



Conduct guide for public sector boards and committees

Developing your code of conduct

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Introduction

Public sector board and committee members are valuable contributors to the work of government and the Western Australian community. Although the roles and functions of boards and committees vary, all members have a personal and collective responsibility to serve the public interest by acting with integrity and making accountable and ethical decisions.

Codes of conduct guide board and committee members about these responsibilities and encourage members to act in accordance with the community's and government's expectations. The majority of public sector boards and committees are required to develop and implement a code of conduct under *Commissioner's Instruction No. 8 – Codes of conduct and integrity training* (CI No. 8).

Purpose of this guide

This guide assists public sector boards and committees (collectively referred to as ‘boards’ throughout) to develop, implement and promote their code of conduct in accordance with the requirements of CI No. 8.

It should be read in conjunction with CI No. 8, *Commissioner’s Instruction No. 7 – Code of Ethics* (CI No. 7), *Good governance for boards and committees* and *Board essentials*, which are available at www.publicsector.wa.gov.au

Public sector boards not covered by CI No. 8, such as governing boards of statutory trading enterprises, may also find this guide useful if developing or reviewing their charters or codes of conduct.

This guide contains information about the types of issues to be addressed in a code of conduct, but it is not exhaustive. It also addresses the implementation and review of your board’s code of conduct. This guide does not replace the need for your board to identify and incorporate any specific legislative and conduct requirements.

Structure of this guide

This guide follows the seven conduct areas arising from CI No. 8. There are three sections under each conduct area.

Section one contains the types of issues and conduct expectations a board’s code of conduct should include. The information is set out as a template code which you may use, where relevant, to form part of your code.

Section two includes information about policies and activities that may support your code. Consider this information in the context of your board’s operating environment and integrity risks.

Section three outlines a range of mandatory requirements, common across the public sector to ensure accountability and proper process (referred to as ‘the accountability framework’). The accountability framework includes, but is not limited to, legislation, Commissioner’s Instructions (including the Code of Ethics), Premier’s Circulars, Commissioner’s Circulars and Treasurer’s Instructions. Check whether the mandatory requirements in section three are applicable to your board before including them in your code.

Developing your code

Considerations for developing your board's code

CI No. 8 requires all public sector bodies, including any public sector board established under its own legislation (unless its constituent Act provides otherwise), to develop, implement and promote a code of conduct and to ensure compliance with that code. Section 9 of the *Public Sector Management Act 1994* also outlines conduct principles for public officers and specifies the requirement to comply with CI No. 7 and any code applicable to the public sector body.

Purpose of a code

A code of conduct translates the principles of the Code of Ethics (personal integrity, relationships with others and accountability) and your board's governance charter into action and commitment for individual board members. It is a practical tool to guide accountable and ethical decision making that recognises the context in which a board operates. Operating context includes the board's functions and objectives as well as stakeholder relationships.

A well-developed code of conduct can build and sustain your board's ethical culture by:

- protecting the integrity and reputation of your board by informing members about appropriate conduct and how potential breaches of the code can be reported
- informing stakeholders about how your board operates
- assisting your board to monitor its integrity.

Inclusions and format

Your board needs to identify the risks associated with your work and ensure these are addressed either within your code or linked policies and guidelines. Your board should also check its own constituent or enabling legislation (if any) and your board charter to ensure your code reflects and references these requirements. As the code applies to all board members, consult with them when developing or updating your code.

Your board can present your code in any format and with content you consider best suits your board, as long as it addresses the seven conduct areas in CI No. 8. These are:

1. Personal behaviour
2. Communication and official information
3. Fraudulent or corrupt behaviour
4. Use of public resources
5. Record keeping and use of information
6. Conflicts of interest and gifts and benefits
7. Reporting suspected breaches of the code.

A sample structure for a code of conduct is included at Appendix A.

Codes often open with a message from the board chair or president to communicate and emphasise expectations. The board's purpose and value statement are also generally included in the introduction.

