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LEGAL DEPARTMENT



seriously compliant 3

NETWORK TEN COMPLIANCE MANUAL





NETWORK TEN COMPLIANCE MANUAL

THIRD EDITION

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MESSAGE FROM THE CEO

At Ten we take compliance seriously. Every member of the Ten team is required to understand their legal obligations. As representatives of the Network we are all responsible for protecting Ten's reputation for honesty, integrity and fairness. Every decision you make must honour the spirit and letter of the law.

Seriously Compliant explains your legal obligations at work and sets out the behaviour expected of you. It provides useful guidance on your professional and ethical obligations as Ten employees.

While the manual doesn't provide an answer for every situation that might arise, it does provide direction as to how to behave in certain situations.

I encourage you to read the Compliance Manual which has been prepared to assist and protect you and Ten.

Grant Blackley

A handwritten signature in blue ink, appearing to read "Grant Blackley".



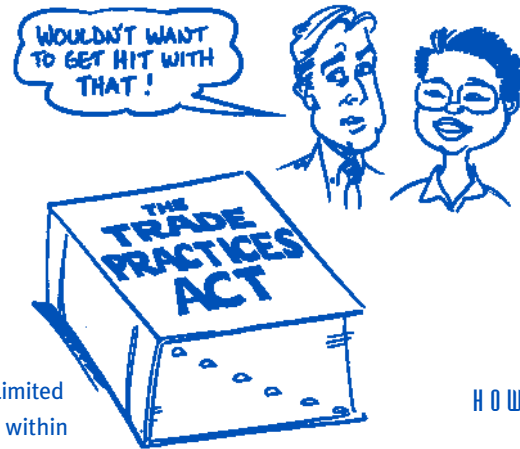
THIS MANUAL

OVERVIEW

This Manual summarises in plain English the main areas of law applicable to the corporate operations of Network Ten Pty Limited and all companies within the Ten Group (**Ten**) in

Australia. This Manual does not outline the areas of law applicable to Ten's role as a broadcaster, such as defamation and contempt or its obligations under the *Broadcasting Services Act*. Issues relating to Ten's operations as a broadcaster should be referred to the General Counsel - Television.

It is the responsibility of every employee of Ten to understand the legal requirements with which Ten must comply. This Manual is intended to assist in that process.



This Manual is not a substitute for legal advice. If you need clarification of any of the issues raised in this Manual or consider that Ten may be in breach of any of the obligations outlined in this Manual, contact the Legal Department.

HOW TO USE THIS MANUAL

All employees are expected to read this Manual and become familiar with its subject matter. Some of the sections of the Manual contain detail that most employees will not need to know. Ten expects that:

- all employees, irrespective of their role with Ten, must understand at least the basic issues in each of the sections which are summarised throughout the Manual under the headings *What We All Need To Know*;
- all managerial employees and board members need to be aware of the detail of all of the sections of the Manual.



1.1 WHAT WE ALL NEED TO KNOW

The *Trade Practices Act 1974* is a Commonwealth act which amongst other things, prevents anti-competitive conduct of corporations and imposes regulations to protect consumers. The Parts of the *Act* which are most relevant to Ten's operations are:

- Part IV, anti-competitive practices;
 - Part IVA, unconscionable conduct; and
 - Part V, false and misleading conduct.
- **Anti-competitive Practices**
- Ten must not engage in conduct amounting to:
- entering into any contract, arrangement or understanding which has the purpose, effect or likely effect of substantially lessening competition;
 - restricting dealings;
 - price fixing;
 - misusing market power where that power is substantial;
 - engaging in primary or secondary boycotts;
 - engaging in exclusive dealing (including third line forcing); or
 - resale price maintenance.

◦ **Unconscionable Conduct**

Ten must ensure that it always deals fairly and in good faith with its customers and suppliers; and

◦ **False and Misleading Conduct**

Ten must at no time engage in conduct that is false or misleading, either in relation to our customers, viewers or anyone else that Ten deals with in the course of its business.

Further details about each of these offences are provided in this chapter.

The *Fair Trading* acts in every State and Territory contain additional consumer protection provisions which protect consumers from the conduct of individuals (whether or not associated with a corporation), as well as from the conduct of corporations. Ten may have dealings with the Department of Fair Trading in relation to the provisions of the *Fair Trading* acts similar to Part V of the *Trade Practices Act*, and also in relation to certain State and Territory specific consumer protection provisions - such as door-to-door trading regulations.

Complaint Handling Procedure

The Australian Competition and Consumer Commission (ACCC) has been established as a watchdog to oversee corporate compliance with the *Trade Practices Act*. To ensure that the ACCC receives accurate and properly co-ordinated information in response to its enquiries, any enquiry from the ACCC should only be answered by the Legal Department.

- If you receive a verbal enquiry from the ACCC:
 - immediately refer the enquiry to the Legal Department;
 - do not attempt to answer the enquiry yourself.

If you receive a written enquiry, either in the form of a letter or formal notice, a copy of that enquiry must be sent immediately to the Group General Counsel and the Group General Counsel's advice should be sought before answering the enquiry.

As a responsible corporate citizen, Ten recognises that it must comply with all laws regarding trade practices. To this end, Ten requires you to understand what it must and must not do, recognise and deal with issues when they arise and alert management to those issues.

1.2 SUMMARY OF THE TRADE PRACTICES ACT

OVERVIEW

The *Trade Practices Act 1974* ("**the Act**") is the main instrument of competition and consumer protection law in Australia, and can impact on every aspect of Ten's business and operations, particularly in relation to the manner in which Ten sells advertising airtime, commissions and produces programs, conducts sales discussions (including Ten's sales brochures) and operates in conjunction with other free-to-air broadcasters.

The two main objectives of the *Act* are to:

- prevent anti-competitive conduct (which is conduct designed to reduce competition between suppliers of goods or services in a market); and
- safeguard consumers.

MAIN PROVISIONS

The main provisions of the *Act* which could be relevant to Ten are:

- Part IV, which deals with anti-competitive practices and mergers. These provisions are based on the fundamental concept that business behaviour which has the purpose or effect of substantially lessening competition in a market should be prohibited;

- Part IVA, which protects consumers (including viewers and advertisers) by prohibiting “unconscionable conduct” in both commercial dealings and consumer transactions; and
- Part V, which prohibits misleading, deceptive and unfair conduct in business. Part V is of greatest relevance to:
 - all forms of sales and marketing, including the selling of commercial airtime by Ten’s sales executives to advertisers (particularly information in respect of price, and the manner in which that information is conveyed);
 - the broadcast by Ten of commercials, client and competition promotions and advertorials; and
 - the production and commissioning of programmes by Ten.

PENALTIES AND REMEDIES

There are substantial penalties for infringements of the *Act*. The maximum fine for a contravention of the anti-competitive practice provisions of Part IV is:

- for corporations, the greater of:
 - \$10 million; and
 - 3 times the value of the benefit to the corporation from the contravention, or 10 per cent of the annual turnover of the corporation; and

- for individuals: \$500,000. Individuals may also be disqualified from managing corporations.

The maximum fine for a contravention of the consumer protection provisions of Part V is \$1.1 million for corporations and \$220,000 for individuals.

Breaches and alleged breaches of the *Act* impact on TEN through:

- negative publicity;
- corrective advertising;
- damages for loss caused to third parties;
- high legal costs, which may be greater than the fines imposed or damages awarded;
- heavy demands on staff time; and
- public disclosure of sensitive commercial documents.

Compliance with the requirements of the *Act* is obviously an important objective of every corporation. A basic awareness of the general principles of the *Act* will help to ensure compliance with the *Act* and will encourage healthy competition on Ten’s part.

Parts IV, IVA and V of the *Act* are outlined in detail in the following pages.

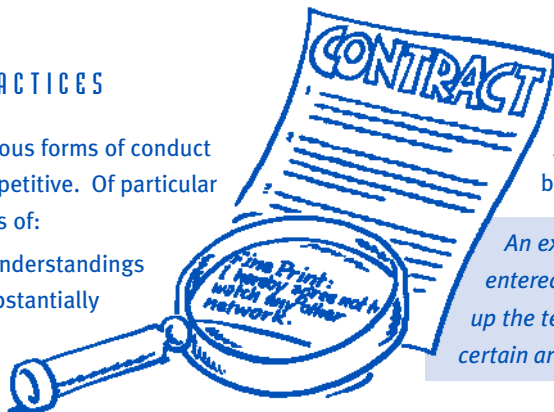
1.3 ANTI-COMPETITIVE PRACTICES

Part IV of the *Act* prohibits various forms of conduct which are considered anti-competitive. Of particular importance to Ten are the areas of:

- contracts, arrangements or understandings which restrict dealings or substantially lessen competition;
- contracts, arrangements or understandings in relation to pricing (i.e., price fixing);
- secondary boycotts for the purpose of lessening competition;
- exclusive dealing; and
- resale price maintenance.

SUBSTANTIALLY LESSENING COMPETITION

Section 45 of the *Act* prohibits Ten from entering into a contract, arrangement or understanding which either contains an “exclusionary provision” (i.e., a provision between two or more parties which has the effect of boycotting or excluding another party) or would have, or would be likely to have, the effect of “substantially lessening competition”. The *Act* prohibits outright agreements containing “exclusionary provisions” (i.e., collective boycotts).



Always seek the advice of the Legal Department before signing a contract or agreement on Ten’s behalf.

An example of a collective boycott would be if Ten entered into an arrangement with other Networks to divide up the television market by agreeing to only broadcast in certain areas.

PRICE FIXING

Section 45A of the *Act* prohibits price fixing arrangements.

A “price fixing arrangement” is a contract, arrangement or understanding which has the effect or likely effect of fixing, controlling or maintaining prices, discounts, allowances, rebates or credits in relation to goods or services acquired or supplied by any of the relevant parties in competition with each other.

An example of price fixing would be if Ten had an arrangement or understanding with other broadcasters that the rates charged by Ten and the other broadcasters for prime time advertising space would not be less than a specific price.

It is important to note that an arrangement may contravene section 45A even though it has no lasting effect. In other

words, a mere agreement with competitors to fix prices is illegal, regardless of how long the agreement lasts.

An agreement of this nature does not have to be in writing. Parties may be considered to have entered into price fixing if the fixing of prices was raised at informal lunch meetings or informal telephone conversations.

For example, an understanding between Ten and another broadcaster that advertising rates would not be set at a level lower than, say 90% of a third competitor's rate, would be enough to constitute price fixing.

MISUSE OF MARKET POWER

Section 46 of the *Act* prohibits a corporation with substantial market power from taking advantage of that market power to:

- eliminate or substantially damage a competitor;
- prevent the entry of a person into that or any other market; or
- deter or prevent a person from engaging in competitive conduct in any market.

SECONDARY BOYCOTTS

Section 45DA of the *Act* prohibits Ten, together with another person, from engaging in conduct that hinders or prevents a third person from supplying goods or services to or buying goods or services from a fourth person where that conduct would have, or would be likely to have, the effect of substantially lessening competition in any market in which the fourth person supplies or buys goods or services.

An example of a possible secondary boycott would be if Ten, through a post production supplier, required the post producer's video tape stock supplier to refuse to supply video stock to another broadcaster in order to obtain work from us.

EXCLUSIVE DEALINGS

Section 47 of the *Act* prohibits Ten from engaging in exclusive dealing where it has the purpose or likely effect of substantially lessening competition. Exclusive dealing has many facets, and includes the following practices:

- Ten supplying goods or services on the condition that the purchaser does not acquire goods or services from a competitor of Ten or accepts a restriction on the right to resupply the goods or services supplied;
- Ten refusing to supply goods or services because the purchaser has dealt with a competitor or the purchaser refuses to stop dealing with a competitor or the purchaser will not accept a restriction on the right to resupply the goods or services supplied;
- Ten acquiring goods or services on the condition that the supplier will not supply goods or services to a particular person or class of persons; and
- Ten refusing to acquire goods or services because the supplier will not agree not to supply goods or services to a particular person or class of persons.

An example of exclusive dealing would be if Ten refused to sell advertising space to a person because that person would not agree not to on-sell the advertising space to other persons.

THIRD LINE FORCING

Third Line Forcing is a particular form of exclusive dealing which involves a supplier of a good or services “forcing” the purchaser to acquire further goods or services from a third party (not being a related company of the supplier) in one of two ways:

- by only agreeing to supply goods or services (at all or at a particular price) on the condition that the customer buys goods or services from a third party; or
- by refusing to supply goods or services (at all or at a particular price) to a customer because they have not bought goods or services from a third party.

An example of third line forcing would be if Ten refused to sell advertising space to a person unless they employed a particular production company for making their advertisement.

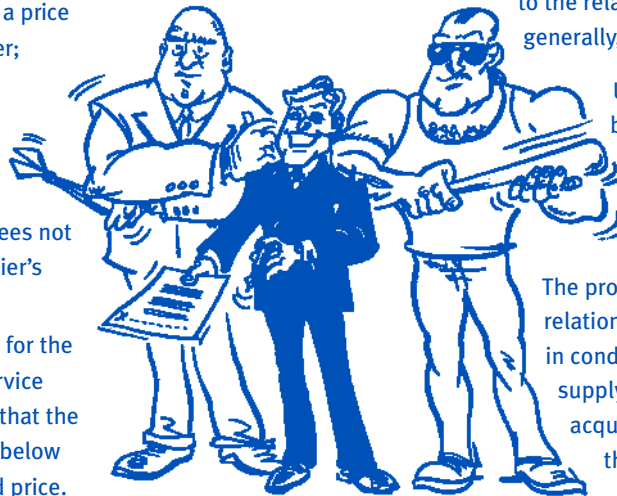
In certain circumstances these dealings can effectively be ratified by the ACCC under section 93 of the *Act*. However, ratification will only be given where the ACCC perceives the benefit to the public arising from the dealing to outweigh the harm caused to competition by the exclusive dealing.

1.4 UNCONSCIONABLE CONDUCT

RESALE PRICE MAINTENANCE

Section 48 of the *Act* prohibits Ten from engaging in resale price maintenance. Resale price maintenance involves:

- attempting to induce a person not to sell the supplier's goods or services at less than a price specified by the supplier;
- making it known to a person that the supplier will not supply her or him unless that person agrees not to sell below the supplier's specified price; and
- entering an agreement for the supply of a good or service containing a provision that the purchaser will not sell below the supplier's specified price.



An example of resale price maintenance would be if Ten imposed an obligation on a purchaser of advertising space that that person could not on-sell the advertising space for less than an amount specified by Ten.

Part IVA of the *Act* prohibits “unconscionable conduct” in both business dealings (section 51AC) and in consumer transactions (section 51AB). The prohibition on unconscionable conduct is of particular relevance to the sale of advertising space and to the relationship between Ten and advertising buyers generally, and may have application to Ten’s business.

Unconscionable conduct results from unequal bargaining positions of Ten and its customers, or Ten and its suppliers, and the emphasis of the legislation is on ensuring conduct which is fair, reasonable and in good faith.

The prohibition on unconscionable conduct in commercial relationships requires that a corporation must not engage in conduct, that is “unconscionable” in respect of the supply or possible supply, or acquisition or possible acquisition, of goods or services for a total price less than \$3 million.

The sale of advertising space is classified as a “supply of services” within the meaning of the *Act* and, if the total amount payable for the advertising time purchased in a particular transaction is not more than \$ 3 million, the *Act* may apply to the transaction.

In addition, the prohibition on unconscionable conduct also applies to the acquisition or possible acquisition of goods or services, and care must be taken to ensure that unconscionable conduct is not engaged in when acquiring goods or services from suppliers.

In determining whether conduct is unconscionable a court will consider:

- the relative strengths of the bargaining positions of Ten and the other party;
- whether, as a result of conduct engaged in by Ten, the other party has been required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of Ten;
- whether the other party was able to understand any documents relating to the supply or possible supply of the goods or services;
- whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the other party (or a person acting on behalf of the other party) by Ten or a person acting on behalf of Ten;
- the amount and the circumstances under which the other party could have acquired identical or equivalent goods or services from a person other than Ten;
- the extent to which Ten's conduct towards the other party

was consistent with Ten's conduct in similar transactions between Ten and other persons;

- the requirements of any applicable industry code;
- the requirements of any other industry code, if the other party acted on the reasonable belief that Ten would comply with that code;
- the extent to which Ten unreasonably failed to disclose to the other party any intended conduct of Ten that might affect the interests of the other party, and any risks to the business arising from Ten's intended conduct (being risks that Ten should have foreseen would not be apparent to the other party);
- the extent to which Ten was willing to negotiate the terms and conditions of any contract for supply of the goods or services with the other party; and
- the extent to which Ten and the other party acted in good faith.

The above list is not exhaustive and it is not necessary that most or all of the above elements be present in order for there to be unconscionable conduct.

An example of unconscionable conduct would be if we used our size and resources to secure an uncommercial deal from one of our suppliers, where we did not provide the supplier with an opportunity to negotiate the terms of the relationship.

