

Boating Industry Association
CODE OF PRACTICE



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BIA's Mission Statement

To promote safe boating and facilities
through industry leadership.

To develop and promote professional
standards and services for our members
and the boating public.





Code Of Ethics

Member Companies are placed in a Position of Trust to

1. ACT HONESTLY AND FAIRLY IN ALL BUSINESS DEALINGS WITH THE CONSUMER
2. MAINTAIN PROFESSIONAL COURTESY AND INTEGRITY AT ALL TIMES
3. ENSURE ALL ADVERTISING AND REPRESENTATIONS ARE TRUTHFUL AND ACCURATE
4. AT ALL TIMES ACT IN AN ENVIRONMENTALLY RESPONSIBLE MANNER
5. DO ALL THAT IS POSSIBLE TO PROMOTE SAFE BOATING AND EDUCATION PRACTICES
6. RENDER ACCURATE, TRUTHFUL AND EXPERT ADVICE TO THE COMMUNITY
7. STRIVE FOR EXCELLENCE IN QUALITY OF SERVICE TO CUSTOMERS



Boating Industry Association

PART ONE

INTRODUCTION

1.1 FOREWORD

This Code of Practice ("the Code") has been prepared and adopted by the Boating Industry Association ("BIA").

The Code establishes standards of conduct for all BIA members to whom the Code is expressed to apply. Many of the provisions are a restatement of principles and practices already observed in the industry and provide:

- guidelines to members and customers;
- assistance to members and customers to understand their obligations and rights;
- guidelines for fair trading and environmental outcomes that can be achieved on an industry wide basis;
- guidance to members wanting to reduce avoidable costs and inconvenience by improving client relations and understanding principles likely to be taken into account in the resolution of complaints and enforcement of fair trading laws;
- consistency in the recreational boating industry which may eliminate complaints;
- assistance to persons engaged in conciliation, mediation and resolution of complaints;
- assistance to customers wanting to clarify their rights and reasonable expectations on sales, service and repair transactions;
- for consumers to be referred to members adhering to the Code;
- guidelines for members and recreational boaters to act in an environmentally responsible manner.

The Code demonstrates the high standards adopted by BIA members and the advantages and protection a consumer has in using the facilities and services offered by BIA members. BIA members aim to achieve "best practice" management goals and strive for quality assurance.

The Code demonstrates members' concern for environmental issues. Recreational boating facilities and services are not in themselves a significant source of pollution. Effective and practical management procedures will mitigate any harmful environmental effects.

BIA members will also encourage their customers/boat owners to accept their responsibilities as set out in Part 7 of

the Code. Simple reminders, precautions and recommended practices have been combined into the Code which encourages recreational boaters to be environmentally responsible. This information centres on boat operation, maintenance and preventative actions individuals can take to maintain clean-water and minimise the on-and near-shore impact of water based recreation.

Protecting the environment comes naturally to most boaters, because clean water is the foundation of enjoyable boating. A common sense approach while boating is thought to be the most effective way to protect the aquatic environment. A sixteen point checklist in Part 7 serves as a quick reference to important environmental concerns.

The principles set out in the Code are not intended to qualify, supplement or interpret the law but are to be read subject thereto.

The BIA will continually assess the Code's effectiveness. There will be a regular review and monitoring of the Code by the BIA and other interested parties to assess its continuing relevance, effectiveness and to identify need for change as the occasion demands.

1.2 AIMS & OBJECTIVES OF THE CODE OF PRACTICE

The aims and objectives of the Code of Practice are:

- 1.2.1 To record the ethics and obligations to be observed by all BIA members in the conduct of their business and in their dealings with others. The Code comprises the ethics, obligations, and other information in this document.
- 1.2.2 To promote industry self-regulation.
- 1.2.3 To maintain and enhance the reputation, standing and good name of the BIA and its members.
- 1.2.4 To promote public confidence in dealing with a BIA member.
- 1.2.5 To clarify all reasonable expectations of all parties to the Code.
- 1.2.6 To help prevent consumer/member problems.
- 1.2.7 To assist in the resolution of disputes, if and when they arise.
- 1.2.8 To outline the best management practices for design, operation, and maintenance of marinas and shipwright services.

- 1.2.9 To promote effective and practical management procedures which will mitigate any harmful environmental effects.

1.3 TO WHOM THE CODE APPLIES

The Code is applicable to:

- 1.3.1 All BIA members whose businesses involve the manufacture, sale or purchase of vessels, parts and accessories, operating and running requirements therefore and vessel storage, servicing and repair, ancillary and related marine services of all kinds. All references in the Code to BIA members are to those members only.
- 1.3.2 Consumers who deal with BIA members.
- 1.3.3 The general community in which BIA members work and live.

1.4 OBSERVANCE OF THE CODE

The BIA, in approving the Code, expects that its members will, in their business transactions carried on with consumers, conduct those transactions in accordance with the Code.

It is not intended that the Code should over-ride any principles of law, but members should realise that failure to observe the Code may, according to the circumstances, be conduct prejudicial to the interests of the BIA and may be the subject of disciplinary proceedings against the member.

Ignorance of the Code will not be accepted as an excuse for its non-observance, by either a member or by staff.

1.5 THE ETHICS

The ethics to be observed by members are:

- 1.5.1 Act honestly and fairly in all business dealings with the consumer.
- 1.5.2 Maintain professional courtesy and integrity at all times.
- 1.5.3 Ensure all advertising and representations are truthful

and accurate.

- 1.5.4 At all times act in an environmentally responsible manner.
- 1.5.5 Do all that is possible to promote safe boating and education practices.
- 1.5.6 Render accurate, truthful and expert advice to the community.
- 1.5.7 Strive for excellence in quality of service to customers.

1.6 INTERPRETATION

In this Code the following words and expressions have the meanings set out below:-

- "BIA"** means Boating Industry Association.
- "client"** means a person, firm or corporation who or which retains a member to represent that client's interests.
- "Code"** means this Code of Practice comprising the Ethics, Obligations and other information contained in this document.
- "consumer"** includes "client" and "customer".
- "customer"** means a person, firm or corporation who or which transacts business with a member but does not retain that member's services.
- "member"** means any member of the BIA.
- "broker"** means any member of the Ship and Yacht Brokers' Institute pertinent to the State who sells goods and receives a percentage of the sale price.
- "consignment"** goods accepted for sale by a vendor/agent at a fixed price.

Words denoting the singular include the plural and vice versa.

Words denoting individuals include corporations and vice versa.

Words denoting any gender include all genders.

