

Department of Planning and Environment

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Community (including landholders) and Industry Reference Groups - Code of Conduct

October 2023



Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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About the Code of Conduct

1 Introduction and application of the code

As public officials, members of reference groups have obligations to act in the public interest. Reference group members are required to demonstrate standards of professional behaviour that will preserve public trust and deliver the best possible outcomes for the people of NSW.

Members of reference groups must comply with a broad range of whole of government regulations and policies including those stipulated in legislation, regulations, Ministerial Memoranda, Department of Premier and Cabinet circulars, Treasury publications and Public Service Commission policy documents.

The Code of Conduct provides an easy to understand summary of these responsibilities and sets out the standards of behaviour expected.

1.1 Values

The NSW Government's core values are set out in the *Government Sector Employment Act 2013*.

They are:

- integrity
- trust
- service
- accountability.

These values are at the heart of how we work and, if applied consistently, help us to maintain the trust of the public.

The Department of Planning and Environment also has additional specific values that encourage us to be:

- daring
- collaborative
- creative
- kind
- inclusive.

1.2 Standards of conduct

This code outlines the standards of conduct expected of reference group members in exercising their functions. It is the personal responsibility of each reference group member to comply with this code.

The code has been developed to ensure members:

- commit to upholding a high degree of professional service and ethical leadership
- act in a way that promotes public confidence in board and committee conduct
- have a clear understanding of their public duty and legal responsibilities
- act for proper purposes without exceeding their powers
- exercise due diligence in all their functions.

1.3 General conduct

A reference group member must:

- act honestly and exercise a reasonable degree of care and diligence in carrying out their functions
- act for a proper purpose in carrying out their functions
- not use their membership for personal advantage
- not use their membership to the detriment of the reference group
- disclose any interest (whether pecuniary or otherwise) that could conflict with the proper performance of their functions and avoid performing any function that could involve such a conflict of interest.

1.4 Work health and safety

Ensuring people working for the department have a safe place to work is a top priority; as is public safety. Reference group members are considered ‘workers’ for the purposes of the *Work Health and Safety (WHS) Act and Regulation 2011*. The department is committed to eliminating and minimising work, health and safety (WHS) risks as far as reasonably practicable. Reference group members are responsible for:

- being aware of the safety systems and practices that help keep everyone safe and well
- looking for hazards, taking action if a safety risk is identified and it is safe to do so
- reporting all WHS incidents, including near misses, to the reference group Secretariat who will liaise with the department’s WHS staff.

1.5 Respect and inclusion

Respect and inclusion are fundamental to a harmonious, productive and psychologically safe workplace where people feel safe to speak up about concerns. The department is committed to ensuring a safe environment in which everyone feels they can achieve their potential.

The department has no tolerance for harassment or victimisation. Members are responsible for:

- treating people with dignity and respect, and contributing to a positive and productive space
- making sure people feel valued and are able to fully participate
- not discriminating against, harassing or victimising anyone on any grounds including:
 - sex, gender identity or sexual orientation
 - marital status
 - pregnancy
 - age
 - race or ethnicity
 - physical or intellectual disability
 - political or religious conviction.
- demonstrating inclusive behaviours and using inclusive language
- creating a workplace that is safe and offers protection from sexual, physical and psychological harassment and neglect
- preventing bullying.

1.6 Conflict of interests

Conflicts of interest do not, in themselves, usually constitute corrupt conduct. Corrupt conduct can, however, arise when a conflict of interest is concealed, understated, mismanaged or abused.

Examples of when conflicts of interest can arise include where a member has:

- other directorships or employment
- professional and business interests and associations
- investment interests or the investment interests of friends or relatives
- family relationships
- participation in party political activities
- personal beliefs or attitudes that affect impartiality related to the subject matter of their work with the reference group.

The above list is indicative only and there may be other situations that can lead to a real or perceived conflict of interest.

A member has a duty to declare any private interest that may impinge on a reference group decision. When an issue arises, the reference group member must disclose full and accurate details of the interest or issue to the Chair of the reference group. A member must disclose interests to the reference group (which include positions and pecuniary interests) in corporations, partnerships or other businesses or organisations that may be relevant to the activities of the reference group. A member's interests include those of an associate or close relative.

General disclosures must be made at the beginning of a member's term. Member's must make specific disclosures as soon as possible after the relevant facts come to the member's knowledge, and they must be recorded by the reference group in minutes of the meeting.