Some other tips for presenting your code are outlined below.

- Use positive or inclusive language such as 'we' or 'our'.
- Make your code clear, concise and use plain English so everyone understands it.
- Avoid having a code that reads like a list of what not to do.
- Ensure the code is well structured and specific enough to guide the conduct of members or employees, and reference other requirements or provide links to your board's policies.
- Be mindful of the code's length. There is no page limit, although for longer codes you may wish to include a contents page, clear layout and easy formatting to improve readability.
- Define or expand on key concepts, either within your code or policy. Examples or scenarios related to the work of your board may illustrate how members or employees should conduct themselves in particular situations.

Risk assessment

A code of conduct can assist to manage integrity risks. Before developing and updating your code, consider risks that may be inherent to the functions of your board. This will form a basis for determining how the risks should be managed.

Because economic, industry, regulatory and operating conditions change over time, risk assessments should be undertaken regularly to ensure risk management approaches remain current and appropriate.

Some points to consider in assessing risk are outlined below.

- Identify areas of particular risk for the board. Considerations may include:
 - Is there a likelihood conflicts of interest may arise for board members?
 - Does the board make decisions about procurement or award contracts or licenses?
 - Is there a likelihood of board members being offered, or needing to provide gifts, benefits or hospitality?
 - Are the decisions of the board subject to strong stakeholder, public or media scrutiny?
 - Does the board deal directly with members of the community, especially vulnerable people?
 - Does the board handle particularly sensitive or confidential information?
- Consider reviews by integrity agencies to see if risks identified in other authorities may be applicable to your board.
- Examine any complaints, reports, conduct issues or disciplinary cases that may indicate risks for your board to manage.

In identifying these risks, your board also needs to consider the possibility of instances where members' decisions and actions may not accord with policies and ethical codes and how these instances will be reported and managed. See the 'Reporting suspected breaches of the code' section on page 32 for further information.

Risk is explored further in Treasurer's Instruction 825.

Responsibility and accountability

The roles of government boards vary. All public sector boards have an accountable Minister and most will report to or through that Minister. Some boards stand alone, report directly to Parliament, and carry total responsibility for their corporate accountability. Some may have varying degrees of operational independence. Some will be funded from Government appropriations, while others may have their own sources of retained revenue. In general, most, if not all, of the 'across government requirements' (section three) will apply.

Other boards are supported by a host agency and may have many of these requirements completed for them. These arrangements with the host agency do not, however, remove the need for your board to abide by the accountability requirements – responsibility for accountability to your Minister, or through a lead portfolio department, and in some cases directly to the Parliament, always remains with your board.

For information about the degree to which the legislation and other requirements in the accountability framework apply to your board, please seek legal advice.

If your board comprises members and you also have employees, you may wish to consider your code's requirements and clearly articulate any differences applicable to board members or employees. Often boards will have separate codes of conduct for board members and for employees to reflect different responsibilities and roles. The Commission's *Conduct guide* may assist your board to identify some of the broader requirements for employees.

Note: In some instances, boards may, by agreement with the relevant employing authority, use the services of employees of a department. These employees are covered by the code of conduct for that department as their employer.

Further information about the types of boards is available on the Commission's website at www.publicsector.wa.gov.au

Personal behaviour

Board members hold a position of trust. They are in a fiduciary relationship with the board of which they are a member. Decisions made or advice provided by board members may affect the welfare, rights or entitlements of the community. The community expects public officers to carry out their functions with integrity and due regard for government policies and priorities and the public interest. As such, all board members need a clear understanding of their public duty and legal responsibilities.

Section one

Issues and conduct expectations which should be addressed in codes of conduct, where applicable. The following words may be considered a template.

As board members, we will understand our board's role and public duties by actively learning and staying informed about:

- the role and purpose of our board and the statutory, regulatory and policy requirements that apply when carrying out our public duties
- the political and social environment in which our board operates
- all relevant issues and activities affecting our board.