PART TWO

MEMBER - OBLIGATIONS

2.1 GENERAL

In accordance with the provisions of this Code, members and their employees shall at all times:-

- 2.1.1 Be well versed in the provisions of the Code, understand them and conscientiously observe them at all times.
- 2.1.2 Be aware that ignorance of the Code is not accepted as an excuse for its non-observance, by either a member or staff members.
- 2.1.3 Not be influenced by inducements from any client or customer which will relieve a member from responsibility to strictly observe the Code.
- 2.1.4 Operate in a manner that will enhance and hold in good stead the reputation of the boating industry and its members.
- 2.1.5 Ensure the validity and accuracy of all documentation and that all legal requirements and statutory licences are maintained.
- 2.1.6 Observe proper standards of conduct and conform to recognised industry practices in regard to all sales transactions and maintain consumer confidentiality at all times.
- 2.1.7 Not mislead or deceive a consumer in relation to the condition of products and services being offered.
- 2.1.8 Be well informed regarding laws and public policy affecting the business and area of trading.
- 2.1.9 Provide a safe working environment for their employees and visitors to their premises.
- 2.1.10 Support the BIA in its prime aim and objective of promoting boating as a safe, pleasant, family pastime.
- 2.1.11 Promote their BIA membership by the display of the BIA logo and other identification material and endeavour to use all standard industry documentation as adopted by the BIA.
- 2.1.12 Not injure the professional reputation or practice of another member.
- 2.1.13 Conduct business and perform duties in free competition with fellow members.

- 2.1.14 Do all things possible to foster public interest in recreational boating.
- 2.1.15 Make information available to customers on safe handling, usage and enjoyment of boating products sold, drawing the customer's attention to the relevant legal requirements.
- 2.1.16 Value the support and confidence of the public as of paramount importance and not act in any way which would detrimentally affect or lose this support and confidence.
- 2.1.17 Implement and maintain a Management Plan and Work Practices, to ensure safety, as well as to prevent adverse environmental impact.
- 2.1.18 Conduct business in a manner conducive to protecting the environment in which the member and its customers operate.

2.2 ADVERTISING:

LAW: General provisions of the Fair Trading Act and the Trade Practices Act mean that all advertising should be truthful, accurate, unambiguous and not misleading in any way.

Specific provisions deal with false representations regarding supply of goods and services, standard, quality, value or grade of services. Prohibits false representations as to approval, affiliations, price, availability of facilities for the repair of goods or spare parts for goods.

MEMBERS ARE TO OBSERVE THE FOLLOWING:

- 2.2.1 Will not in any way misrepresent any product or service and ensure in any form of advertisement that all claims and descriptions are truthful, unambiguous, accurate and in no way misleading or deceptive in accordance with advertising guideline regulations.
- 2.2.2 Advertise only bona fide prices and products and to refrain from using innuendoes in advertising and selling that may cause consumers to be misled or deceived.
- 2.2.3 Advertise and sell the merits of products and services without exaggeration, concealment or misrepresentation.
- 2.2.4 Claims and descriptions in advertising by a member in relation to products and services will not be false, misleading or deceptive. Comparisons to be accurate and capable of substantiation. In particular, any comparison with other models of a different manufacturer will be based on similar criteria and shall not be represented in such a way as to mislead or deceive a consumer.
- 2.2.5 Refrain from making unwarranted criticisms of competitors or reflecting unfairly on their products, service or methods of doing business.

- 2.2.6 Advertisements will not make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.
- 2.2.7 Be able to support any statement regarding qualifications/experience.
- 2.2.8 **LAW:** It would be a breach of the Fair Trading Act if advertising could lead a client to believe that the firm has a relationship with a manufacturer that it does not have.
- PRINCIPLE:** Members wishing to advertise that they hold manufacturer's accreditation must ensure that they hold such accreditation and documentation to substantiate the claim.
- PRINCIPLE:** Members must obtain a manufacturer's permission to use their logo or name in any form of advertising.
- 2.2.9 **LAW:** A breach of the Fair Trading Act will occur if the possibility of extra charges is not made clear.
- PRINCIPLE:** Where a free service call or fixed service call is advertised it should specify all conditions and charges that apply.
- 2.2.10 Where discounts are advertised, details of how these are calculated should be itemised on the invoice and the members must have evidence to substantiate such discounts.
- 2.2.11 A member will not advertise products in a manner intended to attract consumers to inspect that product because of the terms or price advertised, with the preconceived intention of having a consumer purchase another product available for sale, not advertised in a similar fashion, and not available for sale on similar terms.
- 2.2.12 A member will not advertise a product as available for sale when it is not in fact available for sale.
- 2.2.13 A member will not advertise a method, or in any way give any indication that a method is available for financing the purchase of a product, which is not permitted by the law, or is false, misleading or deceptive.
- 2.2.14 A member will not use statements that claim to take away consumer's rights of redress.

PART THREE

BOAT AND PRODUCT RETAILERS (NEW AND USED) - ADDITIONAL OBLIGATIONS

3.1 GENERAL:

BOAT AND PRODUCT RETAILERS ARE BOUND BY THE CONDITIONS IN THE GENERAL MEMBER OBLIGATIONS PART 2 OF THIS CODE.

- 3.1.1 A member must indicate to a consumer whether the product being offered for sale is from trading stock or being offered on a consignment basis. This will be clearly indicated on any contract i.e. that the retailer is facilitating a sale between the customer and vendor.
- 3.1.2
 - (i) A member will transfer to a purchaser a clear title to any boat/trailer/product purchased from stock owned by the member.
 - (ii) A member will strive to ensure that a product is free of encumbrance in the sale of products on a consignment basis.
- 3.1.3 A member offering products will offer it for sale on its merits without exaggeration, concealment or misrepresentation.
- 3.1.4 A member will at all times observe proper standards of conduct in regard to the sale of products and will not mislead or deceive a consumer in relation to the condition of the product, attributes, quality of any boat, boat package or equipment sold.
- 3.1.5 A member will not, in connection with the sale or purchase of a boat, either on the member's behalf or as agent, be a party to any improper practice.
- 3.1.6 A member will not represent that a product is available for sale when it is not in fact available for sale.
- 3.1.7 A member will not misrepresent the year of manufacture, year of first registration, or hull identification number of any product.
- 3.1.8 A member will not represent as a model designation of a product, a model designation other than the true model designation specified by the manufacturer.
- 3.1.9 Unless a member is satisfied that the year of manufacture, year of first registration and model designation is accurate, such descriptions will not be

used in advertisements or negotiations relating to the sale of boating products.

- 3.1.10 A member will provide reasonable facilities to enable prospective purchasers or their nominees to examine the product prior to sale, in order that any defects which ought to be revealed at the time of the sale are made known to the purchaser.

- 3.1.11 **LAW:** The Trade Practices Act and Fair Trading Act definition of merchantable quality is "fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price and all other relevant circumstances."