1.5 FALSE AND MISLEADING CONDUCT

Section 52 of the *Act* prohibits conduct by Ten that is “misleading or deceptive” or is “likely to mislead or deceive”. The section is extremely broad, and as a result, there are more cases brought under section 52 than any other provision of the *Act*. This section is therefore an area of high potential exposure for Ten.

Whether or not conduct is misleading or deceptive will depend on the particular circumstances of each case. In essence, businesses are required to tell the truth, and refrain from giving a false or inaccurate impression. In all cases, the Court will ask what a reasonable person of the class to which the conduct is directed would reasonably understand from the conduct. The “reasonable person” within the relevant class includes the inexperienced as well as the experienced, the gullible and the astute, and the intelligent and the not so intelligent.



It is important to note that in assessing particular conduct under section 52, there is no need for the aggrieved person to prove:

- that the company intended to mislead or deceive, as the state of mind of the company concerned and its executives is irrelevant;
- that any particular person has actually been misled or deceived, as this is not essential in showing that particular conduct was likely to mislead or deceive; or
- loss or damage, as no person needs to have actually suffered loss for particular conduct to be declared in contravention of section 52.

Therefore, it would be possible for Ten to breach this section even where there was no intention on the part of Ten to mislead, and no-one was actually misled or suffered loss.

OTHER IMPORTANT ASPECTS

Important aspects of misleading and deceptive conduct to note under section 52 are:

- verbal statements made can be equally as misleading and deceptive as written material made available to the consumer;
- misleading conduct under section 52 can include silence if there is, in all the circumstances, the suppression of certain facts or information which is likely to mislead or deceive;

-
- misleading conduct may also include a prediction if the maker had no reasonable ground for making it, or if the prediction should have been qualified and was not; and
 - no penalty or fine applies for misleading or deceptive conduct in breach of section 52. However, the ACCC or any person can seek an injunction restraining the conduct, and any person suffering loss or damage as a result of the conduct may seek damages.

An example of false or misleading conduct would be if a purchaser of advertising space said “I know that Ten is the leader in the 45-60 years old female category, which is just the group we are targeting”, and in response, Ten’s advertising sales representative, knowing that the statement was false, either remained silent, allowing the person to continue to believe the false statement or replied in such a fashion to confirm the false statement, such as “Yes, you have come to the right place.”

Misleading conduct under section 52 is particularly relevant to advertising and to representations made in the course of sales negotiations.

An obvious exaggeration or sales puff, as distinct from a representation which is to be taken seriously, will not contravene the *Act* provided it is within acceptable limits. Superlatives and comparatives such as “most beautiful” and “the best”, which are obviously exaggeration or puffing are unlikely to mislead. If such terms are used, however, to suggest some factual characteristic of goods (particularly in quality and price terms), they may amount to misleading or deceptive conduct in breach of section 52. You should always take particular care when using terms such as “free”.

Comparative advertising also requires special care, because such advertisements are likely to be perceived by consumers as providing fair and precise comparisons. It is important to ensure that comparisons made, particularly when disparaging a competitor or its products, are completely accurate and able to be substantiated. Inaccurate comparisons will almost certainly breach section 52.

Character advertising, where products are advertised as being associated with a well-known personality or character, also requires special attention.

For example, Paul Hogan of “Crocodile Dundee” fame succeeded in a law suit against a shoe manufacturer which used a caricature of Hogan’s “Crocodile Dundee” character in an advertising promotion without Hogan’s consent. The shoe manufacturer was found to have falsely represented that Hogan, as the actor who played the character in the films, had endorsed the shoes and the manufacturer.

Finally, it is important to remember that the overall impression of an advertisement on its target audience is particularly important. “Fine print” qualifications will not correct a misleading impression created by other more prominent words or images in an advertisement.

FALSE REPRESENTATIONS

Section 53 of the *Act* prohibits a variety of false or misleading representations or statements in relation to goods and services. These specific prohibitions are in addition to the general prohibition against misleading and deceptive conduct contained in section 52. However, unlike a contravention of section 52, a contravention of the false representation provisions in section 53 can, under Part VC of the *Act*, lead to criminal prosecution and fines.

The false or misleading representations prohibited by section 53 relate to claims of specific attributes of goods and services.

There are 11 separate offences, several of which may be applicable to the relationship between advertisers and consumers. Quite often, one particular representation will fall within two or three of the categories set out below.

It would be unlawful under section 53 for Ten to:

- falsely represent that services are of a particular standard, quality, value or grade;
- falsely represent that a particular person has agreed to acquire goods or services;
- represent that goods or services have sponsorship, approval, performance characteristics, uses or benefits they do not have;
- represent that Ten has a sponsorship, approval or affiliation it does not have;
- make a false or misleading representation with respect to the price of goods or services; or
- make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

If a representation by Ten is factually incorrect it will be covered by section 53 regardless of whether Ten knew it to be false. Representations in breach of section 53 (as well as section 52) may be active or passive, and may arise as a result of statements made or implied by conduct.

An example of a false representation would be if one of Ten's sales representatives told a potential advertiser "Ten is the clear market leader in the 45-60 year old female category", knowing that the statement was false.

Section 53B of the *Act* is also relevant to Ten. Section 53B of the *Act* prohibits Ten from engaging in conduct that is liable to mislead persons seeking employment as to the availability, nature, terms or conditions of employment. A contravention of the prohibition in section 53B can, under Part VC of the *Act*, lead to criminal prosecution and fines of up to \$1.1 million.

It would be unlawful under section 53B for Ten to:

- advertise a position of employment when no such position is available;
- misleadingly represent to people seeking employment the nature of a position; or
- mislead persons seeking employment as to the terms or conditions of a position.

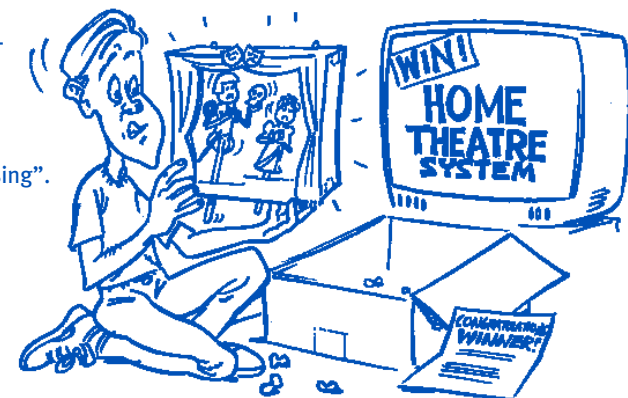
An example of misleading conduct in relation to employment that Ten might be involved in is if Ten produced or commissioned a candid-camera style program where the people being filmed thought that they were applying for real

jobs but were really only hired so that they could be filmed doing funny tasks.

OTHER MISLEADING CONDUCT

The *Act* also makes it illegal for Ten or an advertiser to:

- falsely offer gifts, prizes or other free items in connection with the supply of goods or services if it does not intend to supply them as offered; and
- advertise goods or services at a specified (not necessarily a "special") price if Ten or the advertiser is or should reasonably have been aware that it would not be able to supply reasonable quantities at that price for a reasonable period of time - conduct known as "bait advertising".



“INFORMATION PROVIDER’S” IMMUNITY

Amendments to the *Act* in 1984 clarified the application of a number of the consumer protection provisions of Part V of the *Act* to the media and other persons who carry on the business of providing information. The principal aim of the amendments was to remove the application of the *Act* in respect of defamation.

Under the *Act*, a “prescribed information provider” includes persons and companies which hold broadcasting licences under the *Broadcasting Services Act 1992*. Ten is therefore a “prescribed information provider”. Where an “information provider” is a broadcaster (as Ten is), a publication by way of radio or television broadcast by that person is a “prescribed publication”.

These provisions of the *Act* clearly cover reporting news, whether in the form of a newspaper or by electronic media, and also operate to make exempt from the operation of sections 52 and 53 the publication of opinions and facts by prescribed information providers. However, certain publications by prescribed information providers are specifically excluded from the benefit of the immunity.

Of particular relevance to Ten are the exclusions of publications in connection with the supply of goods or services. This means that advertisements and advertorials aired by Ten on behalf of advertisers would not be exempt under this provision.

TEN’S PROCEDURES

To ensure that Ten does not engage in false and misleading conduct in airing advertisements and offering promotions, procedures must be followed including:

- In airing advertorials:
 - advertisers must indemnify Ten by executing all sections of an Advertorial Contract prior to broadcast;
 - if necessary, the advertiser must provide evidence to substantiate the representations in advertorials;
- In airing advertisements:
 - if necessary, the advertiser must provide evidence to substantiate the representations in the advertisement;
- In offering promotions:
 - any terms, conditions or limitations attaching to an offer must be clearly stated;

-
- it must be clearly stated whether the customer will incur any charges additional to the normal selling price of the goods being promoted; and
 - a closing date for the period during which the offer is still current must be stated when promoting the offer in advertisements and catalogues.

1.6 ENQUIRIES FROM AND INVESTIGATIONS BY THE ACCC

Ten may from time to time receive enquiries from the ACCC regarding its adherence to the *Act*. It is important to ensure that the ACCC is given accurate, consistent and up to date information.

IMPORTANT ISSUES

It is important to note that enquiries from the ACCC by telephone or otherwise are not off the record. All enquiries from the ACCC must be referred immediately to the Legal Department so that they may be considered at senior management level and responded to in an appropriate manner. The ACCC's view on conducting interviews as part of an investigation is that in its experience, they are generally

helpful to all parties. If Ten agrees with the ACCC's view in a particular instance, an authorised senior executive will attend the interview. However, it must be stressed that there should never be any initial informal discussions of any kind between members of Ten's staff and the ACCC.

POWERS OF INVESTIGATION

Section 155 of the *Act* gives the ACCC wide powers to obtain information, documents or evidence from any person or company who may have contravened the *Act* or may have knowledge that a third person has done so. If the ACCC believes that a person or company can provide it with information, documents or evidence, a member of the ACCC may issue a notice requiring disclosure of that information or of the documents. A company may be required to:

- provide information in writing;
- produce documents; or
- give evidence (oral or in writing) under oath or affirmation.

A person served with a notice to provide information is not excused from providing information because the information may tend to incriminate that person. Refusal to comply with such requirements can lead to a fine of up to \$2,200 or 12

months imprisonment in the case of individuals, and a fine of up to \$11,000 in the case of corporations.

Finally, if the ACCC believes that a person or company is engaging in conduct that contravenes the provisions of the *Act*, a member of the ACCC may enter premises, either with the occupier's consent or using a search warrant issued by a magistrate:

- to search the premises for evidence;
- to inspect, copy or take extracts of documents; or
- to operate electronic equipment to access evidence.

Refusal to provide reasonable facilities or assistance to an officer executing a warrant, or refusal to answer questions or produce evidential material to which the warrant relates can lead to a fine of up to \$3,300 in the case of individuals, and a fine of up to \$16,500 in the case of corporations.

1.7 ENQUIRIES

If you have any enquiries concerning Ten's compliance with its trade practices obligations, you should contact the Legal Department.



2 CORPORATIONS ACT

2.1 WHAT WE ALL NEED TO KNOW

The *Corporations Act* is Commonwealth legislation which regulates the establishment, operations and deregistration of corporations in Australia. It is an extensive piece of legislation containing over 1,400 sections imposing numerous rules and regulations on corporations. Corporations and their directors are also subject to obligations imposed by the common law.

Whilst many of the provisions of the *Corporations Act* apply to Ten on a daily basis, the four most important issues that Ten's employees should be aware of are:

- **Disclosure** - You should be mindful that information you deal with may need to be reported. For example, information which may impact on the share price of Ten Network Holdings Limited may be required to be notified to the market through the Australian Stock Exchange (For more information on this please read Chapter 3).
- **Obligations of directors, officers and employees** - Directors and company officers are required to act in good faith, use their position for proper purposes, avoid conflicts and exercise an expected standard of care, skill and diligence. The *Corporations Act* also places obligations on employees prohibiting the improper use of their position, or information obtained from their position, to:

- gain an advantage for themselves, or someone else; or
- cause detriment to Ten.

- **Insider trading** - You may be guilty of an offence under the *Corporations Act* if you hold information which is not known to the market and:

- trade and/or purchase securities (eg., shares, options, debentures, etc) in Ten Network Holdings Limited, either yourself or through intermediaries; or
- pass on information to persons who are likely to trade and/or purchase securities in Ten Network Holdings Limited.

If you possess any information which may be material to the price of Ten Network Holdings Limited's securities and intend to trade securities in Ten Network Holdings Limited you should contact the Group General Counsel. You must seek your own independent legal advice before proceeding with the transaction. You should never reveal information which may be material to the price of Ten Network Holdings Limited's shares to any non-employee of Ten.

- **Whistle blower protection** - you may be entitled to protection if you disclose information about suspected breaches of the *Corporations Act* to the Australian Securities and Investments Commission (ASIC) or certain other people.

2.2 DISCLOSURE OF INFORMATION

Under the *Corporations Act*, Ten has an obligation to disclose certain information to its members, shareholders and to the public. Ten must:

- file financial statements and reports with ASIC before Ten's annual general meeting;
- provide shareholders with those financial statements and reports with the Notice of Meeting;
- lodge annual meeting documents with ASIC which then become available for public inspection;
- lodge annual and half-yearly financial statements and reports with ASIC and the ASX, which are then available for public inspection; and
- comply with the ASX Listing Rules with respect to continuous disclosure, by providing information to the ASX for dissemination to the share market (for more information please read Chapter 3).



2.3 YOUR DUTIES TO TEN

The *Corporations Act* and the common law impose certain duties on Ten employees depending upon their position in the company. Ten requires that all employees comply with both the *Corporations Act* and common law duties.

COMMON LAW DUTIES OF TEN'S DIRECTORS

The common law has, over a considerable period, developed a body of obligations by which directors must abide. These obligations include duties to:

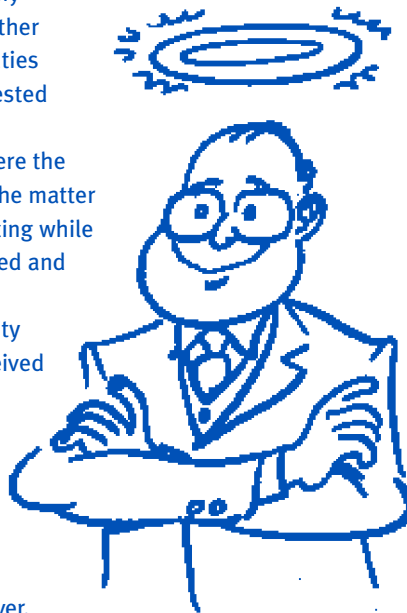
- **Act in good faith** - A director must act in good faith and in the best interests of the company. While the director's belief is important, determining whether a director has breached the duty is based upon an objective test. The standard is of a reasonable person in the director's position and circumstances;
- **Exercise powers for a proper purpose** - A director must ensure that the powers conferred on him or her are exercised in accordance with the purpose for which they were conferred. Determining whether a breach has occurred involves a mixture of both subjective and objective tests. The director's motives, the objective nature and purpose of the power and the limits on the powers are all considered. The duty is fairly broad and a director may breach this duty

if the director knows of any other director's misuse of such power and does not take steps to prevent the misuse;

- **Avoid conflicts of interest** - The general principle is that directors cannot allow their own interests, or the interests of another company on whose board they sit or another person, to conflict with their duties to Ten. This duty can be manifested in several ways and includes:

- not voting on decisions where the director has an interest in the matter and leaving the board meeting while the matter is being discussed and voted on; and
- not exploiting an opportunity or knowledge that was received from the director's position in Ten.

- **Retain discretionary power** - Directors generally cannot contract or otherwise bind themselves as to how they will vote at future meetings. However, directors may validly bind themselves to



further board action if it is necessary to carry out a valid pre-existing contract that was entered into through a proper exercise of the director's discretion;

- **Care, skill and diligence** - Directors are under a duty to exercise a reasonable degree of care, skill and diligence. Although there has been recognition that managing a business has inherent risks and uncertainties, there are still minimum expectations of directors. These expectations include a duty to:

- familiarise themselves with the business and how it is run;
- become familiar with more than just their field of expertise so as to ensure that they understand the whole of Ten's operations and that the board is capable of monitoring and satisfying itself that the company is being properly run; and
- make enquiries and keep themselves informed about all aspects of Ten's operations. In particular, they must reach a reasonably informed opinion about Ten's financial capacity.

The *Corporations Act* provides some relief with the "Business Judgement Rule" (see page 24) which also applies to the common law duties.