A register of such interests must be maintained by the reference group and must also be reported to the Minister for Lands and Water.

1.7 Gifts, benefits and hospitality

Members should be aware that it is illegal to seek, offer or receive money, or gifts, to obtain a benefit or favour. Members must not accept gifts or benefits that could place them under an actual or perceived financial or moral obligation to another organisation or individual.

Offers (other than light refreshment) should be politely refused. Members are required to report all offers of gifts, benefits or hospitality that are offered to them in their role as a reference group member. A reference group may establish a Register of Gifts to provide a high degree of transparency.

2 Departmental resources

2.1 Appropriate use of resources

Departmental resources should only be used for departmental purposes. Furniture, equipment, staff and other resources may be provided to a reference group to perform its functions and should be used only in relation to those functions.

2.2 Public expenditure

Members must ensure the efficient and responsible expenditure of public monies in accordance with legislation and government policies and guidelines including the following:

- *Government Sector Finance Act 2018*
- *Public Finance and Audit Act 1983*
- *Public Works and Procurement Act 1912* and the associated Board Directions.

Members of governing boards must comply with government financial, asset management and procurement requirements.

2.3 Intellectual property and copyright

All intellectual property created by members in the course of their role as members of a reference group is the intellectual property of the department. Members cannot sell, or give away, intellectual property created during or in connection with their appointment to a reference group.

Members should provide the department with complete copies of any reports, documents or other materials created during the course of their appointment as a reference group member.

Intellectual property includes rights relating to scientific discoveries, industrial designs, trademarks, service marks, commercial names and designations, inventions and activity in the industrial, scientific, literary or artistic fields.

2.4 Indigenous cultural and intellectual property

This section is specific to members that identify as Aboriginal. Information provided/created by members may be recorded and used to inform program-based decisions. Free, prior, informed and consent principles will be adhered to throughout the processes to ensure permission is sought to protect participants' Indigenous Cultural and Intellectual Property (ICIP).

ICIP refers to the rights that Aboriginal people have in relation to all aspects of their heritage, knowledge and cultural expressions including:

- traditional knowledge (scientific, agricultural, technical and ecological knowledge, ritual knowledge)
- modern and emerging knowledges that have been developed by Aboriginal people based on history and culture
- traditional cultural expression (stories, designs and symbols, literature and language)
- performances (ceremonies, dance and song)
- cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices)
- human remains and tissues
- the secret and sacred material and information (including sacred/historically significant sites and burial grounds)
- documentation of Aboriginal peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports and records taken by others, sound recordings and digital databases.

ICIP incorporates both tangible and intangible elements – the object and the knowledge, the artwork and the iconography and the cultural practice. This heritage is a living heritage, is handed down from generation to generation and pertains to a particular Aboriginal group or its lands or seas. Many generations may contribute to the development of cultural and intellectual property and it is constantly evolving. In this way, Aboriginal ICIP is communally owned.

In accordance with ICIP rights the program recognises that Aboriginal people have the right to:

- manage and control their ICIP
- ensure that any means of protecting ICIP is based on the principle of self-determination
- be recognised as the primary guardians and interpreters of their cultures
- authorise or refuse to authorise the commercial use of ICIP according to Aboriginal customary laws
- maintain the secrecy of Aboriginal knowledge and cultural practices
- guard the cultural integrity of their ICIP
- be given full and proper attribution for sharing their heritage, knowledge and cultural expressions
- preserve, protect and manage Aboriginal cultural objects
- respectfully care for, and manage, Aboriginal ancestral remains
- control the recording of cultural customs and expressions and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.

2.5 Confidential and private information

During the course of their duties, members might have access to sensitive, personal and or commercially confidential information. This information could relate to members of the community, the NSW Government or government employees. Such information is varied in form including written information, stored information, online documents and verbal information.

Such information may only be used for the purposes of the work of the reference group. Members are expected to protect the integrity and security of information and documents for which they are responsible and to adhere to the principles of the *Privacy and Personal Information Protection Act 1998* and the Departmental *Privacy Management Plan*.

Members have an ongoing duty to protect confidential and private information even after they have retired from the reference group.

Examples of misuse of official information or documents include:

- speculating on shares, commodities or property on the basis of confidential information about the affairs of a business or of proposed government actions
- seeking to take advantage of another person, for personal reasons, on the basis of information held in official records
- disclosing sensitive information to members of the public, political parties, clients, lobby groups, other public servants, other government organisations or members of Parliament, without proper authority
- providing or trading confidential information for use by private investigators, banks and credit agencies.