In simple terms, a consumer's right arises if the product had a major defect in it when purchased and the consumer didn't know about the problem at the time. The law says such a product is "unmerchantable" - usually because there is a problem during design or manufacture, or it suffered damage in some other way before purchase.

PRINCIPLE: A member must bear in mind that on the sale of boat products to a purchaser the member has responsibilities at law to ensure that the product is of merchantable quality and fit for the purpose for which it is required. Any statement in apparent conflict with this principle will be void.

- 3.1.12 When available a member should use a standard BIA order form or standard BIA contract of sale in relation to the sale of products which makes clear to both parties all the terms and conditions upon which business is being conducted.
- 3.1.13 Any specific promise which a member makes to a purchaser on the sale of a product and which is not included in or covered by the manufacturer's warranty or any other form of warranty will be clearly set out in writing and signed by both parties before delivery of the product. All relevant documentation will be handed over to the purchaser.
- 3.1.14 A member will not ask a consumer to enter into a contract to finance the purchase of a product without explaining the repayments and charges required by law and make available to the financier all relevant information supplied by the consumer.
- 3.1.15 Comply with all laws, regulations and statutory licence requirements applicable from time to time.

3.2 CONSIGNMENT STOCK

- 3.2.1 A member when acting as an agent on the sale of a product will act in a fair and honest manner in dealing with a prospective purchaser as well as with the vendors the member represents.

3.2.2 It will be the duty of a member acting as an agent, to advise the vendor of the member's opinion of the fair market value of the product to be sold, if that differs from the price at which the vendor wishes to sell, and;

A member so acting as agent will also inform the vendor of material facts apparently not known to the vendor which affect the member's opinion at the time as to fair market value of the product.

3.2.3 A member when accepting used product on consignment must ascertain from the vendor, or the principal, whether there is any encumbrance on the product.

3.2.4 If the product is subject to an encumbrance the monies received on the sale, less the member/agent commission, will be paid forthwith by the member to the mortgagee and the balance, if any, to the vendor or the principal.

PART FOUR

SHIPWRIGHT AND BOAT BUILDER, REPAIRER AND OTHER SERVICE PROVIDERS - ADDITIONAL OBLIGATIONS

4.1 GENERAL:

LAW: The law of contract determines whether a client has any right to damages if a repairer does not perform work in accordance with a legally binding contract.

The applicable State Act and the Trade Practices Act provide warranties in consumer transactions that goods must be of "merchantable quality". A consumer's right to refund, replacement or repairs under this law arises if the product purchased had a defect in it when it was brought and the customer didn't know about the problem at the time. The right will usually be against the selling retailer, the Australian manufacturer or the first Australian importer. It only arises with a service or repair firm where that firm has done previous repairs and there are problems with any parts supplied.

Repairers attract a warranty under the Trade Practices Act which provides that any service performed must :

- be carried out with due care and skill;
- achieve the result or the purpose requested by the client prior to the work being carried out;
- be performed with materials which are fit for the purpose.

If a fault can be attributed to any of these conditions not being met, a warranty applies under law regardless of the time stated on additional warranties.

Under the applicable State Act and the Trade Practices Act, any parts supplied must be fit for the purpose and of merchantable quality.

4.1.1 Members covered by this part are bound by the conditions in the General Member Obligations Part 2 of this Code.

4.2 TECHNICAL KNOWLEDGE AND EXPERIENCE:

4.2.1 COMPETENCE:

Both small and large operators can do much to encourage and ensure the competence of themselves and their employees by:

- keeping informed about technological advancement of the products they service and arranging tuition/training for themselves and their staff as appropriate.
- ensuring staff are capable of diagnosing and repairing common faults of the products to be serviced.
- by adopting quality assurance practices and programmes.
- providing training and supervision for new staff regarding their level of expertise.

4.2.2 RESPONSIBILITY FOR GOODS:

LAW: By accepting goods into a workshop, the service/repair firm is accepting responsibility for the reasonable care of these goods.

PRINCIPLE: By accepting goods into a workshop the member carrying out the service/repair will exercise adequate care in protecting a customer's goods and possessions. Documentation should note time of receipt of goods, accessories left with product and existing damage, to provide proof of the condition of the goods at the time the member took possession.

Where a repairer employs a carrier to collect goods for repair from a client, the repairer should instruct the carrier to note any existing damage on the docket prior to collection. The notation should be witnessed by the client. Similarly, on receipt of the goods, the repairer should also note any existing damage. If any additional damage is caused by the carrier during transit, the repairer should advise the client immediately of the damage and subsequent reimbursement.

This procedure should apply in reverse when repaired goods are returned by a carrier to the client.

4.2.3 INITIAL DIAGNOSIS:

At the time the initial diagnosis is made, the member repairer should inform the client as soon as possible about the suspected fault and cost of repair together with the overall condition of the goods, including whether the equipment is beyond economical repair, and of other safety issues.

4.2.4 ESTIMATES AND QUOTATIONS:

LAW: A quote represents a firm offer and where a quote is given the repair service or rectification of a problem should be within the quoted price.

PRINCIPLES:

- When requested to do so by a consumer, offer a firm quotation for repairs or service work. Where this is not possible due to the nature of the repairs the member repairer will

- make it clear to the consumer that only an estimate, not binding on either party, is being furnished. The member should indicate how the estimate has been calculated.
- (ii) Where a quotation is requested, the consumer should be informed of any charge that applies and the circumstances of the charge before the quotation is undertaken.
 - (iii) If a quotation or estimate provided by a member repairer does not include prices for spare parts or any other materials required to be used, this fact must be brought to the consumer's attention.
 - (iv) The preparation of a quotation will be treated with care, and it should be realised by both parties that the acceptance of a quotation may constitute the basis of a contract between the member and the consumer.
 - (v) Where an estimate of repair or service work has been given, every effort will be made to complete the repair or service work within the estimated time and cost and every endeavour must be made to inform the consumer if this estimate cannot be met in relation to time and cost.

If the estimation will be exceeded by a significant amount, the consumer's authorisation should be sought before proceeding with the work, unless prior arrangements have been made.
 - (vi) A member will, in the interests of good consumer relations, explain any work included in the quotation, or estimate given, if requested by a consumer to do so.

4.2.5 PARTS:

LAW: The Trade Practices Act requires that manufacturers should ensure "reasonable" availability of service and spare parts for their products for a "relevant" period of time.

"Reasonable" and "relevant" are not defined.

The clause does not apply where the manufacturer has taken reasonable action to ensure the person acquiring the goods would be informed at or before the sale of non-availability.

PRINCIPLES:

- (i) To maintain sufficient access to spare parts members should :
 - (a) Hold comprehensive lists and manuals on those products on which service is normally undertaken.
 - (b) Have established purchasing and stock control arrangements to ensure that

a reasonable stock of spare parts is maintained and that other spares can be ordered without delay.