As board members, we will put the public interest first, ahead of our own personal and pecuniary interests, and act with loyalty, in good faith, ethically and with integrity by:

- exercising our powers and discharging our duties in the best interests of the entity of which we are members
- making decisions fairly, impartially and promptly and considering all available information, legislation, policies, procedures and ethical codes
- being accountable and transparent
- doing our job lawfully, with reasonable care and diligence and as efficiently and effectively as possible
- treating members of the public, stakeholders and fellow board members with respect, courtesy, honesty and fairness; having proper regard for their interests, rights, safety and welfare

- fulfilling our board's statutory purposes and requirements and, to the extent permitted by the board's constituent legislation, serving the Government of the day
- maintaining and contributing to a harmonious, safe and productive work environment and professional relationships
- understanding the consequences of misconduct and actions that may be taken if we do not comply with the code and associated policies.

As board members, we will make an active contribution by:

- attending all board meetings. If we cannot attend, we will submit an apology. If we are likely to miss several consecutive meetings, we may apply for a leave of absence
- participating and working cooperatively with fellow board members and stakeholders to achieve agreed goals
- diligently preparing for meetings by reading and considering papers circulated with the agenda
- expressing our concerns to the chair or other relevant authority about consultations, decisions or actions we believe may be contrary to the board's public duty.

Section two

Supporting information

You may choose to further explore within your code or associated policy:

- equal opportunity and diversity and the prevention of discrimination and harassment
- occupational safety and health
- police clearance and working with children checks where appropriate, including possible consequences if a board member commits a criminal offence during their term on the board.

Induction materials may also refer to the board's values and conduct expectations.

Section three

Compliance with applicable legislation, which commonly includes:

- Board's enabling legislation (if any)
- *Public Sector Management Act 1994*
 - section 7 – Public administration and management principles
 - section 8 – Human resource management principles
 - section 9 – Principles of conduct by public sector bodies etc.
- *Auditor General Act 2006*

- *Corruption, Crime and Misconduct Act 2003*
- *Criminal Code*
 - Chapter XII – Corruption and abuse of office
- *Disability Services Act 1993*
- *Environmental Protection Act 1986*
- *Equal Opportunity Act 1984*
- *Financial Management Act 2006*
- *Freedom of Information Act 1992*
- *Industrial Relations Act 1979*
- *Occupational Safety and Health Act 1984*
- *Parliamentary Commissioner Act 1971*
- *Public Interest Disclosure Act 2003*
- *State Records Act 2000*
- *State Supply Commission Act 1991*
- *Statutory Corporations (Liability of Directors) Act 1996*
- *Working with Children (Criminal Record Checking) Act 2004*

Compliance with across government requirements, which commonly include:

- Code of Ethics (CI No. 7)
 - Outlines the minimum standards of conduct and integrity to be complied with by all public sector bodies and employees
- Codes of conduct and integrity training (CI No. 8)
 - Requires all public sector bodies to have a code of conduct and ensure the ‘Accountable and ethical decision making’ program is provided to employees and board members
- *Public Sector Commissioner’s Circular: 2012-05 Code of practice occupational safety and health in the WA public sector*
 - Promotes strategies to help CEOs, managers and employees improve the work environment and ensure compliance with the *Occupational Safety and Health Act 1984*
- *Premier’s Circular: 2009/01 Coordination of public sector labour relations*
 - Requires public sector bodies to comply with the coordination framework for labour relations, including circulars issued by the Department of Commerce
- *Premier’s Circular: 2003/08 State Government access guidelines for information, services and facilities*
 - Boards to fulfil social and legislative responsibilities by ensuring accessible service for all customers, including people with disabilities

- *Public Sector Commissioner's Circular: 2009-27 Complaints management*
 - Boards' complaints management systems must conform to Australian Standard ISO 10002-2006
- *Public Sector Commissioner's Circular: 2013-04 EEO management plans and workforce planning in the public sector*
 - Public sector bodies are required to prepare and implement an Equal Employment Opportunity Management Plan
- *Public Sector Commissioner's Circular: 2009-23 Implementation of the policy framework for substantive equality*
 - Aims to eliminate systemic racial discrimination in public sector services and promote sensitivity to different client groups
- Public sector standards in human resource management
 - Outlines the minimum standards of merit, equity and probity to be complied with in the public sector for a number of human resource activities
- Treasurer's Instructions
 - Outline financial administration requirements for accounting for revenue, expenditure and property, and the standards for reporting.