Members must:

- not use information for any unofficial purpose outside the reference group

- use confidential or official information only in relation to their reference group role and consistent with their obligation to act impartially
- be cautious and use sound judgement when discussing sensitive information with others
- not use information gained in their capacity as a reference group member for personal gain
- disclose information that is normally available to members of the public
- not improperly collect, use or disclose the personal information of individuals including community and staff members
- not use information gained in the course of their reference group role to cause harm or detriment to government or any person or organisation
- safely and securely store any reference group records, including emails and electronic information
- not remove official information from government premises unless needed for reference group purposes
- treat email and electronic records as carefully as hard copy information.

2.6 Release of information

The *Government Information (Public Access) Act 2009* (GIPA Act) applies to public sector agencies including committees that meet the definition of public sector agency in the GIPA Act. Reference groups are encouraged to proactively release decisions of their meetings in accordance with the NSW Government's Open Government policy unless there is an overriding public interest against disclosure.

Where a reference group has delegated its obligations under the GIPA Act to the department, or is considered a subsidiary agency under Schedule 3 of the GIPA Regulation, requests for information from the Information Access and Privacy Unit should be responded to promptly. All documents should be provided, and any sensitivities clearly articulated to the Information Access Officer handling the case.

2.7 Communicating with the media and third parties

Views that are publicly expressed by a member may be perceived or construed by the broader community as views of the reference group or the department.

Members should ensure that any public comments made in a private capacity are not attributed as official comments of the reference group. In this respect, members should not use official stationery for private correspondence or for purposes not related to their official duties.

Members must not:

- initiate contact with the media on matters or issues that have been subject to discussion by the reference group
- make public comment on behalf of the reference group or the department

- make public comment on (including to the media or on social media) any matter or issue that has been subject to discussion by the reference group
- share any reference group records with the media or on social media.

2.8 Speaking up and reporting matters

The department can only resolve problems and put improvements in place if people speak up and make the department aware of the situation.

The department will support people who speak up by listening and providing feedback on the actions they have taken and the reasons for these actions. Speaking up is more likely to be effective if it takes place early and in a constructive, courteous way.

2.9 Reporting allegations of impropriety and corrupt conduct

It is important that the conduct of board and committee members reflects the principles and ethical requirements set out in this code at all times. If allegations about inappropriate conduct are made or aired in the public domain which, if true, would constitute a breach of this code, the member concerned may be removed from the board or committee.

Corrupt conduct is the dishonest or partial exercise of official functions by a public official including the including the improper use of power or position as a board or committee member for personal gain or the advantage of others.

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. It is more serious than a technical breach of policy or procedures.

Fraud is dishonestly obtaining a benefit, or causing a loss, by deception or other means including the unlawful use of information obtained as a board or committee member or equipment provide by the department for personal use.

The *Public Interest Disclosures Act 1994* provides protection to board and committee members who voluntarily report suspected corrupt conduct. Members can make reports to the Chairperson or to the Principal Officer of the relevant public authority (usually the Secretary, Chief Executive Officer, General Manager) in accordance with the agency's internal reporting guidelines. Members can also report directly to the following investigative bodies:

- Disclosures concerning corrupt conduct should be made to the [ICAC](#).
- Disclosures concerning maladministration should be made to the [NSW Ombudsman](#).
- Disclosures concerning serious and substantial waste of public money should be made to the [NSW Auditor General](#).

2.10 Breach of the code

It is important to remember that members are representatives of the NSW Government and are conducting work on behalf of the NSW Government. If a member does not comply with the code,

the Chair may direct the member to take a specified action to rectify his or her conduct or determine that further work not be allocated to the member until the breach is rectified. If the Chair is in breach of the code, members of the board or committee may take similar relevant actions.

If members of the board or committee do not adhere to the code or are seen to display inappropriate ethical standards of behaviour, the department may take applicable action. Where suspected breaches are related to the conduct of a member or the entire board or committee, the board or committee must consult with the department.

In the case of a serious breach, the Chair may need to refer to the appropriate Minister and consider appropriate action. Any action taken will consider the seriousness of the breach, whether there is a pattern of such conduct, the intent of the member concerned and the effect it is having on the work of the board or committee.