- (ii) Parts replaced by a member during repair on request by the consumer and at completion of the work for return to the consumer unless a warranty claim is involved, or unless the parts have to be submitted to a supplier because replacement parts are being supplied on an exchange basis.
- (iii) Not make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods.

4.2.6 INVOICES:

Invoices issued will give full details of work carried out, and charges for labour, spare parts and materials used.

Invoice copies should be available for the client, manufacturer (if warrantable) and service provider.

4.2.7 FIELD SERVICE - BOOKING APPOINTMENTS:

- (i) Record the customer's name, address and telephone number where available.
- (ii) **LAW:** A breach of the Fair Trading Act will occur if the possibility of extra charges are not made clear.

PRINCIPLE: Advise the customer of likely charges including any field service call fee, what that includes, hourly rate or other charges involved, and freight charges if goods have to be returned to a workshop, etc.
- (iii) Arrange date for service.
- (iv) Advise the customer as soon as possible if an appointment cannot be kept.

4.2.8 WARRANTIES/GUARANTEES:

- (i) Subject always to the consumer's rights at law a member repairer will guarantee repairs and service work effected by him against failure due to defective parts or faulty workmanship for a specific period of time having regard to the age of the product and equipment and the nature of the repair.
- (ii) Such guarantee will be reasonable having regard to the use of the products by the consumer.
- (iii) The member may insert a provision into the guarantee that such a guarantee will be void if the boat or products subject to such a guarantee are used by the consumer

- for competition, racing or commercial use otherwise than for normal private, recreational use, or subjected to abuse or damaged other than through ordinary wear and tear, or not maintained in accordance with the manufacturer's specifications and recommendations.
- (iv) Repairs under guarantee should be remedied promptly and equitably to avoid annoyance, inconvenience and economic loss to customers. Customers should be advised of the expected completed date for repairs.
- 4.2.9 A member's requirement as to the method of payment by the consumer on completion of the work will be notified to the consumer before the work is accepted and commenced.
- 4.2.10 When it is necessary to sub-contract work, a member will agree to be responsible for the quality of the sub-contractor's work provided that the sub-contractor has been nominated by the member repairer. Any estimate given to the consumer will include the cost of sub-contracted work and in the event of any increased charges for the work necessary, the provisions of clause 4.2.4 (v) will apply.
- 4.2.11 While the member's contractual responsibility to the consumer is limited to the work agreed to be performed, the member will make it a general rule to advise the consumer of any defects in the boat or equipment not covered by the work to be performed and which may become apparent while the work is being carried out.
- 4.2.12 The obligations of a member under this section of the Code will not apply in relation to any repair or service which the member and the consumer shall agree is of a temporary nature only.
- 4.2.13 A member undertakes to comply with the provisions of the applicable State Acts and Regulations Act for goods left in possession.
- 4.2.14 Products must be built to standards of merchantable quality in a proper workmanlike manner.
- 4.2.15 A warranty on construction and workmanship on all products manufactured should be offered.
- 4.2.16 In the manufacture of products, a member must not infringe the intellectual property rights (including patents, designs, trademarks, copyright, etc.) of others.

4.3 ENVIRONMENT:

- 4.3.1 A member shall always act in an environmentally responsible manner in accordance with relevant environmental legislation and guidelines.
- 4.3.2 Perform boat maintenance and repairs in such a way that debris and waste is kept to a controlled minimum and is collected and disposed of in an environmentally responsible manner. Treat dust/scrapings as hazardous materials and dispose of accordingly.
- 4.3.3 Store and carry all materials in containers impervious to the materials being used, clearly marking all containers appropriately.
- 4.3.4 Dispose of all waste as required by current regulatory guidelines.
- 4.3.5 Perform abrasive blasting within tarpaulined or otherwise suitable enclosures to facilitate collection and appropriate disposal of all waste.
- 4.3.6 Detergents and cleaning compounds should be environmentally acceptable (biodegradable) and used in a manner that minimises quantity used. Untreated waste water from cleaning operations should not be discharged into the marine environment, but shall be disposed of in accordance with regulatory guidelines.
- 4.3.7 Observe guidelines for potential noise pollution control such as hours for using noise generating equipment in noise sensitive areas.
- 4.3.8 Spillage kits with materials which will absorb or contain any spillage should be readily available at all work sites and staff trained in the deployment thereof.
- 4.3.9 The treatment of below water damage to be carried out in a manner that will not create water pollution.
- 4.3.10 Prevent and discourage in water hull cleaning or any other underwater process that is likely to remove anti-foulant or any other deleterious material into the marine environment.
- 4.3.11 Conduct business in a manner which will minimise nuisance to local residents.

PART FIVE

MARINA OPERATORS' ADDITIONAL OBLIGATIONS

5.1 GENERAL:

- 5.1.1 Marina Operators are bound by the conditions in the General Member Obligations Part 2 of this Code.
- 5.1.2 Ensure that a Site Specific Marina Plan of Management is implemented and maintained to control and manage the Marina's natural, built and recreational resources, as well as regulations for the users of the Marina's facilities.
- 5.1.3 Ensure that Marina management and staff, both permanent and casual, are trained in all facets of Marina operations, particularly those concerning emergency response procedures, safety, hazard prevention, fuel spillage, sewage and pollution, navigation, community amenity and Marina user regulations.
- 5.1.4 Provide for the safety and protection of all persons utilising the Marina and its facilities, as well as for the protection of Marina property and the property of Marina patrons and the public generally.
- 5.1.5 Ensure a hazard assessment has been conducted and prevention plan developed to minimise human and environmental risk in the event of a hazard occurring. This will impact on emergency response plans and procedures.
- 5.1.6 Maintain the structure and operational integrity of both the Marina infrastructure and Marina equipment so as to ensure safety for Marina users as well as to prevent adverse environmental impact.
- 5.1.7 Prevent degradation of the Marina and the marine environment by providing and managing litter and recycling facilities in accordance with the Department of Health Guidelines and Recycling Programmes.
- 5.1.8
 - (i) Provide for safe navigation practices for the safety of Marina berth and mooring users.
 - (ii) Ensure the observance of requirements of the State Marine Authority regulations within the Marina and mooring area.
 - (iii) Preserve the general amenity of the Marina by controlling turbidity, wash and noise aspects.
- 5.1.9 Ensure that water quality within the Marina is maintained at a high level and prevent the discharge

of any wastes into the waters of the Marina.

