, the client having ownership of the client privilege and confidentiality in respect to the particular matter must provide written consent for the Disciplinary Committee/the Council of the Institute (and its Employees) to view the file the subject of the complaint. If a client refuses to provide such written consent, where viewing of the file is necessary to properly consider the complaint, the complaint shall be dismissed.

## APPEALS

1. Where an appeal is made against a determination of the Disciplinary Committee of the Institute, there shall be provision for the full Council to hear and determine appeals:
  - (i) against the decision by the Disciplinary Committee to revoke or suspend membership or to impose conditions relating to the continued membership of the applicant; and
  - (ii) with respect to all other matters provided for in the Memorandum and Articles of Association of the Institute and the Institute's Code of Conduct.
2. An appeal against the determination of the Disciplinary Committee shall be made by giving notice in writing to the Secretary of the Institute within thirty (30) days of receipt of notice of the decision of the Disciplinary Committee and shall be accompanied by such fee as is prescribed or fixed by the Institute from time to time as the case may be.
3. On receipt of a notice of appeal the Council shall within a reasonable time give notice of a date, not earlier than fourteen (14) days after the giving of the notice, for the hearing of the appeal. A venue and time for the hearing of the appeal on that date shall be given to the applicant not less than seven (7) days before such hearing.
4. Only the appellant and the Institute shall be entitled:
  - (a) to be legally represented and/or to appear personally before the Council
  - (b) to make written submissions to the Council; and
  - (c) to call such relevant evidence as they wish.
5. The Council shall reach its decision as expeditiously as possible and may:
  - (a) adjourn the appeal,
  - (b) disallow the appeal;
  - (c) allow the appeal; or
  - (d) vary the decision and declare that the decision appealed from as so varied is to have effect.

In reaching its decision the Council shall be entitled to act upon facts as they existed at the date of the decision and/or as they exist at the time of the hearing of the appeal.
6. The Council shall give notice in writing of the decision to the appellant and any other party who took part in the appeal.
7. The Council shall take such action as is necessary to give effect to the decision and to advise all interested parties of the decision, which shall include but not be limited to:
  - (a) publishing a notice of such determination in any Journal or newspaper in general circulation;
  - (b) advise the parties who made the original complaint; and
  - (c) any related industry representatives who may have an interest in the outcome of the appeal.



# SOME GUIDELINES FOR MEMBERS

## MEMBERSHIP DESCRIPTIONS (on letterhead etc.)<sup>4</sup>

The Council has drawn up the following guidelines to assist members....

**Fellows** are requested to describe themselves as –

‘A Fellow of the Institute of Legal Executives (Victoria)’, particularly for the purpose of administering an Oath or taking a Declaration,

-and to include after their name ‘F.Inst.L.Ex.’,

-and if described as a ‘Legal Executive’ on stationery, to include after their name ‘F.Inst.L.Ex.’.

Fellows in all categories (i.e. Fellow, Fellow (Retired), and Fellow (Honorary Life Member)) are a ‘Fellow of the Institute’, the sub-categories being internal to the Institute for subscription and other purposes.

**Other categories** are requested to describe themselves as –

“ ‘Provisional’/ ‘Associate’/ ‘Affiliate’/ ‘Accountancy’ – Institute of Legal Executives (Victoria)”.

Use of initials after a name, designating membership, by other than Fellows is not desirable.

Whilst the Council is delighted that Institute membership is shown on so many letterheads, as Institute membership is only granted on an individual basis, if membership is shown on public documents then the member’s name must be clearly shown. It is not acceptable for a business to show a description at the foot of correspondence/documentation such as ‘Member of Institute of Legal Executives’ without the member’s name, and the above criteria need to be followed in respect to a member’s correct description.

## STAMPS FOR FELLOWS

This is the general format - MARY CITIZEN F.Inst.L.Ex. of 1 Smith Street Burwood. A Fellow of the Institute of Legal Executives (Victoria) holding a current certificate.

You should ensure that your stamp does *not* say ‘practising Certificate’, as this could be confused by some parties with a Solicitor’s Practising Certificate.

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<sup>4</sup> guidelines were first published in the November/December 2002 Journal  
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# APPOINTMENT TO COUNCIL

## (additional) MEMBERSHIP CRITERIA<sup>5</sup>

The Council of the Institute, pursuant to the Memorandum and Articles of Association of the Institute, has the authority to implement By-Laws provided that these fall within the purview of the Memorandum and Articles of Association.

Pursuant to the response received from members to the Institute's 1995 Survey relating to a Code of Conduct, membership levels, and membership of persons admitted to practise as Legal Practitioners, the Council of the Institute has introduced By-Laws to the effect that -

1. If an applicant for membership possesses the academic and experiential requirements of a category of membership other than Provisional or Affiliate, the applicant may be admitted directly into the appropriate level of membership without first having to be admitted into another category of membership.
2. In order to be nominated as a member of the Council of the Institute, as well as the prerequisite of first being admitted to Fellowship, and notwithstanding any other qualifications possessed by the nominee, the nominee must have firstly served a minimum total of three years in any one or more of the various categories of membership of the Institute of which at least one continuous and current year must be as a Fellow of the Institute (thus ensuring that any person elected to the Council will have the Institute's philosophy, aims and goals, in mind when acting as a Council member). The membership period referred to above shall be deemed satisfied if the applicant for membership of the Council has served these periods as a member/Fellow of The Institute of Legal Executives United Kingdom, New Zealand, Ireland, and/or Western Australia; and periods of membership of the National Federation of Paralegals (United States), The Institute of Law Clerks of Ontario (Canada), or Paralegals SA, shall be taken into account where appropriate [provided that the one continuous and current year as a Fellow referred to above must be as a Fellow of the Institute of Legal Executives (Victoria) or (Australia)].



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<sup>5</sup> introduced with the Code of Conduct in 1998 and revised by Council in February and December 2003  
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