



**Premier's Department
New South Wales**

**Conduct Guidelines
for Members of NSW Government
Boards & Committees**

November 2001

ISBN 0 7313 3150 8

Acknowledgments

This document was prepared by Ministerial and Parliamentary Services Division of Premier's Department NSW in consultation with the Independent Commission Against Corruption. The assistance of the Public Sector Management Office and the Legal Branch of the Cabinet Office is also acknowledged.

Contents

Purpose	2
Scope	2
Code of Conduct	2
1. Principles of Conduct for the Public Sector	3
2. Personal & Professional Behaviour	4
3. Accountability	4
3.1 For Public Expenditure	
3.2 For Decision Making	
4. Use of Public Resources	5
5. Use of Official Information	5
6. Gifts & Benefits	5
7. Disclosure of Interests	5
8. Recognising & Managing Conflicts of Interest	6
9. Reporting Suspected Corrupt Conduct	7
Relevant Legislation, Policy, Guidelines & Publications	8
Sources of Information/Advice	8

Purpose

This document outlines fundamental values and principles that define the standards of behaviour expected of members of NSW government boards and committees.

It also provides sources of information and advice on ethical and other accountability issues of relevance to the NSW public sector.

Scope

These guidelines apply to both governing and advisory boards and to advisory committees.

Governing Boards are empowered to govern the management of the organisation which are subject to control and direction of the Minister but the circumstances in which ministerial control and direction are exercised are specific.

Advisory Boards provide advice to a portfolio Minister on matters relevant to the management of an authority but the Minister retains unfettered right to control and direct the Board and the CEO.

Advisory Committees, Councils etc provide advice on policy or operational issues with little or no policy determination or operational executive functions.

Code of Conduct

All boards should have a code of conduct defining the standards of behaviour expected of their organisation. For those boards that

do not already have a code of conduct, guidance may be obtained from these guidelines and the document *A Model Code of Conduct for NSW Public Agencies*. Members of advisory committees are also encouraged to develop a code of conduct to define their values and behaviour.

The *Model Code of Conduct* can be accessed from the Premier's Department web site www.premiers.nsw.gov.au or by contacting the Public Sector Management Office (PSMO) of the Premier's Department, telephone (02) 9228 3533.

A code of conduct should be developed as a collaborative undertaking. The process of developing and implementing a code of conduct is an important mechanism for positively shaping the culture of the board or committee. Once developed, the board or committee should formally endorse its code of conduct. Each member should sign and agree to abide by it. A good code of conduct is distinguished by a number of key features including:

- *ownership through a participative process*
- To influence behaviour, a code must be an agreed document and one for which all those to whom it is intended to apply have a strong sense of ownership. The way to achieve this is by fully involving members in the development and implementation process. Without this involvement a code will lack legitimacy and authority.

- *support by senior members*

The success of a code is dependent upon obvious and strong support by senior members.

- *ongoing promotion*

On introducing a code it is also important to conduct a well thought out and well resourced implementation plan. The promotion of a particular code should be tailored to the needs of the particular board or committee. Members should understand the importance of a code, how it fits within the operation of their organisation and what it means in the context of their board or committee work.

A code of conduct is not a static document. The board or committee should review the document periodically and amend the code to reflect changing circumstances.

1. Principles of Conduct for the Public Sector

Those who work within the public sector must maintain standards of conduct and ethics that maintain public confidence and trust. Public confidence means that the public has the right to expect that public sector organisations demonstrate the highest integrity and competence treating all citizens fairly, reasonably and equitably.

Members of government boards and committees as public officials are subject to the general principles of conduct that apply to public sector employees. These are set out below and are extracted from the document *Model Code of Conduct for NSW Public Agencies*.

- *Responsibility and impartiality*

This encompasses compliance with any relevant legislative, industrial and administrative requirements and implementation of policies and decisions of the Government of the day in an impartial manner.

- *Respect for people*

Members of the public and colleagues are to be treated fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations.

Public officials should perform their duties in a professional and responsible manner and also ensure that decisions and actions are reasonable, fair and appropriate to the circumstances, based on a consideration of the relevant facts, and supported by adequate documentation.

- *Honesty integrity and public interest*

In performing their duties public officials must promote confidence in the integrity of public administration. They should always act honestly and in the public interest, rather than in their private interest.

- *Responsive service*

Members of boards and committees should have an understanding of their role, the role of the portfolio Minister in relation to their board or committee, the relationship to parent and other organisations and to management. They should also have an understanding of who their stakeholders are.

- *Economy and efficiency*
Public officials should look for ways to improve organisational performance and achieve high standards of public administration. They should use their authority and available resources and information only for the work related purpose intended.