CORPORATIONS ACT DUTIES OF DIRECTORS

The common law duties are supplemented by similar duties in the *Corporations Act*. However, these statutory duties apply to officers as well as directors. The duties imposed by the *Corporations Act*, include:

- **Care and due diligence** - a director or officer must discharge their duty with the degree of care that a reasonable person would use in the same position and circumstances. This statutory duty is subject to the “Business Judgement Rule”, which states that the requirements of care and diligence are met if a business judgement is made by a director or officer:
 - in good faith and for a proper purpose;
 - who has no material personal interest in the subject matter of the judgement;
 - who has informed themselves about the subject matter of the judgement to the extent considered reasonably appropriate; and
 - who rationally believed at the time that the judgement was made that the judgement was in the best interests of the company;
- **Good faith and proper purpose** - this section closely follows the common law and consequently many of the same considerations are relevant; and
- **To avoid conflicts of interest** - there are various provisions which prohibit potential conflicts of interest. The potential conflicts of interest affected by the *Corporations Act* include:
 - related party transactions;
 - restrictions on indemnities given to directors;
 - limits on termination payments to directors and senior managers;
 - the duty to disclose material personal interests; and
 - voting where a director has a material personal interest.
- **Insolvent trading** - directors have a statutory duty to prevent insolvent trading by their corporation. Directors will be in breach of this duty if:
 - they are a director at the time when the company incurs a debt;
 - the company is insolvent at that time, or becomes insolvent by incurring that debt; and
 - at that time, there are reasonable grounds for suspecting that the company is insolvent, or would become insolvent.

DUTIES OF ALL TEN EMPLOYEES

The *Corporations Act* also imposes two basic prohibitions on all Ten employees. These prohibitions are:

- **use of position** - a director, officer or employee must not improperly use their position to gain an advantage for themselves or someone else or cause detriment to Ten; and
- **use of information** - a director, officer or an employee must not improperly use information obtained from their position to gain an advantage for themselves or someone else or to cause detriment to Ten.

CONSEQUENCES OF CONTRAVENTION

Generally, a breach of a director's duty under the common law can result in liability to pay compensation or account for any profit gained.

If a director, officer or an employee breaches one of the duties imposed by the *Corporations Act*, he or she may be subject to:

- an order to pay the Commonwealth an amount up to \$200,000;
- disqualification from holding the office of director (in any company in which that office is held); and
- orders requiring the payment of compensation to Ten for any loss incurred by Ten.

If the breach of the director's, officer's or employee's duty is held to be as a result of intentional, dishonest or reckless conduct, then the director, officer or employee has committed a criminal offence and may also be subject to:

- fines of up to \$220,000; and/or
- five years imprisonment.

2.4 INSIDER TRADING PROVISIONS

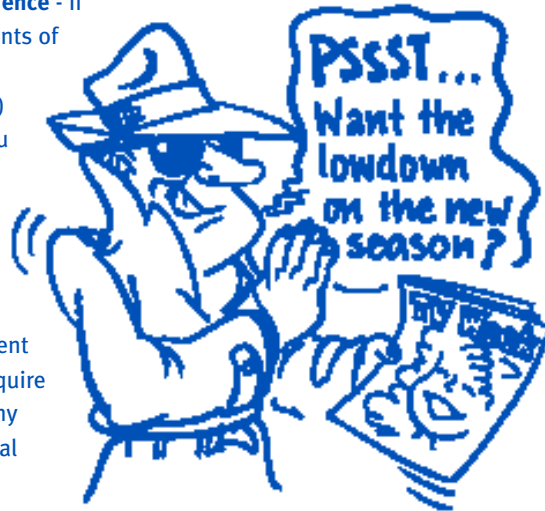
The law of "insider trading" is governed by the *Corporations Act*. It is based on the concept that those who trade in securities markets should have equal access to information, and, accordingly, a person who has any "informational advantage" should not be allowed to exploit it by trading.

If you are an "insider", and each of the elements of insider trading exist, you will be in contravention of the insider trading offences contained in the *Corporations Act*. All Ten employees should be aware of the insider trading provisions, as the penalties for being engaged in insider trading are severe.

THE THREE INSIDER TRADING OFFENCES

The *Corporations Act* creates the following three separate insider trading offences, namely:

- **The Trading Offence** - If all of the elements of insider trading (outlined below) are present, you are prohibited from applying for, acquiring or disposing of, or entering into an agreement to apply for, acquire or dispose of any relevant financial product (for example, buying or selling relevant shares);



- **The Procuring Offence** - If all of the elements of insider trading are present, you are prohibited from arranging for someone else (either for their or for your benefit) to trade in the relevant financial products; and

- **The Communication Offence** - If all of the elements of insider trading are present, and the financial products concerned are quoted on a stock exchange, you are prohibited from directly or indirectly communicating the information, or causing the information to be communicated, to another person if you know, or ought reasonably know, that the other person would or would be likely to trade in the financial products or procure someone else to do so.

WHO ARE “INSIDERS”?

You are an insider if:

- you possess information which is not generally available but if it were, a reasonable person would expect the information to have a material effect on the price or value of Ten’s securities; and
- you know, or ought reasonably to know, that the information is not generally available, and if it were generally available, it might have a material effect on the price or value of Ten’s securities.

A Ten employee could easily find themselves in this position. You could also get inside information about other companies you deal with. The insider trading rules will apply to that information also.

ELEMENTS OF INSIDER TRADING OFFENCES

As outlined above, in order for an insider to be considered to have contravened one of the insider trading offences, all elements of insider trading must be present. The elements of insider trading are:

- **Connection with Australia** - The conduct must have a connection to Australia. This can occur where the insider trading offence occurred in Australia or where the relevant corporation is connected with Australia. As Ten is incorporated in Australia this element is likely to be established;
- **Financial products**- The insider trading offences revolve around transactions in "financial products". Financial products are not only shares, but include units of shares, debentures issued by a company, interests in a managed investment scheme or unit trust, options of any of these types of securities and derivatives;
- **Information** - The term "information" has its general meaning. However, "information" also includes matters of supposition i.e., matters assumed on the facts, whether or not such facts are definite, and matters relating to the intentions or likely intentions of a person;
- **Possession of information** - Ten will be taken to possess information which its officers, employees or agents possess. An officer, employee or agent will "possess" information

which came into his or her possession in the course of performance of his or her duties. It is possible for a person to possess information which he or she has forgotten or which is contained in written material which has not been read. Ten will be presumed to possess information if a Ten officer, employee or agent knows or ought reasonably to know any matter or thing;

- **Information is not generally available** - A contravention of the insider trading offences requires that the information was not generally available. Information is taken to be "generally available" if:
 - it consists of readily observable matter;
 - it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in financial products of the kind whose price might be affected by the information, and a "reasonable period" for it to be disseminated among such persons has elapsed since it became known. A reasonable period is dependent upon the facts and can be as short as 20 minutes after disclosure to the ASX (where disclosure to the ASX is by way of internet releases). As a general rule the appropriate reasonable period would be 24 hours after the notification to the ASX; or

→ it consists of deductions, conclusions or inferences made or drawn from either readily observable matter and/or information made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in financial products of a kind whose price might be affected by the information;

- **Materiality** - A contravention of the insider trading offences requires that a reasonable person would expect the information to have a material effect on the price or value of the financial products in question. A reasonable person would be taken to expect information to have a material effect on price or value if the information would be likely to influence persons who commonly invest in the financial products in deciding whether or not to do so; and
- **Knowledge** - It must be proved that the insider knows, or ought reasonably to know, that the information is not generally available and that if it were, it might have a material effect on the price or value of the financial product.

PENALTY FOR A CONTRAVENTION

Ten and/or you, may be liable in a civil action brought by persons who suffer loss or damage caused by the insider trading. Damages are generally measured by reference to the difference between the amount actually paid for the financial products concerned and the amount that would have been paid if the information had been generally available.

In addition, civil penalty actions can be brought by the ASIC, which may result in:

- an order to pay the Commonwealth an amount up to \$200,000 (or \$1 million for a company);
- disqualification from holding the office of director; and
- orders requiring payment of compensation to those affected.

Breaching the insider trading provisions is also a criminal offence. The *Corporations Act* allows a court to make other corrective and penal orders, but principally for contravention of the insider trading offences of the *Corporations Act*:

- you could be fined up to \$220,000 or imprisoned for five years or both; and
- Ten could be fined up to \$1,100,000.

2.5 PROTECTION FOR WHISTLEBLOWERS

Employees and officers are protected from being victimised and other liability if they report a suspected breach of the *Corporations Act* to:

- ASIC;
- Ten's auditors;
- a director, company secretary or senior manager of Ten; or
- a person authorised by Ten to receive disclosure of that material.

You must give your name when making the disclosure and act in good faith in doing so, to get this protection.

Any disclosure of the information you give or your identity can only be made to regulatory bodies or with your consent.

2.6 COMPLIANCE • PRACTICAL STEPS

If you possess any information which may be material to the price of Ten Network Holdings Limited's securities and intend to trade and/or purchase securities in Ten Network Holdings Limited, you should contact the Group General Counsel before proceeding with any transaction. If you have such information about another company, you should not trade in their shares either. You must seek also your own independent legal advice before proceeding with any such transaction.

You should never reveal information which may be material to the price of Ten Network Holdings Limited's to any non-employee of Ten.

2.7 ENQUIRIES

If you have any questions relating to your obligations under this chapter, you should contact the Group General Counsel.



3 ASX LISTING RULES

3.1 WHAT WE ALL NEED TO KNOW

Ten's ultimate holding company, Ten Network Holdings Limited (**Ten Holdings**), is listed on the Australian Securities Exchange (**ASX**). The ASX offers a market on which listed companies can trade their securities. The listing, quotation and trading of those securities is governed by the ASX Listing Rules (**Listing Rules**).

Under the Listing Rules, Ten Holdings must disclose all information which may have a material effect on the price of its securities. Therefore, if you obtain information which you think may have an impact on Ten Holdings' share price, you should notify the Group General Counsel who will assess whether such information needs to be disclosed through the ASX to the market.

3.2 AUSTRALIAN STOCK EXCHANGE LISTING RULES

Ten Holdings, an Australian company which is listed on the ASX, owns a significant interest in the Ten Group Pty Limited (Ten Group) which in turn operates the stations in the Ten Network and holds interests in regional broadcasters, facility providers and advertising entities.

The ASX offers a market for trading a corporation's securities. The listing, quotation and trading of securities is governed by the Listing Rules. The Listing Rules are enforceable against listed companies both by contract and pursuant to the *Corporations Act*. The Listing Rules create obligations that are additional and complementary to, common law and statutory obligations.

Ten Holdings as a listed company must comply with the Listing Rules. As such, all Ten employees should be aware of the obligations of continuous disclosure imposed by the Listing Rules.

CONTINUOUS DISCLOSURE

Listing Rule 3.1 requires that:

“Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell the ASX that information.”

This requirement for disclosure is subject to certain exemptions. Information is not required to be disclosed if:

- a reasonable person would not expect the information to be disclosed; and
- the information is confidential and the ASX has not formed the view that the information has ceased to be confidential; and
- it would be a breach of a law to disclose the information; or
- the information concerns an incomplete proposal or negotiation; or
- the information comprises matters of supposition or is insufficiently definite to warrant disclosure; or
- the information is generated for internal management purposes of the entity; or
- the information is a trade secret.

An example of information which should be provided to the Group General Counsel would be if a production company (which provides a number of high rating television programs to Ten) terminated its contract with Ten, which would mean the loss of those programs.

At the end of the day, such information may not be required to be disclosed to the market. However, information of this

nature should be passed on to the Group General Counsel who will liaise with the Chairman of Ten Holdings to determine whether or not such information is required to be disclosed.

Chapter 3 of the Listing Rules requires Ten to disclose specific information relating to:

- change in financial forecast or expectation;
- declaration of dividends;
- Ten Holdings making a takeover bid or receiving a takeover bid for Ten Holdings;
- Ten Holdings making a buy back of its shares;
- Ten Holdings making a reorganisation of its shares;
- Ten Holdings changing details of its options;
- details of certain company meetings of Ten Holdings or Ten Group;
- changes of registered offices or principal places of business of Ten Holdings or Ten Group;
- changes of directors and other officers of Ten Holdings or Ten Group; and
- copies of all documents sent to shareholders of Ten Holdings.

FALSE MARKET

Even if Ten satisfies the exception to Listing Rule 3.1, if the ASX considers that there is or is likely to be a false market in Ten Holdings securities and asks Ten to give it information to correct or prevent a false market, Ten must give the ASX the information needed to correct or prevent the false market. For instance, a false market may exist if:

- there is a reasonably specific rumour or media comment in relation to Ten Holdings that has not been confirmed or clarified by an announcement by Ten Holdings to the market; and
- there is evidence that the rumour or comment is having, or the ASX forms the view that the rumour or comment is likely to have, an impact on the price of the entity's securities.

ENFORCEMENT AND PENALTIES FOR NON-DISCLOSURE

The *Corporations Act* reinforces the Listing Rules by imposing serious civil and criminal liabilities for non-compliance with the continuous disclosure requirements. It provides that Ten must notify the ASX of information in accordance with the Listing Rules that:

- is not generally available; and

- a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the securities of Ten.

Information is generally available if it:

- consists of readily observable matter;
- has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information, and a reasonable period of time for it to be disseminated among such persons has elapsed since it was made known; or
- consists of deductions, conclusions or inferences made or drawn from readily observable matter or which are based on information which has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information, and a reasonable period of time for it to be disseminated among such persons has elapsed since it was made known.

A civil action may be brought by persons who suffer loss or damage caused by any failure to comply with the continuous

disclosure obligations. A civil penalty action may also be brought by the ASIC against Ten Holdings or any person involved in the breach if the continuous disclosure obligations are not complied with. You may be involved in a breach if you are knowingly concerned with it or induced the breach. The consequences of such an action by ASIC include:

- a civil penalty of up to \$200,000 or \$1 million for Ten Holdings;
- disqualification from holding the office of director; and/or
- orders requiring payment of compensation.

Ten Holdings could be found guilty of a criminal offence, for which the penalty is a fine of \$110,000. ASIC may also issue an infringement notice to Ten Holdings requiring payment of a fine of \$100,000.

3.3 COMPLIANCE • PRACTICAL STEPS

As Ten Holdings and the Ten Group are required to disclose material information, if you become aware of information in Ten's operations which may affect Ten Holdings' share price on the market, then such information should be provided to the Group General Counsel who will liaise with the Chairman of

Ten Holdings to determine whether such information must be disclosed to the market under the Listing Rules.

3.4 ENQUIRIES

If you have any questions about your obligations under the Listing Rules, you should contact the Group General Counsel.



4 EMPLOYMENT

4.1 WHAT WE ALL NEED TO KNOW

Ten wants its workplaces to be enjoyable and fulfilling places to work and aims to ensure that all employees are not discriminated against. All new employees will be required to enter into a formal employment contract and be subject to a reasonable probationary period.

During employment your relationship with Ten will be governed by the formal employment contract, together with any relevant Award or Collective Agreement.

This section explains the legal aspects of the employment relationship. You are encouraged to read this section together with the Human Resources intranet site to understand your rights and obligations.

4.2 AWARDS, ENTERPRISE AGREEMENTS AND LEGISLATIVE REQUIREMENTS

Ten's relationship with its employees is governed by a number of different factors depending upon the nature of the employment relationship, including:

- **Industrial Awards** - Awards will apply to some Ten employees. Awards contain minimum conditions of employment, for example, minimum wages, overtime, sick leave and so on. Human Resources should be contacted to determine whether a particular Award applies to an employee;
- **Collective Agreements** - Collective Agreements may apply to some Ten employees. Like awards, Collective Agreements set minimum conditions of employment. Human Resources should be contacted to determine whether a Collective Agreement applies to an employee;
- **Individual employment contract** - It is the policy of Ten that all non-Collective Agreement employees will be employed pursuant to an individual employment contract which sets out the terms and conditions of their employment and is prepared by Human Resources;
- **Legislation**, such as the *Workplace Relations Act 1996* (Cth) and various other Federal and State legislation, including OH&S and anti-discrimination statutes and regulations.

The fact that the employment relationship is highly regulated makes it essential for Human Resources to prepare all employment contracts and for managers and supervisors to check with Human Resources as to the procedure required to performance manage or if necessary, terminate the employment of an employee.

4.3 RECRUITMENT

PROBATIONARY APPOINTMENTS

All employees who join Ten must complete a probationary period before their appointment is confirmed. That probationary period will generally be three months, but may be longer and may be extended by Ten in certain circumstances. The probationary period allows both parties to assess the employment relationship.

The probationary period allows the employer or the employee to terminate the employment contract prior to the conclusion of the probationary period if the employment relationship is not working out.

THE HUMAN RESOURCES INTRANET SITE

On commencement of employment, all staff are required to familiarise themselves with the Human Resources intranet site. As the site incorporates employee entitlements and responsibilities, all employees are encouraged to read the content and raise any questions with their manager or supervisor.

4.4 TERMINATION OF EMPLOYMENT

PERFORMANCE MANAGEMENT (CORRECTIVE ACTION) POLICY

The management of issues relating to employee conduct and performance in the workplace is subject to Ten's Performance Management (Corrective Action) policy, which is located on the Human Resources intranet site or in the Schedules of the Enterprise Agreement.