- 5.1.10 Ensure that Marina users, shop patrons, visitors and the public generally are provided with clearly defined signs to ensure their observance of all matters concerned with safety, health and environmental aspects.
- 5.1.11 Preserve the local amenity for Marina patrons and visitors and local residents by controlling noise emissions and other disturbing influences.
- 5.1.12 Generally preserve the visual amenity of the site for all users, visitors, the public and local residents.
- 5.1.13 Ensure that all of the users of the Marina, including berth/mooring occupiers, renters, vessel owners, crew and visitors are provided with appropriate directions and requirements to be adhered to during their use of the Marina and its facilities.
- 5.1.14 Establish rules and regulations with respect to the management of the property. Site specific house-keeping rules should be clearly displayed in the Marina office and a copy given to each customer, as amended from time to time.
- 5.1.15 Ensure that a written Marina Craft - Berthing, Storage and Mooring Agreement is formally completed, explained to the customer and a customer copy issued.
- 5.1.16 Conduct the Marina business in a manner which will minimise nuisance to local residents.

5.2 ENVIRONMENT:

5.2.1 WASTE CONTROL:

- (i) Direct Marina patrons as to the proper disposal of sewage, galley waste and other liquid materials (fuel, oil, bilge) through the use of signs, printed regulations, by-laws and other means.
- (ii) Encourage patrons to use onshore or mobile pumping stations, holding tanks or "porta-potties" to keep sewage out of the water.
- (iii) Implement a "strict no discharge in Marina" policy and inspection programme.
- (iv) Direct Marina patrons to the litter and recycling facilities.
- (v) Incorporate traps, bunds or other controls to prevent litter, drainage and other pollutants coming from slipways, hardstand areas and car-parks, from reaching the waterways. Clean traps and other control devices regularly to ensure effectiveness.

5.2.2 MARINA BOAT SERVICING OPERATIONS:

- (i) Provide curbs or other barriers around areas used for the storage of liquid material to contain spills. Store materials in areas impervious to the type of material stored, and preferably undercover.
- (ii) Keep separate containers for the disposal of waste oil and fuels and other substances used in maintenance and dispose of such in accordance with regulatory requirements.
- (iii) Provide training to staff in the correct techniques for responsible waste disposal.
- (iv) Perform boat maintenance/cleaning above the waterline in such a way that no debris falls into the water.
- (v) Clean hull maintenance areas at the end of each day to remove sanding paint chips, rubbish and all other waste materials.
- (vi) Perform abrasive blasting within spray booths or plastic tarp enclosures to prevent residue from being carried into surface waters. If tarps are used, blasting should not be done on windy days.
- (vii) Detergents and cleaning compounds used for washing boats should be biodegradable, and amounts used should be kept to a minimum. Traps and filters for the containment of residue from such action should be encouraged with appropriate maintenance schedules.
- (viii) Provide proper disposal facilities to Marina patrons. All containers must be covered to prevent rain from leaching materials from the containers.
- (ix) Provide facilities for recycling of appropriate materials, in convenient locations for Marina patrons.
- (x) Control potential air, water and noise pollution.
- (xi) Display adequate signage at marinas to educate boating public of protection practices.
- (xii) Conduct business in a manner which will minimise nuisance to local residents.
- (xiii) Prevent and discourage in-water hull cleaning, or any other underwater process, that is likely to remove anti-foulant or any other material deleterious to the marine environment.

5.2.3 PETROLEUM CONTROL MANAGEMENT

- (i) A spill contingency plan must be developed for fuel storage and dispensing areas.
- (ii) Marina personnel must be trained in spill containment and control procedures, as well as emergency response procedures.
- (iii) Appropriate containment and control materials must be stored in clearly identified positions for ready deployment.
- (iv) Containment material should consist of absorbent booms and pads and fire extinguishers.
- (v) Clearly indicate positions of safety fuel cocks at points of storage and dispensing.
- (vi) Fuel drips must be prevented from polluting waters by use of a drip tray and small holding tank located under fuel bowzers, or by other acceptable means. Where installed, drip trays should be regularly inspected and emptied under proper disposal procedures.
- (vii) All bowzers should have automatic shut-off nozzles.
- (viii) Fuelling is to be supervised by a staff member. This includes tanker operator unloading into fuel storage tanks.
- (ix) Promote the use of fuel air separators on air vents or tank stems of inboard fuel tanks to restrict fuel spillage onto surface waters during fuelling of boats.
- (x) Signage should be placed on the fuel bowser indicating not to overfill tanks. Fuel spills are an offence under the Pollution of Waters by Oil and Noxious Substances Act 1987 and fines can apply.
- (xi) Signage at fuel points should direct customers to:
 - (i) Stop Engines during refueling;
 - (ii) No smoking or naked flames at fuel point;
 - (iii) Ventilate boat interior and engine compartment before restarting.

PART SIX

MARINE BROKER - ADDITIONAL OBLIGATIONS

6.1 GENERAL

This section of the Code applies to all members of the BIA whose businesses include the selling of vessels on a brokerage/agency basis.

It is a requirement that a separate brokerage within a marina operation should have separate BIA membership and be a signatory to this Code. Unless the brokerage is owned and operated by the Marina owner the brokerage will be deemed to be a separate business.

Maintenance of the reputation of the BIA and the Ship and Yacht Brokers' Peak Industry Body, and the high standard of ethical practice which they promulgate is the direct responsibility of every member.

The confidence and responsible nature of a broker's work makes it a matter of public concern that the reputation of members' integrity and efficiency is beyond question.

6.2 DEALING WITH VENDORS

- The Vendor is defined as the owner (or legally authorised representative) of a boat which is available for listing with a broker for sale.
- If a listing is to be accepted, the broker should inspect the boat (preferably in company with the vendor) and obtain a signed authority to sell and complete list of equipment and accessories which will be sold with the boat, together with details of the ownership of the boat, whether there are any mortgages or other encumbrances affecting the boat, and whether it is registered under the Shipping Registration Act, 1981 (or under any other legislation).
- The vendor should be advised of any work needed in order to present the boat for sale and the costs and charges associated with such work.
- The vendor shall be advised from time to time of the progress towards the sale of the boat, with the number of inspections and comments of prospective purchasers.
- When a sale has been negotiated by the broker, a selling agreement must be signed by the vendor and the purchaser.
- The broker shall account to the vendor for the purchase price not later than five (5) banking days after the sale has been fully completed and after deducting and paying to a mortgagee having a charge over the property, such monies as are required to discharge that charge and after deducting such commission and other charges as may properly be due to the broker.

6.3 DEALING WITH PURCHASERS

The Purchaser is defined as the buyer or the potential buyer (or legally authorised representative) of a boat which is offered for sale by a broker. If any doubt exists as to whether a prospective purchaser has already been shown a boat by another broker on Open Listing, members will take action to clarify if any such prior showing took place. If the boat has already been shown by another broker, the purchaser should be referred back to the other broker immediately. When a sale has been negotiated, the purchaser shall be requested to pay a deposit of at least 10% of the negotiated purchase price. This deposit money is to be held in a specially registered trust account pending completion of survey, mechanical check and final preparation of settlement documents and final completion of the sale or until the broker is informed that the sale is not proceeding.