Source: *A Model Code of Conduct for NSW Public Agencies*. See also the Independent Commission Against Corruption (ICAC) publication *The First Four Steps: Building Organisational Integrity*.

2. Personal and Professional Behaviour

All board and committee members need a clear understanding of their public duty and legal responsibilities and must act for the proper purpose and without exceeding their powers.

The primary source of information on the role and functions of the board or committee is the board or committee's enabling legislation ie. the legislation which establishes the board or committee and its functions.

Board and committee members must perform their functions with:

- integrity
- impartiality
- honesty
- conscientiousness
- care
- skill
- diligence and
- loyalty to the public interest

A suggested reference source regarding the legal obligations of board and committee members is the *Australian Institute of Company Directors (AICD), Code of Conduct* and other AICD publications.

3. Accountability

The nature of work in the public sector requires a high standard of accountability, transparency and fairness.

3.1 For Public Expenditure

Board and committee members must ensure the efficient and responsible expenditure of public funds in accordance with government legislation, policy and guidelines.

For access to relevant legislation, policy, guidelines see NSW Treasury, Office of Financial Management web site www.treasury.nsw.gov.au

For access to NSW government procurement policy see Department of Public Works & Services web site www.dpws.nsw.gov.au

3.2 Decision Making

Members should attend all meetings of the board or committee as far as is possible, and allow the necessary time to prepare for meetings. Decisions, reasons for those decisions and processes of the board or committee must be documented and minutes of all official meetings prepared and retained as official records.

4. Use of Public Resources

The relevant agency will provide furniture and equipment and other resources for the board or committee to perform its functions. All such resources are to be used only for board or committee work and in accordance with any guidelines or rules about the use of those resources.

5. Use of Official Information

A board or committee member must not disclose official information or documents acquired as a consequence of membership of the board or committee other than is required by law or when the member has been given proper authority to do so.

6. Gifts and Benefits

As a board or committee member you are a public official and are required to perform your functions with integrity, impartiality and honesty. During your term of appointment you may be offered certain gifts or benefits. It is critical to be wary here for the acceptance of gifts and benefits can place a public official in a position where they feel obliged to act contrary to rules of integrity, impartiality and honesty.

If you are offered money or gifts in order to obtain a benefit or favour it is illegal. It is called bribery and is one form of corruption. Similarly, if you seek or accept a bribe it is corruption.

Board and committee members must not accept gifts or benefits that could place them under an actual or perceived financial or moral obligation to other organisations or to individuals. To avoid the possibility of being compromised, only gifts or hospitality of token or nominal value may be accepted in some circumstances. Accepting such gifts or benefits is essentially a matter of judgement. You must be satisfied that your position will not in any way be compromised or appear to be compromised by acceptance. Agency guidelines on the subject must be taken into account.

It is recommended that a Register of Gifts be maintained to enable the receipt and disposal of gifts to be conducted in an open and transparent manner. The information recorded should include who made the offer, who received the gift or benefit, the date, its value and the decision made on its allocation.

For information and advice see the Independent Commission Against Corruption publication *Gifts, Benefits or Just Plain Bribes? Guidelines for Public Sector Agencies and Officials, June 1999*.

7. Disclosure of Interests

A member must disclose interests to the board or committee (which include positions and pecuniary interests) in corporations, partnerships or other businesses that may be relevant to the activities of the board or committee. A declaration form can be

developed for this purpose. A member's interests include those of an associate or close relative. A register of such interests should be maintained by the organisation. Such interests must also be reported to the Minister.

8. Recognising and Managing Conflicts of Interest

Members of government boards and committees are appointed for their expertise and skill in particular areas. As a consequence of their expertise in these areas there may be the potential for conflicts of interest to arise between a member's duties to the board or committee, and his or her personal interests (or the duties or interests of others).

A conflict of interest may arise for example from:

- Other directorships or employment
- Professional and business interests and associations
- Investment interests
- Family relationships

Further to section 7 above **Disclosure of Interests**, a member has a duty to declare any private interest that may impinge upon a board or committee decision. When an issue arises, the board or committee member must as soon as practicable disclose full and accurate details of the interest or issue to the board or committee.

Mechanisms for Avoiding or Managing a Conflict of Interest

The board or committee should make a decision as to how to manage the conflict of interest and record reasons for that decision.

There are a number of ways of managing conflicts of interest. One method may be for the member not to take part in any discussion of the board or committee relating to the interest or issue, and not vote on the matter. This would include a requirement for the member to be absent from the meeting room when any discussion or vote is taking place and to not receive any relevant board or committee papers. This should also be recorded in the board or committee Minutes.