This Policy is designed to assist managers and supervisors to develop an action plan to facilitate improvement in the conduct or performance of the employee. All managers and supervisors are responsible for the implementation of this policy. As a general principle, the Performance Management

(Corrective Action) policy reflects the policy of Ten and that, in most cases, employees will be counselled before any further disciplinary action is taken.

4.5 SUMMARY DISMISSAL

Ten has the right to terminate an employee summarily, that is immediately and without notice, in the case of serious misconduct.

“Serious misconduct” means misconduct of a kind such that it would be unreasonable to require Ten to continue the employment during the notice period. Actions that constitute serious misconduct can include (but are not limited to) conduct that causes serious and imminent risk to the health or safety of a person, theft, fraud, assault, intoxication at work, refusal of duty, wilful and serious neglect of duty or disobeying instructions or orders.

In each case, whether the misconduct justifies summary dismissal will depend on the circumstances.

It is important that managers and supervisors move promptly to address and investigate any allegations of serious misconduct against an employee.

In some circumstances Ten may require the employee’s employment to be suspended on full pay while investigations are carried out.



An employee will normally be given an opportunity to respond to any allegations made before disciplinary action is undertaken.

TERMINATION WITH NOTICE

In cases other than where serious misconduct is involved, or employees are otherwise not entitled to notice of termination (such as casuals and fixed-term employees), termination will usually only occur on the provision of notice.

Subject to some exceptions, Ten and employees must give notice of termination or (in the case of Ten), payment in lieu of notice. The relevant period of notice is contained in collective agreements or in employment contracts. If no notice period is specified, the minimum notice periods in the *Workplace Relations Act 1996* (Cth) will apply. It is essential that Human Resources is consulted before the employment of any employee is terminated.

THE RESOURCES

This Compliance Manual is to be read in conjunction with relevant collective agreements, employment contracts and Network Ten's Human Resources intranet site. Collective agreements set out the basic terms and conditions of

employment for some of Ten's staff. Employees should check with Human Resources to find out if their employment is governed by a collective agreement.

The Human Resources intranet site provides an overview of employee entitlements and responsibilities, together with Ten's policies and guidelines in relation to Performance Management (Corrective Action); Discrimination; Harassment and Equal Opportunity and Systems Access, for example.

This Manual makes reference to the contents of collective agreements and the Human Resources intranet site. All managers and supervisors must be aware of the contents, and take steps to ensure that the staff under their control are similarly aware.

4.6 ENQUIRIES

If you have any questions about the rights and obligations discussed in this chapter, you should contact Human Resources.



5 EQUAL EMPLOYMENT OPPORTUNITY

5.1 WHAT WE ALL NEED TO KNOW

Equal Employment Opportunity (EEO) is a means of ensuring that all employees, or those seeking to become employees, of Ten are afforded fair treatment and equal opportunity in employment. This means making sure that workplaces are free from all forms of unlawful discrimination and harassment.

EEO ensures that all employees and potential employees are treated equally on the basis of merit. Merit means that Ten will consider the employee's or potential employee's true (rather than assumed) qualities and the qualities genuinely required for a position. Ten is an equal employment opportunity employer and seeks to ensure that it does not discriminate against its employees. Ten seeks to foster a working environment free from discrimination and harassment.

Discrimination is any practice or conduct which distinguishes between people because they belong to a particular group of people or have a particular attribute or characteristic so as to disadvantage some and advantage others. Whilst not all forms of discrimination are unlawful, both State and Federal legislation prohibit discrimination for reasons such as:

- gender;
- race;

- marital status;
- family or carer's responsibilities;
- disability; and
- age.

Workplace harassment is where a person subjects another person in the workplace to degrading behaviour, ranging from verbal abuse or threats to actual physical violence. Workplace harassment also includes sexual harassment in the workplace.

Ten has procedures to deal with allegations of discrimination and workplace harassment which are outlined in this section of the Manual. If you consider that you have been harassed or discriminated against and wish to address the matter you should speak to your manager, supervisor or Human Resources.

Equal Opportunity is the removal of obstacles in employment so that a class of people have available to them the same opportunities as other classes of people. Equal Opportunity does not mean that Ten must employ a certain number of the discriminated class of persons or that the discriminated class of persons must be selected over the other class. It simply involves the removal from the decision-making process of

stereotyped assumptions about the discriminated class of persons, the way they work, and the types of work they are suited for and wish to undertake.

Ten has an Anti-Discrimination and Harassment (Equal Opportunity) Policy which is located on the Human Resources intranet site. All employees are required to read and become familiar with this policy.

Staff should be aware that discriminatory or harassing behaviour may be grounds for disciplinary action (including dismissal).

5.2 DISCRIMINATION

Discrimination is prohibited at both Federal and State levels by specific anti-discrimination and industrial legislation. Managers and supervisors need to understand the consequences of discrimination in order to effectively deal with it in the workplace.

LEGISLATION GOVERNING DISCRIMINATION

The five principal Federal anti-discrimination statutes are as follows:

- *Racial Discrimination Act 1975*;
- *Sex Discrimination Act 1984*;
- *Disability Discrimination Act 1992*;
- *Human Rights and Equal Opportunity Commission Act 1986*; and
- *Age Discrimination Act 2004*.

In addition, every State and Territory has enacted anti-discrimination legislation. While Federal and State laws use similar definitions of discrimination, the grounds and areas covered vary.

In employment, the legislation protects employees from discriminatory treatment at all stages in the employment

relationship between employer and employee, including recruitment, the terms and conditions of employment (including promotion, transfer and training and access to other benefits) and termination of employment.

DEFINITION OF DISCRIMINATION

Discrimination generally means any practice which makes a distinction between individuals or groups so as to disadvantage some and advantage others. Treating someone less favourably includes conduct which has the effect of disadvantaging them, whether this is intended or not. It may take the form of a denied opportunity, such as promotion, harassing conduct or exclusion from certain tasks or rewards.

There are two types of discrimination, namely:

- **Direct Discrimination** - Direct discrimination involves treating a person less favourably than other persons in similar circumstances because they belong to a group or category of people (for example, women, homosexuals, Aboriginals or people over the age of 65) or because they possess characteristics which are thought to relate generally to people of a particular status.

Examples of direct discrimination include:

- dismissing an employee because of pregnancy;
- playing jokes on a fellow employee with an intellectual disability; or
- refusing to offer jobs to people from non-English speaking backgrounds because they do not reflect the “corporate image”.

- **Indirect Discrimination** - Indirect discrimination occurs where there is a requirement (that is, a rule, practice, policy or procedure) which, on its face, appears to be neutral and to treat everyone equally, but which has an unequal or disproportionate impact on a particular group of people and is unreasonable in the circumstances.

In order for indirect discrimination to be established, four specific elements must be proved. These are:

- the person discriminating required the complainant to comply with a requirement or condition;
- a substantially higher proportion of persons of a different status to the complainant are able to comply with the requirement or condition than persons of the same status as the complainant;

-
- the complainant cannot comply with the requirement or condition; and
 - the requirement or condition is unreasonable in the circumstances.

For example, a requirement that only Ten employees of five years' continuous employment are able to apply for a promotion to senior management level seems on its face to be neutral and to treat everyone equally. However, the requirement would be discriminatory if a substantially higher proportion of men than women were able to comply with it because the women were more likely to have taken a break during their employment to have children. In these circumstances, unless the employer could show that the five years' continuous employment requirement was reasonable, this policy may be indirectly discriminatory against women.

Similarly, imposing a height restriction on security guards may appear to be reasonable, however the practical effect of such a requirement is that more men than women can comply with this requirement. The requirement may also have other implications, for example people from certain racial or ethnic backgrounds may be disadvantaged by this requirement.

Other examples of indirect discrimination include:

- a requirement that a position can only be filled on a full-time basis which may discriminate against people with family responsibilities;
- a requirement that there be a fixed time for a lunch break which may impact upon a person with diabetes.

COMMON GROUNDS OF DISCRIMINATION

Some common grounds of discrimination are:

- **Sex/Gender** - Discrimination on the ground of sex/gender is prohibited by the Federal *Sex Discrimination Act* and in all State jurisdictions. Discrimination prohibited on the grounds of sex/gender includes discrimination:
 - against a person by reason of a characteristic that applies generally, or is generally imputed, to people of a certain sex, for example, the child rearing potential of a woman; and
 - on the grounds of marital status or the identity of their spouse, for example, a refusal to employ a husband and wife in the same company because of a belief that married people should not work together, may be discriminatory;

- **Pregnancy** - Discrimination on the ground of pregnancy is unlawful in all jurisdictions. Pregnancy discrimination covers less favourable treatment based on characteristics that pregnant women are generally thought to have, for example, the assumption that pregnant women may suffer frequent morning sickness and may be incapable of performing their jobs competently. It also covers potential pregnancy, for example, denying a woman of child bearing age training or promotion because of the assumption that she may soon leave the company to have children;
- **Family or Carer's responsibilities** - Discrimination on the ground of family responsibilities is prohibited under the *Sex Discrimination Act* and several state acts. An example of this type of discrimination is the failure to promote an employee, due to family responsibilities, or because he or she is unable to work a certain amount of overtime;
- **Sexuality/Lawful sexual activity** - Discrimination on the ground of sexuality is also prohibited under state acts. An example of this type of discrimination is asking a person in an employment interview if he or she is gay or treating an employee less favourably because of the perception that he or she is gay;



- **Race** - Discrimination on the ground of race, colour, descent, nationality or ethnic or national origin is prohibited under the *Racial Discrimination Act* and most State legislation.

For example, a policy that all employees must speak and understand English fluently so that an employer can ensure that they are able to follow essential health and safety rules may constitute indirect discrimination against people of non-English speaking backgrounds. Such a policy may be considered unreasonable if there were other reasonable ways of ensuring that employees followed essential health and safety rules, for example, adequate training or translating important signs into several languages;

◦ **Racial vilification** - In addition, the *Racial Discrimination Act* prohibits racial vilification, making it unlawful for a person to do a public act that is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person and which is done because of the race, colour or national or ethnic origin of that other person. It is also unlawful to incite hatred towards members of a particular ethnic group;

◦ **Disability/Impairment** - Discrimination on the ground of physical or intellectual disability or impairment is prohibited under most state acts and the *Disability Discrimination Act*.

“Disability” is very widely defined in the legislation and includes physical, sensory, intellectual and psychiatric impairment, mental illness and the presence in the body of organisms causing disease.

The definition of disability includes a disability which presently exists, which existed in the past (for example, a history of severe asthma which is now under control) and one which may exist in the future, as well as a disability that is imputed to a person (for example, assuming a gay man has AIDS). As an illustration, an employer would be prohibited from refusing to employ people with epilepsy,

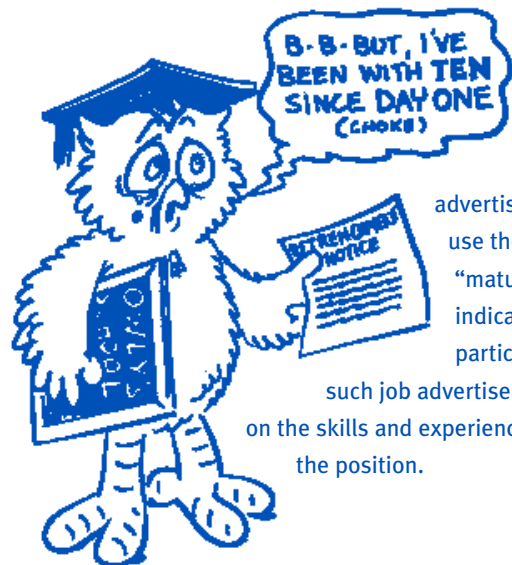
because of the fear that they may have seizures at work and thus cause a disturbance or injure themselves, unless the employer could show that this refusal was reasonable given the nature of the position.

In some circumstances it is not unlawful to discriminate against a person with a disability. For example, if a person is unable to carry out the inherent requirements of the job it is not unlawful not to employ the person. The inherent requirements of a position are those essential for the job to be done. To determine whether a person with a disability could carry out those requirements, factors such as the person’s training, qualifications, experience and performance in similar jobs should be taken into account.

It is also not unlawful discrimination if, in order to carry out the requirements of the job, the impaired person would require special services or facilities, the provision of which would impose unjustifiable hardship on Ten. In determining whether “unjustifiable hardship” would occur, factors such as the effect of the disability on the person, the financial circumstances of Ten and the estimated amount of expenditure required to be made to implement the special service or facility will be taken into account.

- **Age** - Age discrimination is prohibited under both State and federal legislation. It is unlawful to discriminate against a person because of his/her age or whether s/he fits into a particular age group. For example, Ten aims not to indirectly discriminate against younger people by requiring job applicants to have a certain number of years of experience

unless a number of years of experience is completely necessary for the position.



Similarly, in job advertisements, Ten does not use the words “junior”, “mature” or “senior” to indicate that we are seeking a particular age group. Rather, such job advertisements specify and focus on the skills and experience that are required for the position.

It should also be noted that prohibitions against compulsory retirement on the basis of age have also been introduced in a number of States.

DISCRIMINATION AND THIRD PARTIES

Prohibition against discrimination is not confined to workplace situations.

The prohibition can extend to conduct involving third parties.

For example, it is unlawful to discriminate against a person by refusing to engage a woman as an independent contractor (eg., a freelance journalist) on the basis that she is a woman.

TEN'S PROCEDURES

All complaints of discrimination should be handled in accordance with Ten's *Complaint Handling Procedure* located on the Human Resources intranet site and in Clause 1.9 of the *Enterprise Agreement (Dispute Settlement Procedure)*.

All complaints of discrimination involving third parties should be referred to the General Manager responsible for the division or station in which the complaint arises or, if that is inappropriate in the circumstances, to Human Resources.

All complaints of discrimination will be treated seriously.

In all cases, the manager or supervisor to whom a complaint is made must consult with Human Resources to obtain advice concerning the investigation procedure to be followed in the particular case.

Steps should be taken to ensure that the complainant is not exposed to further discrimination, whilst at the same time observing the rights of the alleged perpetrator to an objective and impartial investigation.

5.3 WORKPLACE HARASSMENT

Workplace harassment is a form of discrimination and can take many forms apart from the more commonly understood sexual harassment. Workplace harassment occurs where a person subjects another person in the workplace to degrading behaviour, ranging from verbal abuse or threats to actual physical violence.

Unlawful harassment may occur on a number of grounds, including:

- age;
- disability/impairment;
- industrial activity/inactivity;
- lawful sexual activity;
- marital status;
- sex;
- race; and
- religious activity.

Harassment may be seen to have occurred if the behaviour makes the receiver feel offended, humiliated, intimidated, frightened or uncomfortable.

Ten recognises that comments and behaviour which do not offend one person can offend another and that people from different cultural backgrounds find different behaviours to be offensive. Ten respects the right of individuals to react differently to similar harassment behaviours.

SEXUAL HARASSMENT

All anti-discrimination legislation prohibits sexual harassment in employment, either specifically or as a form of sex discrimination. A person sexually harasses another if:

- he or she engages in conduct that is unwelcome;
- the conduct is of a sexual nature (eg., sexual comments, jokes, innuendo or gestures, displaying, transmitting or downloading offensive material by email, fax or internet, intrusive references to physical appearance including dress);
- the conduct causes the person to feel offended, humiliated or intimidated; and
- in the circumstances, a reasonable person would have anticipated the other person feeling offence, humiliation or intimidation.

The conduct does not have to be a direct statement made by

one person to another. Sexual harassment includes where the workplace environment is sexualized, even if none of the conduct complained about was directed at the person making the complaint. Allegations of sexual harassment can also occur at work-related functions which occur out of the office environment.

Examples of conduct which could constitute sexual harassment include the following circumstances:

- *when express or implied threats (eg., dismissal, or promises of benefits such as promotion, a pay rise or access for further training) are used to gain the employee's consent to the harasser's sexual advances;*
- *sending inappropriate SMS messages to another person;*
- *sexually oriented office entertainment;*
- *repeated requests for outings or drinks, especially after prior refusal;*
- *persistent questions about a person's sex life; or*
- *suggestions about a person's sexual morality - for example suggesting someone is a "prude", "tart", "easy" etc;*
- *where sexual comments, jokes and conversations create an environment that is intimidating or offensive;*
- *when an employee is dismissed from employment because*

he or she rejects the harasser's advances; and

- *where an employee sends to other employees of the opposite sex sexually explicit e-mails or e-mails containing sexual references (including jokes of a sexual nature).*

Not all sexual interaction between employees will amount to sexual harassment. The determining factor is whether the behaviour is unwelcome. The conduct will be deemed to be unwelcome if a reasonable person would have anticipated that the behaviour would be offensive and humiliating.

Friendship, mutual attraction, dating, consensual sexual interaction or conduct that is invited and reciprocated is not sexual harassment. However, sexual harassment can occur after a consensual relationship (even a sexual relationship) has ended. This scenario is a common cause of complaints.

It should be noted that it is not always necessary for an employee to have told the harasser to stop his or her behaviour or for the behaviour to have been intentional. Silence is not consent. There are many reasons why a person may remain silent in the face of harassment: the youth or inexperience of the person, fear of reprisals, distrust of the employer's complaint process or where the person to whom

complaints are to be directed is the harasser, or is in a more junior position than the harasser.