6.4 RELATIONS WITH CLIENTS AND THE PUBLIC:

- 6.4.1 Brokers are bound by the conditions set in the Ship and Yacht Brokers' Peak Industry Body Code as well as those in the General Member Obligations Part 2 of this Code.
- 6.4.2 It is the responsibility of the brokers to protect the public to the best of their ability, against fraud, misrepresentation or unethical practices in connection with brokerage transactions.
- 6.4.3 It is the duty of the broker to act in a professional manner in providing accurate and truthful information to the public.
- 6.4.4 It is the duty of the broker to observe total confidentiality over his dealings with all vendors and purchasers and to protect the interests of clients at all times.
- 6.4.5 A member should endeavour to be informed on laws, regulations, proposed legislation, public policies, boating industry information and other essential facts which affect those interests.
- 6.4.6 Brokers should endeavour to eliminate any practices which could be damaging to the public or to the dignity and integrity of the marine brokerage profession, and assist the BIA Executive Committee in regulating the practices of brokers.
- 6.4.7 In accepting engagement as an agent, brokers pledge themselves to protect the interest of the client. This obligation of absolute fidelity to the client's interest is paramount, but it does not relieve the broker from obligations of dealing fairly with all parties to the transaction.
- 6.4.8 It is the duty of the broker to be well informed on current market conditions in order to be able to accurately advise vendors and purchasers of fair and correct market values.

- 6.4.9 The price at which a broker offers a vessel should be in accordance with the instructions of the vendor. However, if a broker considers that the price asked by the vendor is more or less than fair market value, the broker shall so advise the vendor, so that the vendor may, if desired, adjust the price.

6.4.10 CANVASSING:

Members may not canvass for new listings in marinas where another yacht broker is operating, or on boats where another broker has an exclusive agreement. If a listing is offered to a member by a vendor of a boat located in a Marina where another broker is operating, members must advise that broker.

6.4.11 AUTHORITIES TO SELL:

A member shall not advertise a boat for sale on behalf of a vendor without first obtaining a written and signed listing authority from the vendor.

6.4.12 LISTINGS:

Before accepting a listing from a prospective vendor, members will ascertain whether the boat is already exclusively listed by another broker. If a boat is already exclusively listed with another broker, that listing should be respected and any further dealings on the boat must be referred to the listing broker.

Members should obtain complete and accurate details about any boat being listed. These details should include, but are not limited to, the ownership of the boat, whether there are any mortgages or other encumbrances affecting the boat, whether it is registered under appropriate legislation, as well as the list of equipment and accessories which will be sold with the boat.

The rights and responsibilities of the vendor must be made clear at the date of the listing of the boat. The gross selling price and the percentage of brokerage/ commission should be specified and written into the listing agreement or Authority to Sell together with any other agreed terms.

- 6.4.13 Brokers, for the protection of all parties with whom they deal, should see that financial obligations are in writing and express the exact agreement of the parties. Copies of such agreements must be placed in the hands of all parties involved at the time the agreements are executed, or as soon thereafter as is practicable.
- 6.4.14 The broker shall use best endeavours to ensure that all appropriate details and commitments regarding a boat brokerage are in writing, expressing exact agreement of the parties using such standard industry documentation as adopted by the BIA from time to time.

For the protection of all parties concerned brokers

should use the following documents in each boat brokerage transaction:

- Authority to Sell.
- Statutory Declaration.
- Contract of Sale.
- Trust Account Receipts.

Documents are to be dated and signed by the parties concerned, with copies to each party.

The Statutory Declaration should be obtained by the broker from the vendor at the time of obtaining a signed Authority to Sell. The Statutory Declaration should be to the effect that the vendor is the owner of the boat and that the boat and any inventory to be sold with it is unencumbered.

6.5 RELATIONS BETWEEN BROKERS AND MARINA OPERATORS:

- 6.5.1 In the interest of professional courtesy, the Marina operator should be kept informed of any dealings that are occurring on the operator's Marina or commercial moorings.

6.6 RELATIONS BETWEEN OTHER BROKERS

- 6.6.1 A broker must conduct business so as to avoid controversies with other fellow brokers and avoid conduct that is contrary to ethical brokerage practice and to the best interests of the vendor and/or purchaser. Business dealings with other brokers should be conducted on the basis of strict professional integrity and courtesy.
- 6.6.2 It is preferable that a member, before resorting to action at law, first submit the alleged misconduct to the Ship and Yacht Brokers' Peak Industry Body for conciliation and/or adjudication.
- 6.6.3 A broker should seek no unfair advantage over fellow brokers.
- 6.6.4 A broker should not disparage the business practice of a competitor, nor volunteer an opinion of a competitor's transaction. If opinion is sought, it should be rendered with strict professional integrity and courtesy.
- 6.6.5 A broker may co-operate with other member brokers on boats listed for sale. Negotiations concerning a boat exclusively listed with one broker should be carried on with the listing broker, and not with the vendor, except with the express consent of the listing broker. All shared commission agreements should be negotiated prior to the submission of any offer to purchase.
- 6.6.6 A broker must not solicit instructions directly from a vendor, as a result of information gained from the advertising and promotion of a boat by another