Other means may be more appropriate to the management of the conflict of interest issue:

- In an extreme case this may require resignation by the member from the board or committee
- Divestment of the interest/issue that is creating the conflict, for example the sale of shares
- Severing the connection for example resignation from a position in another organisation giving rise to the conflict

The code of conduct and in particular the section on conflicts of interest, should address areas of concern or risk to the board or committee and include specific examples where possible.

For information on dealing with conflicts of interest, contact the Independent Commission Against Corruption (ICAC), Corruption Prevention Education and Research Division.

9. Reporting Suspected Corrupt Conduct

A principal officer of a public authority is its most senior officer usually the CEO, Director General, General Manager or Chairperson of a Board or Committee. Principal officers are required to report corrupt conduct or suspected corruption to the Independent Commission Against Corruption (Section 11 of the Independent Commission Against Corruption Act). Corrupt conduct can be generally understood as the dishonest or partial exercise of public official functions. It may also involve the conduct of non-public officials which adversely affects the honest and impartial exercise of a public official's functions.

For conduct to be considered corrupt under the ICAC Act definition it has to be serious enough to involve a criminal offence, a disciplinary offence, be grounds for dismissal or, in the case of Members of Parliament, involve a substantial breach of their Code of Conduct.

A report must be made to the ICAC as soon as you have a reasonable suspicion that corrupt conduct may have occurred or may be occurring. Matters must be reported to the ICAC regardless of any duty of secrecy or other restriction on disclosure. It is important that

reports to the ICAC be made without advising the person(s) to whom the report relates and without publicity.

The *Protected Disclosures Act* provides protection to public officials who voluntarily report suspected corrupt conduct. Board and committee members can make reports to the Chairperson of the Board or to the principal officer of the relevant public authority where that is available to the board or committee 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 Independent Commission Against Corruption
- Maladministration should be made to the NSW Ombudsman
- Serious and substantial waste of public money should be made to the NSW Auditor General

However it is recommended that as a first point of contact, you contact the office of the NSW Ombudsman regarding any matter pertaining to the *Protected Disclosures Act*.

Relevant Legislation

- Your Board/Committee's enabling legislation
- Anti Discrimination Act 1977
- Freedom of Information Act 1989
- Independent Commission Against Corruption Act 1989
- Occupational Health & Safety Act 1983
- Ombudsman Act 1974
- Protected Disclosures Act 1994
- Public Finance & Audit Act 1983
- Public Sector Management Act 1988
- Public Sector Management (General) Regulation 1996
- Public Sector Management (Goods and Services) Regulation 2000

Policy & Guidelines

Premier's Department NSW
Model Code of Conduct for NSW Public Agencies: Policy and Guidelines

Premier's Department NSW
Code of Conduct & Ethics for Public Sector Executives

Premier's Memorandum 99-3
Government Boards & Committees

Publications

Independent Commission Against Corruption. *The First Four Steps Building Organisational Integrity*

Audit Office NSW. *On Board: Guide to Better Practice for Public Sector Governing and Advisory Boards*

Premier's Department NSW.
Boards and Committees Handbook

Sources of Information/Advice

Premier's Department NSW

Governor Macquarie Tower, 1 Farrer Place
SYDNEY NSW 2000
Telephone (02) 9228 5555;
Facsimile (02) 9228 4421
Web site address
www.premiers.nsw.gov.au
Information on public sector employment, policy and guidelines; board and committee appointments and remuneration.

Australian Institute of Company Directors New South Wales Office

Level 25, Australia Square,
264-278 George Street
SYDNEY NSW 2000
Telephone (02) 8234 3333
Web site
www.companydirectors.com.au
Australian professional organisation for company directors providing education, information and advocacy.

Independent Commission Against Corruption (ICAC)

191 Cleveland St
Redfern NSW 2016
Telephone (02) 9318 5999
Web site address
www.icac.nsw.gov.au
Information concerning corruption prevention, investigation and ethics.

NSW Ombudsman

Level 24; 580 George St
SYDNEY NSW 2000
Telephone (02) 9286 1000 or
1800 451 524 (toll free)
Web site address

www.ombo.nsw.gov.au

Investigates and reports on complaints about the administrative conduct of NSW government agencies and their employees.

The Audit Office of New South Wales

Level 11; 234 Sussex St
SYDNEY NSW 2000
Telephone (02) 9285 0155;
Facsimile (02) 9285 0100
Web site address

www.audit.nsw.gov.au

Information concerning public sector accountability requirements and corporate governance.

Institute of Public Administration Australia (IPAA) NSW Division

Level 6; 4-6 Bligh St
SYDNEY NSW 2000
Telephone (02) 9228 5225 ;
Facsimile (02) 9241 1920
Web Site address

www.nsw.ipaa.org.au

Association for professionals in the public sector. IPAA runs conferences, courses, and programs concerning public administration issues including a one-day course on corporate governance for members of government boards, committees and trusts.