In brief, sexual harassment:

- does not have to be deliberate or intentional;
- can be obvious or indirect;
- can be visual, physical or verbal in nature;
- can be a single incident or a series of incidents; and
- can be in or out of work hours.

SEXUAL HARASSMENT AND THIRD PARTIES

As with discrimination, the prohibition against sexual harassment is not confined to the workplace. It can extend to the relationship between Ten and third parties.

For instance, sexual harassment may occur:

- between a Ten employee and an independent contractor or volunteer; and
- in the provision of goods and services to customers or members of the public.

Particular care should be taken by Ten employees in Queensland. The prohibition against sexual harassment

in that State is not limited to workers and the workplace as it is in other jurisdictions. The coverage of the Queensland Act is therefore much broader and can extend to harassment by employees whether or not against other employees or whether or not the harassment takes place in the workplace.

APPROPRIATE ACTION

It is essential for every manager and supervisor to take appropriate steps to ensure that harassment does not occur in the workplace or in relation to third parties.

Employees are encouraged to report complaints to their manager or supervisor or Human Resources. All complaints of harassment will be taken seriously and investigated promptly, thoroughly, confidentially and fairly. However, it is particularly important that an alleged harasser is not disciplined until the complaint has been fully investigated. It is also important to ensure that a complainant is not victimised as a result of his or her complaint.

TEN'S PROCEDURES

All complaints of sexual harassment must be handled in accordance with Ten's *Anti-Discrimination and Harassment (Equal Opportunity) Policy*, which is located on the Human Resources intranet site.

All complaints of sexual harassment by third parties should be referred to the General Manager responsible for the division or station in which the complaint arises or, if that is inappropriate in the circumstances, to Human Resources.

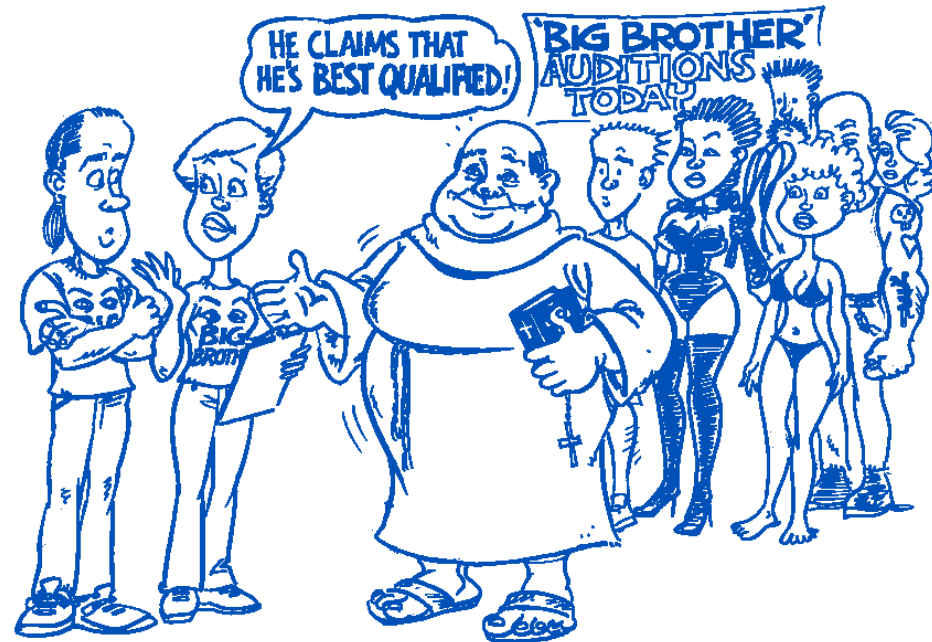
All complaints of harassment will be treated seriously. In all cases, the manager or supervisor to whom a complaint is made must consult with Human Resources who will provide advice concerning the investigation procedure to be followed in the particular case.

Steps should be taken to ensure that the complainant is not exposed to further harassment or victimisation, whilst at the same time observing the rights of the alleged perpetrator to an objective and impartial investigation.

5.4 EQUAL OPPORTUNITY

Equal Opportunity is the removal of obstacles in employment so that classes of persons have available to them the same opportunities as other classes of persons. It is based on the principle of merit, that is, the best person for the job irrespective of the characteristics of the class. Equal Opportunity does not mean that an employer must employ a certain number of the discriminated class of persons or that the discriminated class of persons must be selected over the other classes of persons. It simply involves the removal from the decision-making process of stereotyped assumptions about the discriminated class of persons, the way they work, and the types of work they are suited for and wish to undertake.

As discussed above, anti-discrimination legislation aims to eliminate discrimination in, among other things, employment. By contrast, equal opportunity legislation places positive obligations on employers to correct discriminatory practices and systematically ensure that different classes of persons have access to equal opportunity.



EQUAL OPPORTUNITY LEGISLATION

The *Equal Opportunity for Women in the Workplace Act 1999* (Cth) places an obligation on, in particular, private sector companies employing more than 100 employees to implement an equal opportunity program for women in the workplace. These obligations apply to Ten.

The legislation requires an employer to implement an Equal Opportunity for Women in the Workplace Program whereby it must:

- notify its employees that it has a program by issuing a policy statement on Equal Opportunity for Women in the Workplace;
- appoint a person of sufficient authority and status within management to develop and implement the program. In the case of Ten, the relevant person is the Human Resources Manager;
- consult with relevant trade unions;
- consult with employees, particularly female employees;
- collect and record statistics about the number of employees of each sex, the types of jobs undertaken by employees of each sex and their respective conditions of employment;
- attempt to identify personnel policies or practices which discriminate against women, and patterns of lack of equality of opportunity for women within the employer's organisation;
- set objectives and make forward estimates designed to achieve equality of opportunity for women; and
- regularly monitor and evaluate the implementation of the program and assess the achievement of the objectives and forward estimates.

EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE AGENCY

At present, Ten must report annually to the Equal Opportunity for Women in the Workplace Agency, however the federal Government has announced that biennial reporting may come into effect from 2008. This change recognises the time required to develop, implement and evaluate EEO programs. The Agency's purpose is to administer the *Equal Opportunity for Women in the Workplace Act 1999* and through education, assist organisations to achieve equal opportunity for women.

At present, employers that employ over 100 people must submit a report relating to the previous year's activities before 31 May each year. The Agency may waive reporting requirements in circumstances where an employer has taken all reasonably practicable measures to address the issues relating to employment matters that affect equal opportunity for women in the employer's workplace, and the employer has complied with the legislation for at least three years.

**ANTI-DISCRIMINATION AND HARASSMENT
(EQUAL OPPORTUNITY) POLICY**

Ten has an *Anti-Discrimination and Harassment (Equal Opportunity) Policy*.

In line with this Policy, all managers and supervisors are responsible for fulfilling Ten's obligations in relation to Equal Employment Opportunity and the program for women. Further information regarding Ten's responsibilities can be obtained from Human Resources.

5.5 ENQUIRIES

If you have any enquiries concerning discrimination, workplace harassment or equal opportunity, you should contact Human Resources.



6.1 WHAT WE ALL NEED TO KNOW

The safety of Ten's employees, contractors and visitors is of paramount importance to Ten. Ten will do its utmost to ensure a safe working environment for all of its employees and requires that each employee must do everything reasonably possible to ensure that our premises are safe and that each employee is familiar with OHS policies and procedures.

Workplace safety is governed in each State and Territory by:

- the State or Territory's Occupational Health and Safety (OHS) legislation;
- the State or Territory's Workers' Compensation legislation; and
- general common law obligations.

The objects of the OHS legislation as they relate to Ten are to:

- secure the health, safety and welfare of persons at Ten;
- protect persons present at Ten's places of work against risks to health or safety arising out of the activities of Ten's employees;
- promote and assist Ten in providing a safe and healthy work environment; and
- provide for the involvement of Ten and its employees in the formulation and implementation of standards, policies and

practices to ensure all persons are not exposed to risks to their health and safety.

The OHS legislation has broad application, applying to Ten and Ten's employees and covering all locations where people perform work such as offices, shops and other buildings. Importantly, the nature of Ten's work means that its "workplace" will extend to all places where employees work on a mobile or on-site basis.

Workers' Compensation legislation and the common law augment the OHS legislation by:

- imposing on Ten and owners of buildings which Ten occupies obligations regarding the safety of a workplace; and
- providing a system for the compensation of loss suffered by persons injured in the workplace where the injury is causally connected to their employment.

ENSURING HEALTH AND SAFETY IS EVERYONE'S RESPONSIBILITY

If any employee becomes aware of any circumstance which could endanger safety the employee must immediately report that circumstance to their Manager in the relevant State and log onto the OHS intranet site to complete a Hazard Report form.

6.2 OCCUPATIONAL HEALTH & SAFETY IN DEPTH

GENERAL PROVISIONS

The key provisions common to the OHS legislation in most States and Territories are as follows:

- **Duties of employers** - Ten is required, so far as is reasonably practicable, to provide and maintain for its employees a working environment that is safe and without risks to health. This duty includes an obligation to provide information, instruction, training and supervision to enable employees to perform their work in a manner that is safe. Employers must also conduct regular risk assessment programs. In some circumstances, Ten's duties will be extended to independent contractors engaged by Ten and any employees of the independent contractor.
- **Duties of employers to non-employees** - Ten is required to ensure that any persons (who are not Ten's



employees) are not exposed to risks to health and safety arising from Ten's business. This may include visitors to Ten's premises.

- **Duties as manager or controller of workplaces** - In addition to the obligations as an employer, Ten must take measures in relation to matters over which it has management or control to ensure that the workplace and the means of access to and exit from the workplace are safe and without risk to health. The legislation generally defines a "workplace" to mean any place, whether or not in a building or structure, where employees or self-employed persons work.
- **Duties of employees** - The onus of responsibility of OHS in all jurisdictions is shared with employees. While at work, an employee must:
 - take reasonable care for his or her own health and safety;
 - take reasonable care for the health and safety of everyone else who may be affected by his or her conduct in the workplace;
 - comply with any directions or instructions issued by Ten with respect to its obligations to ensure health and safety;

→ not intentionally or recklessly interfere with or misuse anything provided in accordance with the provisions of the OHS legislation.

- **OHS committees** - Although arrangements vary in each State and Territory, the OHS legislation generally provides for the establishment and/or appointment, within the workplace, of groups of employees who have the responsibility to assist the employer, employees and other persons at the workplace to comply with OHS obligations. Such committees will usually be established at the request of employees. The groups are variously described as “designated work groups” (Victoria and the ACT), “health and safety committees” (Victoria, the ACT, NT, South Australia and Tasmania), “Workplace OHS Committees” (in NSW) “workplace health and safety Committees” (in Queensland) and “safety and health committees” (in Western Australia).

The primary functions of health and safety committees established under OHS legislation in Ten’s workplaces include the:

- facilitation of co-operation and consultation between Ten and its employees in instigating, developing and carrying out measures designed to ensure the health and safety of employees at work; and
- formulation, review and distribution to employees of the standards, rules and procedures relating to health and safety which are to be carried out or complied with at the workplace.

In some States, the committees will also be responsible for actively investigating matters which may be a risk to health and safety, making recommendations on changes to the workplace that should be made and resolving issues in the workplace relevant to OHS.

- **OHS officers and representatives** - In addition to the establishment of OHS committees, individuals are also given responsibility under OHS legislation. Such persons are called “health and safety”, “OHS”, “employees’ safety” or “safety and health” representatives.

Although not identical in each State and Territory, health and safety representatives have important powers, including the right to:

- inspect Ten's workplace and accompany an inspector during an inspection of Ten's workplace;
- help in the resolution of OHS issues in the workplace;
- require Ten to establish a health and safety committee; and
- in some instances, investigate complaints relating to OHS issues.

Ten is specifically required to:

- permit access to certain categories of information;
- permit a representative to be present at any interview concerning OHS between Ten and an employee (at the employee's request);
- consult the representative on certain OHS matters including proposed changes to Ten's workplace; and
- provide such facilities and assistance as are necessary to enable the representative to carry out his or her functions and duties.

COMPLIANCE MONITORING

OHS Legislation in each State and Territory is administered by a general government agency of the State or Territory. In administering the OHS legislation the government agency may:

- carry out inspections;
- issue improvement and prohibition notices and other notices in respect of alleged contraventions; and
- develop Codes of Practice and provide other information to provide practical guidance for meeting the requirements of general duties under the legislation.

ENFORCEMENT

Breaches or failure to comply with OHS legislation is an offence. Breaches may also be punishable by a fine or a term of imprisonment.

The specific penalties vary throughout the States and Territories. However, it is an offence in all States and Territories for Ten to fail to meet its duties to provide and maintain a safe work environment. For example, in New South Wales the penalty for a first offence exceeds \$500,000 and in Victoria the penalty that can be ordered for a breach of an

employer's general duties is almost \$1 million. Other non-monetary penalties may also be applicable, such as orders to publicise or notify the offence, or orders to undertake OHS projects.

YOUR OBLIGATIONS

All State and Territory legislation imposes penalties on employees who breach their duties. Again, the penalty an employee may incur for such failure varies depending on the State or Territory, but ranges from \$3,300 for a first offence in NSW, and is now close to \$200,000 (per offence) for an individual employee in Victoria. Imprisonment may also be ordered in relation to some very serious breaches.

In addition a breach of any applicable OHS policy or measure put in place by Ten may also expose an employee to a disciplinary penalty imposed by Ten. In very serious matters, Ten may consider the termination of your employment.

6.3 GENERAL LAW OBLIGATIONS

In addition to its obligations under OHS legislation, Ten has a common law duty to take reasonable care for the safety of its employees.

The duty of Ten to take reasonable care for the safety of employees is personal to Ten - it cannot be entrusted to a third party - and it is a duty owed to every employee.

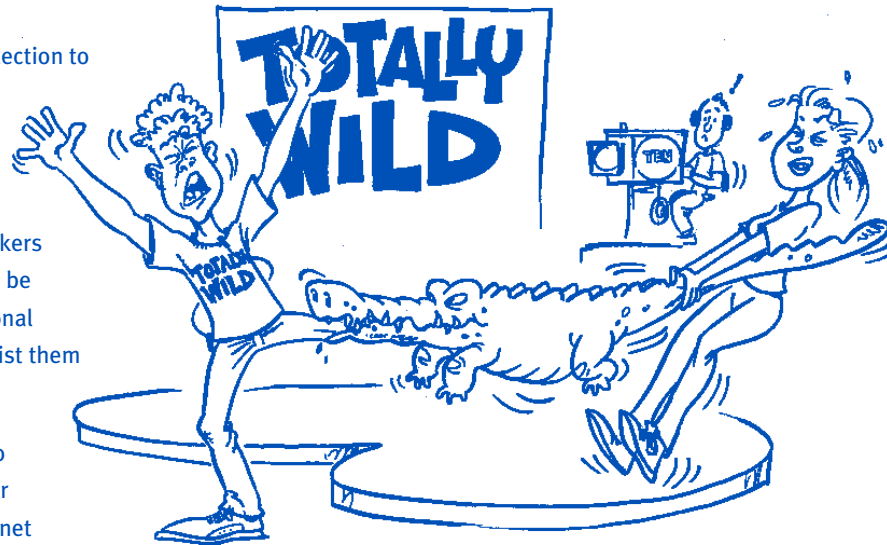
The common law duty includes an obligation to establish and maintain a safe system of work. The system of work refers to the usual method adopted by Ten of carrying out the operations in which the employee is engaged. Ten is required to set up a safe system of work and to maintain it to ensure that it does not later become unsafe.

Finally, Ten is under an obligation to provide safe plant and equipment to enable the employee to carry out his or her duties, and the plant and equipment must be adequately maintained to ensure its safety. Ten will not, however, be responsible for breakdowns or defects in plant or machinery which are beyond its control or possible knowledge.

6.4 WORKERS COMPENSATION

Workers compensation in Australia provides protection to workers and their employers in the event of a workplace-related injury or disease. Controlled and administered under workers compensation legislation enacted in each State and Territory, workers compensation compensates injured workers for their lost earnings. Injured workers may also be entitled to recover medical expenses and vocational rehabilitation expenses, where necessary, to assist them to return to work.

If you are injured at work it is essential for you to report the incident to your manager or supervisor immediately and that you log onto the OHS intranet site and complete an Accident and Incident Report form. This information needs to be documented in the Injury Register on the Ten OH&S Intranet site.



6.5 ENQUIRIES

If you have any enquiry or require any further information on workplace safety or you consider that there is anything which is unsafe about the workplace you should contact the General Manager in your State.



1.1 WHAT WE ALL NEED TO KNOW

In conducting its business Ten will come to hold information which is of a private nature. Ten respects the privacy of individuals and will only use information gathered for authorised uses.