- broker, without first requesting and receiving instructions from the listing broker.
- 6.6.7 When a broker has entered into an exclusive brokerage contract or arrangement, members must not induce nor attempt to induce a breach of or interference with that contract or arrangement.
- 6.6.8 A broker holding direct instructions from a vendor to offer a boat for sale may, subject to any contrary instructions from the vendor, offer the boat on a shared basis to other brokers. The offer should be made or confirmed in writing and agreement to sell the boat should be confirmed in writing. A sharing broker shall not without the express permission of the listing broker and subject to any contrary instructions from the vendor:
- advertise the boat.
 - offer the boat to other brokers.
 - contact the vendor of the boat.
 - solicit direct instructions from vendors.
 - offer the boat at a price differing from the price quoted by the listing broker.
- 6.6.9 If a conjunction (jointly instructed) brokerage has been established, such arrangement shall continue until terminated and confirmed forthwith in writing by the brokers themselves either on instructions of the vendor/s or by mutual agreement on a nominated client.
- 6.6.10 Any listing secured by a member from another broker shall not be passed on to an additional broker without the consent of the original listing broker and the vendor. In particular, the indiscriminate exchange of information between brokers is a practice which cannot be approved.
- 6.6.11 The listing broker is responsible for providing accurate details of any boats offered to other brokers. The listing broker must advise brokers accepting a shared boat of any changes in details, especially the asking price, as soon as possible after such changes have been notified by the vendor/s or his authorised representative.
- 6.6.12 When a sharing broker wishes to arrange for a purchaser to inspect a shared boat the necessary arrangements must be made with the listing broker and the name of the purchaser provided.
- 6.6.13 All offers must be submitted in writing to the listing broker with the name of the purchaser. Upon acceptance of an offer the sharing broker will advise the full name and address of the purchaser to the listing broker and forward any deposit to the listing broker who will be responsible for issuing a receipt. The sharing broker must not enter into any contract for the sale without the express agreement of the listing broker.
- 6.6.14 Commissions must be distributed and should be paid as per prior agreement as soon as the listing broker has finalised the sale and is in receipt of the commission.
- 6.6.15 Members may act for a vendor on a sole and exclusive agency basis. The agency of a broker who holds a sole agency should be respected. An owner may thereby secure the services of an expert or specialist in any one branch of the profession.
- 6.6.16 Where a broker accepts an exclusive agency for a vessel previously listed with other brokers, it should be recommended to the vendor that brokers are notified of the existence of the exclusive agency contract. The member should take reasonable steps to see that such brokers are in fact notified.
- 6.6.17 If a broker places a "for sale" board on a vessel or advertises or offers it for sale by any other method, having exclusive authority to sell, then it shall be unethical for another broker to approach the owner of a vessel being offered for sale unless prior contact is made with the broker who has the exclusive authority.
- 6.6.18 In the event that more than one formal bona fide offer on a specific vessel is made before the owner has accepted an offer, any other formal bona fide offer presented to the broker, whether by a prospective purchaser or another broker, should be transmitted to the owner for a decision.
- 6.6.19 The sale is controlled by a deposit being placed by the purchaser and an offer accepted by the vendor
- 6.7 ENGAGEMENT TO ACT FOR PURCHASER:**
- If a member accepts an engagement to act for a purchaser the member must look to the purchaser for remuneration in this regard. The member acting in this situation must negotiate with the vendor's broker and not directly with the vendor.
- A member employed for a fee or commission to purchase a vessel should not act for and accept commission from another party without the knowledge and consent of both parties.
- 6.8 ADVERTISING:**
- 6.8.1 A broker must not offer for sale any vessel without the authority of the owners and signed listing agreement at the time of placing the advertisement.
- All advertising must contain the name and such other details so as to clearly identify the broker.
- A broker shall take particular care to ensure advertising is truthful and totally accurate.
- 6.8.2 The price at which the broker offers the boat must be in accordance with the instructions of the vendor.

6.8.3 The price quoted shall in all cases be the gross price inclusive of commission and other charges. The listing of vessels at net sale prices is undesirable and is discouraged.

6.8.4 A broker placing a sign on a vessel must ensure that:

- (i) The authority of the owner has been received to place such a sign.
- (ii) No sign should be placed on a vessel where another broker already has a sign unless it is with the express instructions of the vendor.
- (iii) It does not obscure the sign of another broker.
- (iv) It does not in any way interfere with another broker's sign or remove it except by direction of the owner, and takes all reasonable steps to preserve the sign.

6.9 TRUST ACCOUNTS:

6.9.1 Every broker shall operate a designated trustee style account with a trading bank holding a banking licence in Australia. This account should be reconciled and a proper cash book kept which may be subject to BIA inspection in the event of any complaint. The trust account shall be conducted with observance of all statutory regulations for the conduct of trust accounts.

6.9.2 Unless otherwise instructed, the broker shall be responsible for banking the deposit, part payment and all proceeds of sales of vessels sold on consignment in a separate trustee status bank account designed for the sole purpose, and shall account for the moneys to the vendor not later than five (5) banking days after the sale has been fully completed and after deducting and paying to a mortgagee having a charge over the property amounts to discharge that charge and after deducting such commission and charges as may properly be due to the broker and which will have been previously disclosed to the client.

6.10 APPRAISALS/VALUATIONS:

6.10.1 When and if called upon to value a vessel, brokers shall first ascertain whether such vessel is already listed with another broker. If the vessel is listed with another broker, the member shall notify such other broker of the request for valuation.

6.10.2 A broker should not undertake to make any appraisal or render an opinion of value of any vessel where a present or contemplated interest exists unless such interest is specifically disclosed to all parties to the transaction.

6.10.3 Brokers should not undertake to make an appraisal that is outside the field of their expertise unless the assistance of an authority is obtained on such types of vessels, or unless the facts are fully disclosed to the client. In such circumstance, the authority so engaged should be identified and any contribution to the appraisal should be clearly set forth.

6.10.4 An appropriate fee may be charged for all appraisals/valuations which do not result in the broker accepting a listing provided the owner was advised of such fees prior to valuation.

6.10.5 Any valuations provided to external institutions should be recorded in a valuation register, signed by the member.

6.11 MARINE SURVEYS:

6.11.1 Brokers will keep a list of qualified marine surveyors and make this list available to prospective purchasers, together with a recommendation that a survey be arranged at the cost of the purchaser.

6.11.2 A broker should always recommend the engaging of an independent qualified marine surveyor as a condition precedent to the completion of a brokerage transaction.

6.11.3 Under no circumstances shall a broker make or receive a commission from survey.

6.11.4 It is unethical for a broker to act in the capacity of a marine surveyor or valuer in respect to any vessel in which he or they have any interest as brokers or otherwise.

6.12 BROKER ACTING AS PRINCIPAL:

6.12.1 The broker should not acquire an interest in or buy personally, any immediate family member, his or any other firm member thereof, or any entity in which the member has substantial ownership interests, vessels listed with him, or his firm, without making the true position known to the listing owner, and in selling vessels owned by the member, or in which he has such interest, the facts should be revealed to the purchaser.

6.12.2 If a member wishes to act in the selling or purchasing of a vessel for personal use, the member shall make this position known to the parties with whom the member is dealing.

6.12.3 The disclosure shall be in the form of a written memorandum, duly acknowledged and stating the nature of the interest and identifying the property.

6.12.4 A member must not have directly or indirectly any interest in any transaction in which the member acts or purports to act as broker other than in the capacity of broker, unless the vendor, being permitted by law, has given prior written consent thereto.

6.13 BROKERS ACCEPTING TRADE-INS

Where a broker accepts in the broker's own right and at the broker's own risk, to take ownership of a boat and or product by way of a trade-in and who carries on the business of dealing in, buying or selling second-hand goods, the provisions of Part Three - Boat and Product Retailers (new and used) - Additional Obligations, shall be observed.

A broker will also comply with the provisions of the appropriate State Act dealing with pawn brokers and second hand dealers.

PART SEVEN

CONSUMER - OBLIGATIONS

7.1 GENERAL:

In accepting "the obligations" imposed by the Code, a member is entitled to assume that a consumer, with whom the member has dealings, will observe the obligations set out in this part of the Code.

Indeed BIA members will encourage their customers and boat owners to accept these responsibilities. Simple reminders, precautions and recommended practices have been combined into the Code which encourages customers/recreational boaters to be environmentally responsible in their conduct. Information centres on boat operation, maintenance and preventative actions individuals can take to maintain clean water and minimise on - and near - shore impact of water based recreation. Protecting the environment comes naturally to most boaters, because clean water is the foundation of enjoyable boating.

A common sense approach is thought to be a most effective way to protect the aquatic environment. A sixteen point check list in this part of the Code serves a quick reference to environmental concerns.

THE RESPONSIBILITIES OF THE CONSUMER AND RECREATIONAL BOATERS INCLUDE :

- 7.1.1 To co-operate fully with all BIA members in order that the consumer may obtain maximum benefit from the Code.
- 7.1.2 To maintain any new or used product in accordance with the manufacturer's specifications and recommendations and subject the same only to fair wear and tear having regard to the nature of the product and equipment.
- 7.1.3 To give the BIA member all information possible concerning the purchase, trade-in, use, manufacture and repair of the product and equipment, so that the BIA member may be as fully informed as possible concerning the product and may exercise sound judgment and have clear responsibilities to the consumer in the terms of the Code.

7.2 ENVIRONMENT

Having regard to environmental responsibility, boat owners:

- 7.2.1 Shall be encouraged to take steps to ensure that any potential pollution risks are minimised.

- 7.2.2 Shall use their best efforts to educate fellow boaters to support the restoration and protection of our marine environment.
- 7.2.3 Shall be encouraged to maintain or improve our water quality for all boat users by compliance with all environmental laws and regulations in operation.
- 7.2.4 Will observe the regulations of usage of the waterways by government authorities, Marinas and boatsheds
- 7.2.5 Will not automatically or otherwise drain the engine bilge, unless bilge water is passed through a filter, or other control measure, to ensure no pollution of waters, and will at all times observe the "strict no discharge" policy of Marinas.
- 7.2.6 Will ensure no petroleum product residue be pumped overboard. Use of petroleum absorbent material which can be appropriately disposed of on land, is recommended.
- 7.2.7 Will be encouraged to use environmentally compatible products in the operation and maintenance of their vessels.
- 7.2.8 Will use oil-absorbing materials in the bilge areas of all boats with inboard engines and undertake to examine these materials at least once a month and replace as necessary and dispose of them in accordance with petroleum disposal regulations.
- 7.2.9 Will be encouraged to install fuel-air separators on air vents or tank stems of inboard fuel tanks to reduce the amount of fuel spilled onto the surface water during fuelling of boats.
- 7.2.10 Will at all times prevent fuel spills, and be knowledgeable regarding how best to treat any accidental spill, to maximise safety, and minimise environmental harm.
- 7.2.11 Will prevent the contamination of waterways whilst working on or maintaining their craft.
- 7.2.12 Will prevent and discourage in water hull cleaning or any other underwater process that is likely to remove anti-fouling or any other deleterious material into the marine environment.
- 7.2.13 Will act at all times to protect the waterways from senseless and harmful dumping by returning all garbage and other waste to shore for proper disposal or recycling and when possible, clean up after others who are less thoughtful.
- 7.2.14 Will be aware of the effect of noise, smoke and odours generated by their vessels and activities of those around them.

7.2.15 Will keep your motors efficiently tuned, and avoid excessive idling and engine noise while at Marinas or in the vicinity of residential property.

7.2.16 Will prevent unacceptable wake and propeller wash, especially in the vicinity of sensitive or erodible shores, Marinas and other waterway users.

PART EIGHT

DISPUTE RESOLUTION

8.1 SELF RESOLUTION BY MEMBER AND CONSUMER:

One important aim of this Code is to clarify the rights and obligations of both parties to help avoid complaints and to facilitate compromise and agreement when disputes occur.

In the first instance, consumers should always bring their complaint to the attention of the member. With goodwill it should be possible to reach a settlement on any area covered by the Code.

Members handling complaint should:

- Establish how the business should handle complaints and how it would work in practice.
- Take time to handle complaints when they are first made - deal with them straight away.
- Identify the problem.
- Decide what can be done.
- Keep a record.
- Make sure all staff understand the policy, why it was introduced, how it will work and what they should do. Some training will be necessary.
- Make it easy for customers to complain as it is one of the best opportunities for enhancing customer loyalty.

8.2 EXTERNAL DISPUTE RESOLUTION OPTIONS:

External dispute resolution may be sought when a stalemate is reached in self resolution attempts. The issues involved will rarely be black and white and although each party to the dispute is confident of their position, weaknesses will normally exist.

Where the external mechanism chosen involves mediation or conciliation it allows parties to take a fresh look at the dispute with assistance from an objective third party.

8.2.1 RESOLUTION BY INDUSTRY ASSOCIATION:

Upon receipt of a complaint, industry association representatives informally discuss the matter with both parties and make objective suggestions for resolution. This would normally occur without bringing the parties together. The matter may be referred to a BIA Committee for resolution.

8.2.2 BY MINISTRY OF FAIR TRADING:

If the firm does not belong to the BIA or if the BIA has been unable to effect a resolution to a grievance between two or more members or a member and another party, the Ministry of Fair Trading can be contacted. The Ministry can mediate, impose a variety of sanctions or advise on further options available to the parties.

8.2.3 BY CONSUMER SMALL CLAIMS TRIBUNALS AND THE COURTS:

The fastest and most effective way to settle complaints is to handle them yourself. When a complaint cannot be settled by mutual agreement, arbitration of the claim may be necessary.

Arbitration involves a decision being made on the basis of evidence. Even when parties are confident of their position the outcome is not assured. Accordingly, arbitration will normally be used as a last resort. However, the option of taking a claim to arbitration can be of relevance where the issues of fact cannot be readily ascertained and resolution is likely to require weighing up conflicting evidence given under oath.

The Small Claims Tribunal provides a quick, inexpensive alternative to the court system for disputes of small claims. Although it aims to provide an informal atmosphere, any orders made are enforceable in the same way as orders by a magistrate.

The Tribunal is obligated by law to attempt to bring the parties to settlement before making an order. Accordingly, they provide a forum for conciliation where parties can review their positions and come to a compromise solution. Where this fails arbitration can follow.

The Tribunal has jurisdiction over claims that must:

- Arise out of a contract for supplying goods, services or a related contract.
- Be lodged within 2 years of the date:
 - the contract was made;
 - of supply;
 - supply was supposed to have occurred.

8.2.4 MONITORING AND REVIEW OF THE CODE:

Feedback on the operation of this Code is essential for assessing its effectiveness and ensuring its continuing success.

A regular review of this Code will be undertaken by the BIA and other interested parties to assess its continuing relevance, effectiveness and to identify need for change.



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