Corporations such as Ten are required to comply with the privacy protection standards set out in the National Privacy Principles, which relate to:

- the collection of information;
- the use or disclosure of information;
- the quality of the information collected;
- the security of the information collected;
- the openness of the corporation's privacy policies;
- access to the information collected;
- how people are identified;
- anonymity;
- trans-border flow of information; and
- sensitive information.

Failing to comply with privacy obligations may have wide-ranging commercial and legal consequences for Ten

and individuals. Accordingly, Ten has developed a privacy policy which governs the collection of all information by Ten. You must familiarise yourself with the privacy policy.

1.2 PRIVACY ACT 1988

The *Privacy Act 1988* (Commonwealth) imposes obligations to maintain minimum standards of privacy when dealing with personal information.

The provisions apply to private sector “organisations” (being body corporates whose business has a turnover of \$3 million or more per annum).

Consequently the provisions apply to Ten.

At its heart, the *Privacy Act* establishes the National Privacy Principles (“NPPs”) which set out the minimum standard of privacy protection required.

NATIONAL PRIVACY PRINCIPLES (NPP)

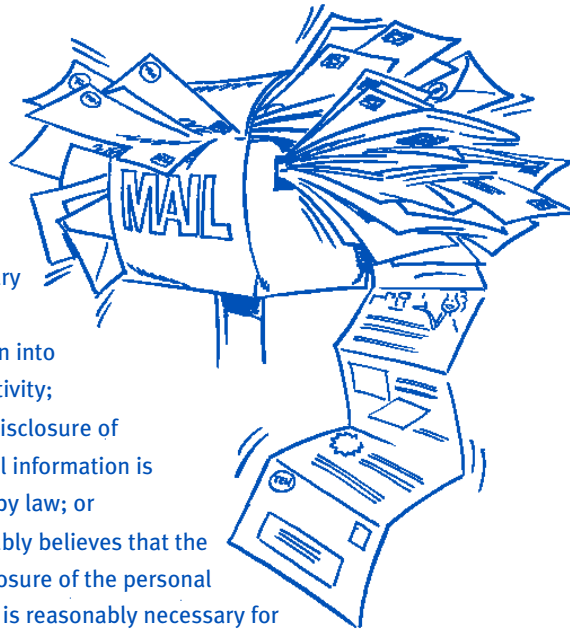
There are ten NPP's. Each of the NPP's apply to Ten in the following manner:

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- **Collection of Data:** Ten must only collect personal information which is necessary for its functions or activities. The collection of the information by Ten must be by means that are lawful, fair and not unreasonably intrusive. The person from whom the information has been collected by Ten must be advised:
 - of Ten's name and contact details;
 - of the purpose of collection;
 - that the person can get access to their personal information;
 - of the types of organisations to which Ten will give that kind of information;
 - of any laws that require information of that kind to be collected; and
 - of the main consequences of not giving the information.

Where reasonable and practicable, Ten must collect personal information about a person from that person. If the information is obtained from someone else, then Ten must (subject to some limited exceptions) take reasonable steps to ensure that the person about whom the information is obtained is aware of the matters listed above.

- **Use and disclosure of data:** Ten should only use or disclose information for the purpose for which it was collected, unless:
 - another use is related to the purpose and the person would reasonably expect such other use;
 - the person has consented, or the secondary purpose is related to the primary purpose;
 - the information is not sensitive information and the other purpose is for direct marketing; and
 - it is impracticable to get consent before use;
 - there is no cost to the person to stop the direct marketing if requested by the person;
 - the person did not make a request not to receive direct marketing;
 - each direct marketing communication provides a notice informing the person that they may request that the direct marketing communications be stopped; and
 - each direct marketing communication provides Ten's contact details;
 - Ten reasonably believes that it was necessary to use or disclose the information to lessen or prevent serious and imminent threat to an individual's life, health or safety or a serious threat to public health and safety;

- the use or disclosure of the personal information is a necessary part of an investigation into unlawful activity;
- the use or disclosure of the personal information is authorised by law; or
- Ten reasonably believes that the use or disclosure of the personal information is reasonably necessary for an enforcement body to prevent, investigate or enforce various laws.



- **Data quality:** Ten must take reasonable steps to ensure that information is complete, accurate and up-to-date when it:
 - collects personal information; or
 - uses or discloses personal information.

- **Data security:** Ten must take reasonable steps to ensure that personal information in its possession is protected from misuse, loss, unauthorised access, modification or disclosure. If personal information that has been collected is no longer needed for any purposes allowed by the NPPs, Ten must take reasonable steps to destroy or permanently remove material which identifies the person to whom the personal information relates from the personal information.
- **Openness:** Ten must have a document clearly setting out its policies for the management of personal information. This document must be made available to anyone who asks for it. If requested by a person, Ten must take reasonable steps to generally inform the person of the kind of information held by it, for what purposes, and how it collects, holds, uses and discloses the information.
- **Access and correction:** Ten must provide a person with access to their personal information when requested by that person. However, access may be denied if:
 - giving access would pose a serious and imminent threat to the life or health of any individual;

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- giving access would have an unreasonable impact upon the privacy of others;
 - the request is frivolous or vexatious;
 - the information relates to existing or anticipated legal proceedings between the person and Ten;
 - the information is not accessible by discovery in the court proceedings;
 - it would prejudice negotiations between the person and Ten;
 - giving access would be unlawful;
 - denying access is required or authorised by or under law;
 - giving access would interfere with investigations of unlawful activity;
 - giving access is likely to interfere with an enforcement body preventing, investigating or enforcing various laws; or
 - a request is made by an enforcement body performing a lawful function to not give access to a person.

If Ten considers that it does not have to provide access because of any of the situations outlined above then, if reasonable, it must consider whether a mutually agreed

intermediary would give sufficient access to meet the needs of the parties.

Where providing the information would reveal information connected with Ten's decision making process, which information is commercially sensitive, then Ten may give an explanation of the decision rather than giving direct access to the information.

If Ten charges fees to access the information, the fees must not be excessive and they must not be charged for the lodgement of a request for access to the information.

If a person considers that his/her personal information is incorrect, not complete or not up-to-date, Ten must, at the person's request, take reasonable steps to correct, complete or update the information. If there is disagreement about the accuracy of the information between Ten and the person, Ten must take reasonable steps, if requested by the person, to include a statement claiming that the information is not accurate. Ten must give the person reasons for refusing to give access to information or refusing to correct personal information;

◦ **Use of a Commonwealth Government agency identifier:**

Ten must not adopt an identifier used by a Commonwealth Government agency or contracted service provider to identify individuals and information held by Ten in respect of that individual. An identifier is a reference used to identify an individual, such as a unique reference number (but does not include an Australian Business Number).

It is unlikely that Ten will obtain information from any Commonwealth Government agency. If it does receive information from a Commonwealth Government agency it should not use the Commonwealth Government agency's identifier to identify the information. An example of such use would be if Ten identified a person on whom Ten holds information by that person's Medicare number. Use of a Commonwealth Government agency's identifier is authorised in limited circumstances, although it is unlikely that these circumstances will apply to Ten in the operation of its business.

◦ **Anonymity:** Where Ten seeks to obtain information from any person, where practicable, there must be an option for a

person not to identify themselves. The right to anonymity will not apply where the person is required by law to provide his or her identity with the information.

◦ **Trans-border flow of data:**

Ten may transfer personal information about a person to someone else who is in a foreign country only if:

- Ten reasonably believes that the recipient is subject to information handling requirements that are substantially similar to the NPPs;
- the person consents;
- the transfer is necessary for the performance of a contract between the person and Ten;
- the transfer is necessary for the conclusion of a contract, made in the interests of the person, between Ten and a third party;



-
- the transfer is to the benefit of the person and it was impractical to obtain consent from the person, although it was likely that consent would have been given if it were practicable; or
 - Ten has taken reasonable steps to ensure that the transferred information will not be held, used or disclosed by the recipient in a manner inconsistent with the NPPs.

- **Sensitive information:** Sensitive information is information about a person's race, political opinions or affiliations, religious or philosophical beliefs, membership to trade or professional associations, membership of a trade union, sexual preferences or practices, criminal record or health information. Ten must not collect sensitive information about a person unless:
 - the person consents;
 - collection was required by law;
 - collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual and the person is unable to give consent due to physical or legal incapacity; or

- collection is necessary for the establishment, exercise or defence of a legal claim.

EXEMPTIONS FROM THE APPLICATION OF THE NATIONAL PRIVACY PRINCIPLES

There are 2 main exemptions from the NPPs, namely:

- **Use of employee records** - the NPPs will not apply to records held by Ten in relation to the employment relationship with its current or previous employees. This exemption does not apply to contractors, sub-contractors and prospective employees; and
- **Media exemption** - the NPPs will not apply to acts or practices engaged in by "a media organisation" in the course of journalism. A media organisation is defined as:
"... an organisation whose activities consist of or include the collection, preparation for dissemination or dissemination of the following material for the purpose of making it available to the public:
 - a. material having the character of news, current affairs, information or a documentary;*
 - b. material consisting of commentary or opinion on, or analysis of, news, current affairs, information or a documentary."*

Consequently, Ten may be exempt from the application of NPPs for acts done during the course of journalism. However, it is important to note that just because we are a media organisation not all of our activities will be done “in the course of journalism”.

However, in order to gain exemption, Ten must be publicly committed to observing published written standards (developed either by the organisation or a body representing a class of media organisations) that deal with privacy in the context of the activities of a media organisation. Ten’s commitment to the *Commercial Television Industry Code of Practice* (see 7.3 opposite) should meet this requirement.

INFORMATION TO WHICH THE NPP’S APPLY

You should note that whilst the NPPs regarding the collection of information and the use or disclosure of information only relate to information collected after the commencement of the NPPs on 21 December 2001, all other NPPs will apply to information held by Ten regardless of when the information was collected. Ten will not be able to avoid obligations

on the basis that it held information on persons prior to 21 December 2001.

7.3 THE COMMERCIAL TELEVISION INDUSTRY CODE OF PRACTICE

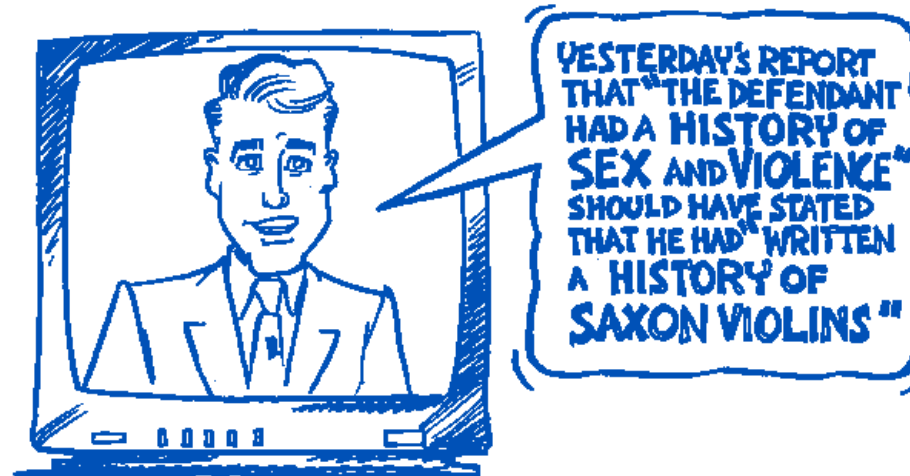
The *Commercial Television Industry Code of Practice* contains several provisions regarding privacy issues in relation to the broadcasting of news and current affairs. These include:

- **Images of dead or seriously injured people** - appropriate regard to the feelings of relatives and viewers is to be had when including images of dead or seriously injured people;
- **Bereaved relatives/survivors** - sensitivity is to be exercised when interviewing or showing images of bereaved relatives and survivors or witnesses of traumatic incidents;
- **Material relating to personal or private affairs** - material relating to a person’s personal or private affairs, or which invades an individual’s privacy must not be used unless there is an identifiable public interest reason;
- **Identification of individuals** - when reporting on the behaviour of a group, care should be taken to avoid unfairly identifying a single person or business;

7.4 ENQUIRIES

- **Murder and accident victims** - reasonable steps must be taken to ensure that accident or murder victims are not identified before their immediate family is notified;
- **Suicide** - reports of suicide or attempted suicide should only be made if there is an identifiable public interest reason. Any report should exclude detailed descriptions as to the method used, graphic details and should not glamorise suicide in any way;
- **Gratuitous emphasis of sensitive information** - a negative portrayal of any person or groups of persons must not be made by placing gratuitous emphasis on matters such as age, colour, gender, national or ethnic origin, any disabilities, race, religion or sexual preferences. However, if there is a public interest reason for a report the matters may be raised; and
- **Correction of significant errors** - reasonable efforts must be made to correct significant errors as soon as possible.

If you have any enquiries concerning Ten's compliance with its privacy obligations, you should contact the Legal Department.





8.1 WHAT WE ALL NEED TO KNOW

Ten's e-mail system allows communication both between members of staff and to other external parties through the Internet. As e-mails have become an important part of communication, it is important to ensure that they are used appropriately. Similarly, access to the Internet is provided to staff for the benefit of Ten and its customers. To ensure that all Users understand their responsibilities, guidelines have been established for the use of the Internet.

As we become more dependent on using the Internet, and the popularity of e-mail rapidly develops, so too has the rise of spam. Spam e-mail is much like junk mail that we receive in the post. It is unsolicited commercial electronic messaging, which is usually sent to a large number of e-mail recipients, and normally takes the form of advertising. Spam is also often used for fraudulent purposes, such as an attempt to obtain from the recipient either payment or personal information by deception.

The purpose of this chapter is to establish standard practices and guidelines for the responsible, safe and productive use of e-mail and Internet facilities (**Systems**) and to ensure that Users of the Systems understand and comply with obligations under the *Spam Act 2003*.

Ten requires that employees do not:

- forge e-mails;
- send harassing or nuisance e-mails;
- attempt to gain unauthorised access to any person's e-mail inbox or information held by Ten of a financial, strategic, personal or private nature;
- endanger the confidentiality or reputation of Ten or its customers;
- send unauthorised e-mails from another staff member's e-mail account;
- send e-mails containing unlawful or illegal information;
- engage in excessive personal use of the Internet, or use the Internet for personal financial gain;
- access Internet sites containing material that is obscene, abusive, defamatory or unlawful (eg., material that may contravene anti-discrimination legislation or constitute harassment including any racist, sexist, ageist or sexually explicit material);
- download files from the Internet (except for work related reasons);
- download or distribute information subject to copyright requirements; and

- engage in actions that are in breach of the *Spam Act 2003* by sending unsolicited commercial electronic messages without consent.

E-mails are a legal record and can be used as evidence in legal proceedings. You should remember that e-mails are an official company record just like letters, facsimiles, memos and file notes. As such, you are expected to use the same diligence and discretion when communicating via e-mail, that you would use when sending a letter, facsimile or memo.

E-mail and Internet facilities are provided by Ten for business purposes and Ten has the right to monitor any and all aspects of the use of these facilities. For further information, Users should familiarise themselves with the Workplace Surveillance Chapter in this Manual.

Inappropriate use of e-mail or Internet facilities may be grounds for disciplinary action (including dismissal), termination of contract or revocation of access to e-mail and Internet facilities.

8.2 SECURITY

It is the responsibility of Users to ensure that personal User IDs and passwords are securely maintained. This includes making passwords hard to guess and committing them to memory rather than recording them. Users should also ensure that passwords are regularly changed.

8.3 PROHIBITIONS ON E-MAIL AND INTERNET

Use of Ten's Systems are granted for authorised business purposes only. However, Ten understands that personal usage is sometimes necessary, and this is acceptable as long as it is kept to a minimum.

You must not use the Systems in any way contradictory to this policy or any of Ten's other policies (including the System Access Policy). Examples of unacceptable use include:

- **Forged mail** - forging an e-mail signature to make it appear as though it originated from a different person;
- **Harassment or Discrimination** - sending e-mail that is abusive or threatens an individual's safety. The use of e-mail for sexual, ethnic, religious or any other harassment is also prohibited. Use of e-mail in this context should be reported to your manager or Human Resources;

- **Nuisance mail** - using e-mail to unduly disturb or distress an individual. This includes sending or forwarding chain letters, deliberately flooding a user's mailbox with automatically generated mail and sending mail that is deliberately designed to interfere with proper mail delivery or access;
- **Inappropriate usage and excessive personal usage** - including using e-mail and Internet for personal business enterprise, political activity, intelligence gathering, fraudulent activities, gambling or in breach of intellectual property rights;
- **Unauthorised Access** - attempting to gain unauthorised access to another person's mail files regardless of whether the access was successful;
- **Illegal Use of Mail Services** - messages containing illegally obtained credit card numbers, telephone authorisation codes, criminal conspiracy, illegal transmission of copyrighted material or similar items. Please remember that such e-mails are not only a breach of the policy but potentially criminal offences;
- **Transmitting** any content that is obscene, offensive, harassing, fraudulent or unlawful;

- **Downloading** files from the Internet (except for work-related reasons); and
- **Downloading or distributing** information that is subject to copyright requirements.

The Network Information Services Manager reserves the right to disconnect a user's account if the user represents a serious threat to system or mail integrity. As part of an investigation, the Network IS Manager (or a designate) may examine mail files, logs, and any other appropriate documents or testimony. The appropriate senior manager, in consultation with Human Resources, will determine whether disciplinary action is appropriate.

USERNAME DISSEMINATION

A person's username and e-mail address are considered private information and cannot be given out to other persons. You must not release a person's username for the purpose of advertising, mass mailings, or other commercial uses.

8.4 USING E-MAILS

“JUNK” E-MAIL AND BULK MAILING

The convenience of e-mail can also become its curse. Since messages can be sent with little effort or cost to one or more mailing lists of multiple recipients, the temptation exists to do massive bulk mailings. Due care should be taken when sending e-mail. E-mail is most suited to communications in which it is important to both the sender and the recipient that the recipient realises that a time critical message has been received. Therefore, only messages that must be read by all recipients should be bulk mailed.

In many instances, individuals would like to view certain types of information at their convenience or possibly not at all. Information that falls into this category is better suited to other distribution mechanisms, such as use of cc: Mail Bulletin Boards. “For Sale” items etc. should be posted to a Bulletin Board. Requests for the establishment of a new Bulletin Board should be forwarded to the IS Manager.

If you receive a bulk mail item, ensure that you are careful not to include all recipients in any subsequent reply. Also, do not reply to the message simply to indicate discontent at having been a recipient. These behaviours can lead to “mail storms”



which can affect the reliability and performance of the computing network.

USE OF ATTACHMENTS

Users should avoid unnecessary use of file attachments. Where possible, type your message directly into the e-mail message screen rather than into an attached MS Word document.

8.5 E-MAIL USER RESPONSIBILITIES

The content and maintenance of a user's e-mail account is the user's responsibility. Users should ensure, at a minimum, they perform the following functions:

- check e-mail daily and where appropriate reply to messages promptly;
- delete unwanted messages immediately since they take up network disk storage;
- keep messages remaining in their mailbox to a minimum;
- for long term storage, mail messages should be moved to the "Archive" sub-directory under your "Home" directory, as mail older than 80 days is purged from the main post office;
- never assume that other people cannot read their e-mail; and
- never send company confidential information to external users via the Internet.

8.6 USE OF THE INTERNET

Authorised Users may access Internet services, such as the World Wide Web and Newsgroups, for any valid work-related purpose. Users must not display or download offensive or illegal material. Such actions may result in disciplinary action

being taken, including but not limited to the removal of all access privileges.

Users are encouraged to use Internet based e-mail to communicate with external parties for business purposes, where it is appropriate to use such an informal medium. Users should be aware that Internet-based e-mail cannot be considered secure, and accordingly confidential information should not be sent via this medium.

Private e-mail may be exchanged where such use does not detract from the productivity of the individual. All such use must comply with the policies outlined in this document and other company policies.

All users should be aware that any file received from the Internet, whether an executable or data file, has the potential to introduce a computer virus to Ten's Systems. Accordingly, all files received from the Internet, regardless of their original source, must be scanned with Ten's supported virus scanning software prior to being read or executed.

8.7 ACCESS TO E-MAIL AND INTERNET FROM EXTERNAL LOCATIONS

Remote access takes place when Ten Systems are accessed from an external site rather than from our premises, eg., via a web browser across the Internet.

The guidelines and prohibitions described in this chapter remain in force whether you use your own computer to access the Systems, a Ten supplied or 'loan' computer or any other computing device.

8.8 SPAM

Spam has become a growing epidemic, which the Commonwealth Government is attempting to combat. The *Spam Act 2003 (Act)* was developed as a response to the growing volume of spam which is threatening the viability and efficiency of e-mail usage. The *Act* provides that unsolicited commercial electronic messages must not be sent and that messages should only be sent to an address when it is known that the person responsible for that address has consented to receive it.

“Electronic messaging” under the *Act* does not only include e-mail, but also instant messaging, SMS and other mobile phone messaging.

In order to come under the *Act*, the message must be commercial in nature and it must have been sent without the prior consent of the recipient, that is, it must be an unsolicited message. The *Act* considers that an e-mail is commercial in nature if, amongst other things, it offers to supply, advertise or promote goods or services, or a business opportunity.

It is important to be aware that a single message may be spam. The message does not need to be sent in bulk, or received in bulk.

IT'S EVERYONE'S BUSINESS

At Ten, everyone has a role to play in maintaining the integrity of Ten's Systems, and trying to keep it as spam-free as possible.

While most of the e-mails you may send are not commercial in nature, it is important that every single commercial e-mail that you do send conforms with the *Act*. Therefore, it is important that whenever you send an e-mail, whether or not

it is commercial in nature, you keep in mind the following three steps:

◦ **Step 1: Consent**

When sending an e-mail, you must ensure that you have consent. Consent may take the form of “express consent” or “inferred consent”. Express consent is a direct indication from the person you wish to contact that it is okay to send the message of that nature. While inferred consent is consent that is implied due to the business or other relationship you may have with the recipient and their conduct, for example if they have provided you with their business card on the basis of receiving communications with you.

When you have determined that you either have express or inferred consent, you are ready to consider the next step.

◦ **Step 2: Identify**

It is important for people to know who is contacting them, and how they can get in touch in return.

Any e-mail you send should always contain a clear and accurate identification of who is responsible for sending the message, and how they can be contacted. Your name, electronic signature or Ten’s contact details at the end of the e-mail will be sufficient for these purposes.

◦ **Step 3: Unsubscribe**

When sending an e-mail to a subscribed user on behalf of Ten, for example a client who would like to receive mail-outs, you must ensure that your e-mail contains an unsubscribe facility. This unsubscribe facility must allow people to opt-out from receiving future messages, and such requests to opt-out must be honoured by Ten within five working days from the date of the unsubscribe request.

If you have any doubts regarding whether an e-mail you are about to send is in breach of the *Act* please contact Information Systems or the Legal Department.

8.9 RECEIVING SPAM

If you find that you are receiving more than the odd amount of spam in your e-mail inbox, or you are receiving spam from a repeat offender, please report this to Information Systems or Human Resources.

8.10 ENQUIRIES

If you have any questions concerning the use of the Systems, you should contact Information Systems, Human Resources or the Legal Department.



9 WORKPLACE SURVEILLANCE

9.1 WHAT WE ALL NEED TO KNOW

The purpose of this section is to explain the circumstances in which Ten will carry out surveillance in the workplace. On an ongoing and continuous basis, Ten:

- Will monitor employees' use of Ten's computers and information technology systems;
- Will monitor electronic communications use (including use of e-mail and Internet);
- May block access to some Internet websites or the delivery of certain e-mails;
- May operate security cameras within the workplace.

Ten will not carry out surveillance in change rooms, toilets, showers or other bathing facilities and will not monitor telephone conversations.

If Ten collects personal information as a result of the workplace surveillance, Ten will comply with the provisions of the *Privacy Act 1988* (Cth).

9.2 COMPUTER SURVEILLANCE

Use of Ten's computers and information technology systems (**Systems**) is governed by the *Systems Access Policy*. From time to time, Ten may investigate alleged breaches of the law

or Ten's policies by staff using its Systems and this may involve accessing the staff member's computer and records stored on that computer.

Ten may monitor staff use of computers and Systems in the following areas:

- Ten workstations, servers, e-mail and network services, printers, network connected devices, and connections to the Internet;
- Ten retains logs, backups and archives of computing activities, which may be audited;
- Monitoring may include, but is not limited to, storage volumes, download volumes, breaches of intellectual property laws, suspected malicious codes or viruses.

Computer surveillance is continuous and ongoing.

9.3 SURVEILLANCE OF E-MAIL AND INTERNET

Ten will monitor electronic communications use (including use of e-mail and Internet), will scan all e-mails for viruses and will store all e-mails on the server on an ongoing and continuous basis. Information Systems has access to all e-mails and files stored on the network.

Some of the circumstances in which Ten may access and monitor staff use of Ten's e-mail and Internet systems include (but is not limited to):

- Ten monitors e-mail performance and retains logs, backups and archives of e-mails sent and received through Ten's server. It is important to remember that even if e-mails are deleted from a User's terminal they may be backed up and recoverable by Information Systems;
- Ten retains logs, backups and archives of all Internet access and network usage. While individual usage is not monitored as a matter of course, unusual or high volume activities may justify more detailed examination;
- For the purpose of determining whether there has been unacceptable use of e-mail or Internet facilities;
- To enable detection of conduct which may cause damage to Ten's business, for example removal of confidential information or a staff member conducting a private business during their working hours;
- For the purpose of determining if there has been a breach of Ten's policies in the use by the staff member of Ten's Internet facilities;

- For the purpose of investigating allegations of misconduct or to provide materials to external investigative authorities lawfully investigating possible criminal conduct.

In some circumstances, Ten may block the delivery of an e-mail sent to or by, or access to an Internet website by, a staff member. In the case of the preventing of delivery of an e-mail, the staff member will be given a prevented delivery notice as soon as practicable by Ten. However, Ten will not be required to give a prevented delivery notice if:

- The e-mail was a commercial electronic message within the meaning of the *Spam Act 2003* (Cth);
- The content of the e-mail or any attachment would or might have resulted in an unauthorised interference with, damage to or operation of a computer or computer network operated by Ten or of any program run by or data stored on such a computer or computer network;
- The e-mail or any attachment would be regarded by reasonable persons as being, in all the circumstances, menacing, harassing or offensive.

E-mail and Internet surveillance is continuous and ongoing.

9.4 CAMERA SURVEILLANCE

Ten may operate security cameras within the workplace. This is for the purpose of ensuring the safety and security of staff, contractors, visitors and Ten's premises and facilities. Cameras are not intended for the surveillance of any persons but camera footage may be accessed and used as evidence where an act has occurred that warrants investigation by Ten. Such records may also be required by law to be provided to other parties such as a court or to law enforcement authorities.



Notices that Ten's premises and facilities are monitored by cameras are located at each of the entrances to Ten's premises. Security cameras are clearly visible in the place where surveillance is taking place.

Camera security monitoring is ongoing and continuous.

9.5 SURVEILLANCE TEN WILL NOT CARRY OUT

Ten will not carry out the following types of surveillance:

- Surveillance in a change room, toilet, shower or other bathing facilities at the workplace; or
- Monitoring of telephone conversations.

9.6 USE OF PERSONAL INFORMATION OBTAINED THROUGH SURVEILLANCE

If Ten's surveillance results in the collection of personal information, the provisions of the *Privacy Act 1988* (Cth) (**Privacy Act**) will apply. Under the *Privacy Act*, Ten is required to:

- only collect, use and disclose personal information (which is defined as any information which identifies or could potentially identify an individual) in a manner that is consistent with the National Privacy Principles and the *Privacy Act*;
- maintain the security of personal information held about employees; and
- provide employees with access to any personal information held about them.

The *Privacy Act* contains a general exemption relating to employers. An act done or practice engaged in by an employer will be exempted under the *Privacy Act* if:

- the act or practice is directly related to an employment relationship; and
- the act or practice directly relates to an “employee record”.

If the practice of monitoring an employee’s computer, e-mail and Internet usage is considered to be directly related to the employment relationship, any records collected as a result of such monitoring could arguably amount to employee records. However, any personal information received via such monitoring practices, which is not directly related to the employment relationship, will attract the protection of the *Privacy Act*, requiring Ten to abide by the National Privacy Principles.

For further information, see the Privacy chapter of this Manual.

9.7 ENQUIRIES

If you have any enquiry or require any further information on workplace surveillance you should contact the General Manager in your state.



10.1 WHAT WE ALL NEED TO KNOW

Ten is committed to providing a healthy and safe environment that is free from physical, psychological and similar abuse for its employees, contractors and the public.

Ten considers that bullying or intimidating behaviour towards another person in the workplace is unacceptable and will not be tolerated under any circumstances.

Bullying includes threatening conduct towards one person by another, which causes that person to be offended, humiliated or intimidated. Unlawful bullying at work includes:

- verbal abuse;
- constant ridicule and being put down;
- maliciously excluding and isolating a person from workplace activities;
- offensive or aggressive gestures; and
- aggressive touching or conduct.

Bullying is unacceptable and can be unlawful under anti-discrimination and occupational health and safety legislation.

It is the responsibility of Ten to provide a working environment free from bullying and to ensure that all complaints are

treated confidentially, seriously and sympathetically and that appropriate action is taken whenever bullying has occurred.

No person will be penalised or disadvantaged as a result of raising legitimate concerns or complaints relating to bullying.

Bullying and intimidating behaviour is grounds for disciplinary action (including dismissal).

10.2 WHAT IS BULLYING?

There is no legal definition of bullying, and it means different things to different people. However, it is generally understood to mean any form of behaviour which is offensive, intimidating, malicious or insulting or is an abuse or misuse of power intended to undermine, humiliate, denigrate or injure individuals or groups.

Examples of bullying behaviour may include:

- yelling, screaming, abusing a person loudly (usually when others are present);
- repeated threats of dismissal or other severe punishment for no reason;

- constant ridicule and being put down;
- leaving offensive messages on e-mail or the telephone;
- persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters;



- sabotaging a person's work, for example deliberately withholding information that is vital for effective work performance, hiding documents or equipment or not passing messages on;

- maliciously excluding and isolating a person from workplace activities;
- humiliating a person through gestures, sarcasm, criticism and insults, often in front of other people; and
- spreading gossip or false, malicious rumours about a person with an intent to cause the person detriment.

10.3 ACCEPTABLE BEHAVIOUR

Bullying does not include reasonable management action taken in a reasonable way by the person's employer in connection with the person's employment.

It is recognised that an employer has the right to organise a business in the way it considers most efficient, however this right is subject to it being exercised in a manner which is fair, just and reasonable.

Reasonable management actions include legitimate:

- performance management processes;
- action taken to transfer or retrench a worker;
- decisions not to provide a promotion in connection with the worker's employment;

-
- disciplinary actions;
 - allocation of reasonable work;
 - modification of duties or work processes to accommodate an injury or illness; and
 - business processes, such as workplace change or restructuring.

However, these reasonable management actions may still constitute bullying where the managerial actions are primarily used to offend, intimidate, humiliate or threaten workers or where the actions create an environment where workplace harassment is more likely to occur.

10.4 RESPONSIBILITY OF EMPLOYEES

Employees should be aware of their individual responsibilities under this policy. Employees should:

- Be mindful of their behaviour in relation to bullying;
- Comply with this policy;
- Offer support to anyone who is being bullied and refer to them to Ten's *Complaint Handling Procedure*; and

- Maintain confidentiality to the greatest extent possible, particularly if providing information during the investigation of a complaint.

10.5 TEN'S PROCEDURES

All complaints of bullying should be handled in accordance with Ten's *Complaint Handling Procedure* located on the Human Resources intranet site and the Staff Enterprise Agreement.

All complaints of bullying will be treated seriously and thoroughly investigated. In all cases, the manager or supervisor to whom a complaint is made must consult with Human Resources to obtain advice concerning the investigation procedure. Steps should be taken to ensure that the complainant is not exposed to further bullying, whilst at the same time observing the rights of the alleged perpetrator to a fair and impartial investigation.

10.6 PROTECTION FROM VICTIMISATION

Ten is committed to ensuring that a person making a complaint in good faith is protected from victimisation.

Under this policy, staff, volunteers, consultants and contractors who make a complaint in good faith and in accordance with this policy are protected against being victimised.

Ten officers, employees, volunteers, consultants and contractors must not victimise any person, or cause any person to be victimised, because that person has made a complaint of bullying. Victimisation could include intimidation, harassments, threats, action causing injury, loss or damage, discrimination, disadvantage, adverse treatment in relation to a person's employment, career, professional, trade or business. Ten will regard any victimisation as extremely serious and take appropriate action, which may include, in the case of staff, disciplinary action and dismissal.

10.7 ENQUIRIES

If you have any enquiry or require any further information on workplace bullying you should contact the General Manager in your state.



II CODE OF CONDUCT AND ETHICS

II.1 INTRODUCTION

In recent years business generally has been required to improve in the area of corporate governance with companies demonstrating their commitment to being responsible corporate citizens.

Each of Ten Network Holdings Limited, The Ten Group Pty Limited, Eye Corp Pty Limited and their respective subsidiary companies (collectively referred to as “the Company”) have committed to responsible corporate governance in accordance with community and shareholder expectations.

The Company has chosen to have a Code of Conduct (“Code”) and has done so, based on its existing policies and procedures. This Code is available to all Directors, employees and contractors of the Company (referred in this Code to as “us”, “we” and “you”) and will be available on our corporate website so that shareholders, customers, suppliers and other members of the public may view this Code.

WHY HAVE A CODE OF CONDUCT?

The Company’s basic policy in regard to the conduct of business is to perform its business in accordance with all

relevant laws, and in a professional and ethical way. Each of us represents the Company as we carry out our duties and responsibilities. It is important to make clear what is expected by law and by the Company to maintain this high standard of conducting business. How each of us acts in our business dealings is a reflection on the entire Company, and our reputation is everything.

WHAT RELATIONSHIPS DOES THE CODE COVER?

The Code covers many aspects of our work within the Company and with our suppliers, customers and other business partners. The Code applies to all Directors when conducting Company activities and all employees of the Company. In addition, contractors and companies (including freelancers, stringers and private companies) that provide people services to the Company, will be required to endorse this Code for the purpose of their dealings with the Company.

You are required to become familiar with our Code to ensure that you are clear that the decisions and actions taken whilst representing the Company are consistent with the various laws that govern business generally.

CORPORATE GOVERNANCE

The Code helps us understand how to best represent the interests of the Company and more specifically to protect all of us and ultimately the Company. Complying with the Code, together with this Compliance Manual - *Seriously Compliant 3* and other Company Policies and Guidelines (as found on the Company intranet and in various policy and guideline documents) and attending the compulsory annual corporate compliance training seminars, will assist in ensuring that our legal responsibilities are fulfilled.

We take our commitment to professional and ethical business practices and behaviour seriously and to this end the Company will ensure that each of us has been provided with the appropriate information so that we understand our role within the Company.

Clearly, no code can provide the answers to all situations that may be faced; however I am confident that this Code provides the guidelines necessary to carry out our work in an ethical and professional manner.

If in doubt ask yourself the following question:

“Would you be comfortable disclosing publicly to your friends, family, colleagues and business associates your actions”

COMPLIANCE WITH LAW

Each of us is expected to comply with the applicable laws, rules and regulations of Australia including those of the relevant states in which the Company conducts its business and to which the Company and each of us are subject.

This Code does not attempt to summarise all such laws, rules and regulations. *Seriously Compliant 3*, the compulsory annual corporate compliance seminars and other guidelines provided from time to time, are an excellent reference point to become more familiar with the many laws that govern our work. If you have additional questions, you should consult with the Legal Department.

THE FOLLOWING PRINCIPLES HAVE BEEN DEVELOPED TO GUIDE YOU IN YOUR ROLE WITH THE COMPANY.

11.2 CONFLICTS OF INTEREST

A conflict of interest arises when an individual's private interests, activities, investments or associations, interfere or conflict (or reasonably appear to interfere or conflict) with the interests of the Company as a whole.

You are expected to avoid "conflicts of interest" with regard to the Company's interests. For example, a conflict of interest may arise when:

- you cause the Company to engage in a business transaction with family, relatives or friends;
- you use confidential, non-public Company information for personal gain or the gain of family, relatives or friends;
- you owe a fiduciary duty to, or have more than a modest financial interest in any Company supplier, customer or competitor;
- you (or any immediate family member) engage in part-time or other employment, including consulting arrangements, with any Company supplier, customer or competitor;
- you compete or prepare to compete with the Company;

- you receive an improper personal benefit as a result of your position in the Company, whether received from the Company or a third party. Improper benefits may take many forms, including, but not limited to, bribes, inducements, kickbacks, discounts, gratuities, gifts (of more than a nominal value), and payment for services, such as travel and entertainment not undertaken in carrying out the Company's business. Occasionally, they may take more sophisticated forms of inducement, such as, an allocation of shares in an initial public offering to an officer or director (or an immediate family member) by an investment banker who either has, or desires to enter into, a business relationship with the Company.

As a general rule conflicts of interest generally make it difficult for us to perform our Company work (or carry out our fiduciary duties to the Company) objectively, effectively and in the Company's best interests.

Conflicts of interest have the potential to cloud or interfere with our judgement. Accordingly, conflicts of interest are prohibited as a matter of Company policy unless approved in advance in accordance with the following policy:

- Any employee or a contractor of the Company (other than an officer or director) wishing to engage in a transaction with respect to which a conflict of interest exists (or is reasonably likely to exist) is expected to disclose the nature and details of the potential conflict of interest to his or her Department Manager or other applicable senior manager and the Human Resources Department and, prior to engaging in such conflict of interest, to have received his or her Department Manager's approval.
- Company officers are subject to the same policy but should disclose information regarding the conflict of interest directly to the Chief Executive Officer for his review and approval. Directors are subject to certain laws, rules and regulations of the Australian Securities and Investment Commission and are affected by the listing rules of the Australian Stock Exchange governing related-party transactions and independence. As a result, the Chief Executive Officer and Directors are expected to disclose all

conflicts of interests in advance and receive approval from the Company's Board of Directors prior to engaging in a transaction involving a conflict of interest.

As conflicts of interest may not always be clearly identifiable, concerned employees should consult with their Department Managers, or other applicable senior executives or the Legal Department, as appropriate.

11.3 INSIDER TRADING AND SECURITIES LAWS

If you have knowledge of material non-public information about the Company, you are not permitted to buy, sell or otherwise trade in the Company's securities, whether or not you are using or relying upon that information. This restriction extends to sharing or providing tips to others with such information, especially where such individuals may use the information to trade in the Company's securities.

In addition, Directors are required to inform the Chairman of Ten Network Holdings Limited when they wish to trade shares. Employees must contact the Company Secretary in the event they have any queries or concerns that any insider trading restrictions may apply.

Any employee who is uncertain as to whether they possess material, non-public information should contact the Legal Department before trading in the Company's securities.

11.4 ACCOUNTING MATTERS

It is the Company's policy that senior finance and accounting employees and, to the extent applicable, all of us take such actions as are necessary to ensure that in all material respects:

- the Company's books and records contain no false or misleading entries;
- the Company's business transactions are properly authorized and completely and accurately recorded in accordance with Generally Accepted Accounting Principles (GAAP) and applicable Company policies; and
- the documents the Company files with the Australian Securities and Investment Commission, other government or regulatory authorities or makes available publicly contain full, fair, accurate, timely and understandable disclosures relating to the Company.

You are expected to report concerns or complaints regarding accounting and auditing matters to the Audit Committee of the

Board of Directors in accordance with Reporting Violations of the Code found on page 90 of this manual.

11.5 CORPORATE OPPORTUNITY

You owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises.

Our reputation is built largely on your performance. You should actively seek to publicly support the Company and promote its positive image.

You must refrain from:

- taking opportunities that properly belong to the Company or are discovered through the use of Company property, information or position;
- using Company property, information or position for your personal gain;
- engaging in conduct, including acting contrary to publicly accepted social and moral standards and decency, which is detrimental to the business or reputation of the Company; and
- making any disparaging comments in relation to the Company, any of us personally or the business operations or reputation of the Company.

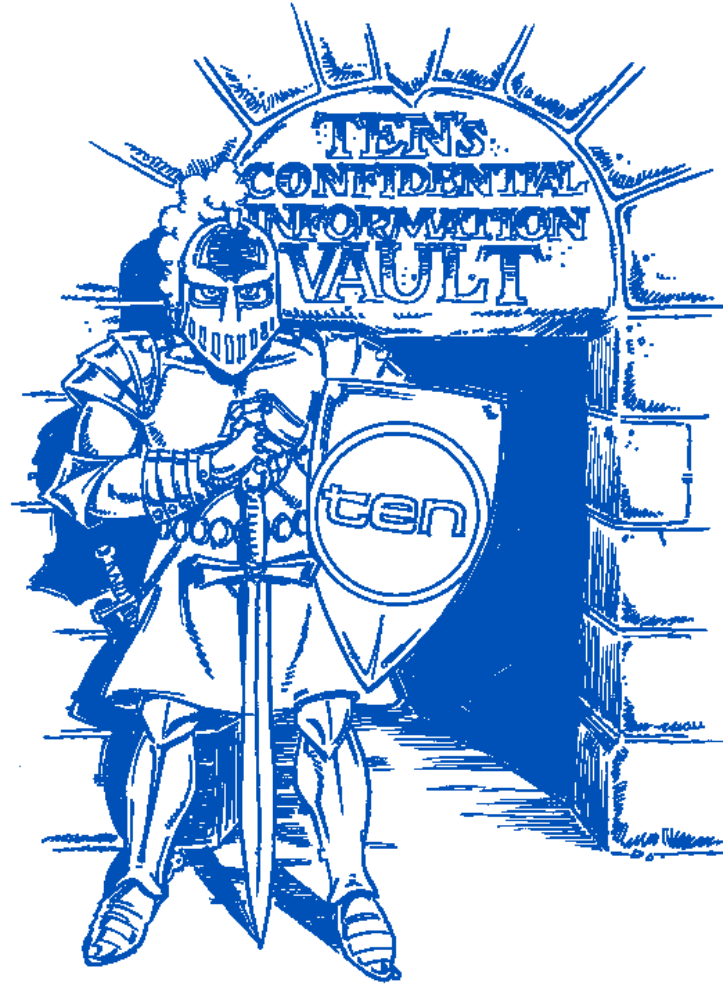
11.6 CONFIDENTIALITY

All of us are expected to maintain the confidentiality of information considered to be confidential to which we have access and which belongs to the Company, its suppliers or customers.

Confidential information may be disclosed on a need to know basis to carry out the Company's operations. If any disclosure is to be made outside the Company, such disclosure should only be made pursuant to the terms of a valid non-disclosure agreement or as otherwise authorised by the Legal Department. Employees are expected to consult the Legal Department if they believe they have a legal obligation to disclose confidential information belonging to the Company, its suppliers or customers.

Confidential information includes, but is not limited to, non-public information that might be of use to competitors of the Company or be harmful to the Company, its suppliers or customers, if disclosed. Employees should consult their supervisor or Department Manager if they have questions about the confidentiality of particular information.

We should take care to protect and preserve confidential information and avoid discussing confidential information in



elevators, airplanes or other public places where other persons may overhear you. Each of us should take care not to read confidential documents in public places and in no event should anyone leave confidential documents with any third party unless specifically authorised by the Legal Department.

Additional restrictions are contained in the Constitutions of each of Ten Network Holdings Limited and The Ten Group Pty Limited which relate to the disclosure of confidential information by Directors of these companies.

Each of us has a right to privacy and to the security of their personal information. The Company respects the privacy of individuals and will only use information gathered for authorised uses.

11.7 FAIR DEALING

Each of us is expected to deal fairly with the Company's customers, suppliers, competitors and other employees, in accordance with applicable laws, rules and regulations and Company policies.

We are expected to avoid taking unfair advantage of persons or entities through manipulation, concealment, abuse of

privileged or confidential information, misrepresentation of material facts or other unfair practices.

You are expected to familiarize yourself with, and follow, the additional policies in the Company Compliance Manual - *Seriously Compliant 3* and other related policies regarding general standards of conduct and prohibitions against inappropriate behaviour.

11.8 PROTECTION AND PROPER USE OF COMPANY ASSETS

Each of us is expected to protect the Company's assets and ensure their proper and efficient use. The Company's assets include, but are not limited to:

- real property;
- program information;
- equipment;
- supplies, including computer data and time, confidential information, and our time and skills during work hours;
- advertising opportunities.

Company assets are to be used for legitimate business purposes only. The unauthorized use of any of the Company's

assets is prohibited. The inappropriate use of contra associated with television advertising is not permitted.

Theft, carelessness and waste have a direct impact on the Company's profitability.

11.9 BUSINESS RELATIONSHIPS

Our business is built on the quality of business relationships formed with suppliers, partners, customers and third parties. It is the Company's intent to treat all persons we deal with fairly, ethically, honestly and respectfully. It is important that we only make decisions and commitments that we can keep and following this we must ensure that we meet all commitments that we give. It is also important to:

- respect any confidential information that is obtained through the course of developing business relationships;
- be fair, honest and responsible in choosing suppliers, negotiating prices, terms and conditions and meeting contractual obligations;
- decisions to purchase goods and services should be based on pre-defined criteria such as quality, price, service, reputation and the total business relationship; and

- be aggressive but fair and honest in all business dealings and not to make false or misleading statements about the Company.

11.10 ACCEPTING GIFTS AND ENTERTAINMENT

Many of us are regularly offered gifts, entertainment and hospitality in our role with the Company. It is important to consider the motive behind these gifts and business entertainment before accepting. It is a breach of the Code if you accept gifts and entertainment that are not offered in the spirit of business courtesy and relationship management. In accepting gifts, entertainment or hospitality it is important to acknowledge that, by accepting, we do not feel a sense of obligation to the giver of the gift, entertainment or hospitality.

All employees have a duty to disclose the giving and receiving of any form of gift, entertainment or hospitality to their General Manager by way of email. The General Manager will monitor activities and intervene as necessary and maintain records of all activities around the giving and receiving of gifts, entertainment and hospitality.

As a rule of thumb you may offer or accept gifts, entertainment or hospitality that:

- would be considered customary and reasonable;
- are extended or distributed widely to those who share essentially the same business relationship with the giver;
- do not show favouritism; or
- do not present an appearance that they are being provided to influence a decision.

Examples of inappropriate acceptance of gifts, entertainment or hospitality include:

- any form of gift, entertainment or hospitality that is supplied to your personal residence;
- gifts or hospitality bestowed on an individual such as hotel accommodation for personal holiday use;
- any gift, entertainment or hospitality that provides a benefit to the supplier from the Company;
- reaching an understanding that by you providing a cheaper rate to do business with the Company confers a benefit back to you from the supplier; and
- building business relationships where trading one item for another is payment.

11.11 COMPANY REPRESENTATION

Communication with the Company's shareholders, the investment community, representatives of the media and high-level communication with other companies, government and quasi government organisations on confidential business matters should only be made by executives and managers who have clear accountability and authorisation for such communications. The Company's *Continuous Disclosure Procedures and Policy* provide clear guidelines.

If you are approached to provide information about confidential information, you should advise that you are not authorised to speak on behalf of the Company.

It can often be difficult to determine whether information you



possess is materially price or value sensitive, and it is recommended that you speak to the Company Secretary or the Corporate Relations Manager if you are at all uncertain.

11.12 REPORTING VIOLATIONS OF THE CODE

Any employee who in good faith, reasonably believes, that a violation of the Code or any other illegal/unethical conduct (not involving accounting or auditing matters - the reporting process for which is outlined in below) has occurred, or may occur, is expected to contact his or her Department Manager or other applicable senior executive and report such information.

If, for any reason, you are uncomfortable with reporting the information as described above, you may report the information anonymously (or otherwise) to the Group General Counsel by calling ext 21260, and leaving the information as described below, or by sending information to the Group General Counsel in the manner provided below.

11.13 REPORTING COMPLAINTS OF ACCOUNTING MATTERS

If you have concerns or complaints regarding questionable accounting or auditing matters of the Company, you should submit details of those concerns or complaints anonymously (or otherwise) to the Audit Committee of the Board of Directors by sending information to the Group General Counsel (who has been designated by the Audit Committee to receive such complaints) in the manner provided below.

11.14 MAINTAINING CONFIDENTIALITY OR ANONYMITY

At your request, the Company will use all reasonable efforts to preserve your anonymity or the confidentiality of the information you wish to provide, subject to the necessity of sharing such information, as circumstances reasonably dictate, with:

- the Audit Committee, if applicable;
- those persons tasked with investigating or overseeing the investigation of the complaint; and
- any relevant body pursuant to any applicable law, regulation or legal proceedings.

In the event that you do not require anonymity, you may also provide the above confidential information in any reasonable

manner, including by meeting with the Group General Counsel or by sending an email to the Group General Counsel or by calling the Group General Counsel.

11.15 PROVIDING INFORMATION

The following information should be provided when giving notice of a possible Code violation or accounting or auditing concern or irregularity:

- if you would like to be informed privately of the outcome of the concern or complaint, your name and contact information;
- a detailed description of the alleged improper conduct;
- the names of persons involved;
- when the action occurred or is expected to occur; and
- other details important to the conduct of an investigation, such as, witnesses, documents and other evidence.

11.16 SENDING INFORMATION TO THE GROUP GENERAL COUNSEL

In the event you wish to send information to the Audit Committee or the Group General Counsel, the address to which violations of Code or accounting and auditing concerns

or complaints should be sent, are as follows:

Group General Counsel

(“Attention—Audit Committee”, in the case of accounting and auditing concerns or complaints),

The Ten Group Pty Limited

GPO Box 10

SYDNEY NSW 2001

11.17 NO RETALIATION

It is the Company’s policy not to retaliate against anyone who, in good faith, reports or complains of a violation of the Code.

11.18 DISCIPLINE

The matters covered in this Code are of the utmost importance to the Company, its shareholders and business partners and are essential to the Company’s ability to conduct its business in accordance with its operating principles and values.

The Company expects each and every one of us to adhere to the rules of this Code in carrying out our duties or responsibilities to the Company.

Accordingly, the Company will take appropriate action against anyone whose actions violate these rules or any other policy or policies of the Company applicable to such persons. Disciplinary action may include the immediate termination of employment (or of the business relationship), at the Company's sole discretion. Nothing in this Code restricts or limits the Company's ability or rights to pursue any and all remedies, at law or in equity, against the responsible or participating persons. Where laws have been violated, the Company will co-operate fully with applicable authorities.



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