Communication and official information

Boards can discuss highly sensitive matters and should do so only with board members present and in strict confidence. Nevertheless, all decisions the board makes should be appropriately documented. Certain information must be treated with extra security and sensitivity, for example, Cabinet-in-confidence documents and sensitive personal or financial details.

Board members must not disclose information acquired in the course of their official board duties. Board members must not use official information for personal, commercial or political gain for themselves or others, or to the detriment of others. Board members should be especially cautious when information to which they are privy could be seen to involve any conflict of interest they may have and could be perceived as advantageous to their representative body or interest group.

Section one

Issues and conduct expectations which should be addressed in codes of conduct, where applicable. The following words may be considered a template.

Use of confidential information

As board members, we will:

- maintain confidentiality and not divulge information deemed confidential or sensitive, other than as required by law or where proper authorisation is given. If we are unsure, we will seek direction from the board chair
- not make improper use of information obtained in the course of our board duties, or use for direct or indirect personal or commercial gain, or to do harm to other people or the board, for example, speculating on shares on the basis of confidential information or disclosing the contents of any official papers to unauthorised persons
- respect confidential information and observe any restrictions agreed by the board (subject to *Freedom of Information Act 1992* requirements)
- respect the privacy of individuals and the security of personal information
- protect intellectual property

- raise concerns of improper communications or use of information with the chair, or other relevant authority
- not enter into any contract or arrangement contrary to section 81 of the *Financial Management Act 2006*.

Communication and public comment

As board members, we will:

- adhere to applicable legal requirements, policies and all other lawful directives regarding communication with Parliament, Ministers, ministerial staff, lobbyists, the media and members of the public
- only make public comment on behalf of the board to the media or outside organisations when authorised to do so
- understand how we may use social media in an official capacity, if at all.

Section two

Supporting information

You may choose to explore within your code or associated policy:

- how and when information may be released, including public access to documents where appropriate, freedom of information and making general information available through the board's website
- the nature of official information, including identifying who is authorised to make comment on behalf of the board to the media or other organisations
- protection of intellectual property, including using and granting permission to use intellectual property
- stakeholder privacy and security of personal information
- use of social media in an official capacity, if applicable.

Section three

Compliance with applicable legislation, which commonly includes:

- Board's enabling legislation (if any)
- *Public Sector Management Act 1994*
 - section 9 – Acting with integrity and being scrupulous with information, equipment and facilities
 - section 74 – Relationships between ministerial officers etc. and employees of departments etc.
- *Freedom of Information Act 1992*
- *State Records Act 2000*

- *Financial Management Act 2006*
 - section 81 – No action is taken or omitted to prevent the provision of information by the Minister to Parliament concerning conduct or operations
- *Criminal Code*
 - section 81 – Disclosing official secrets
 - section 83 – Corruption
- *Corruption, Crime and Misconduct Act 2003*
 - section 4 – Misconduct
- *Public Interest Disclosure Act 2003*

Compliance with across government requirements, which commonly include:

- *Public Sector Commissioner’s Circular: 2009-10 Communication arrangements between Ministers and agencies - section 74 of the Public Sector Management Act 1994*
 - Outlines Ministers’ responsibilities for how communications are made between ministerial staff and government employees
- *Public Sector Commissioner’s Circular: 2009-13 Contact with lobbyists code and the register of lobbyists*
 - Lobbying of Government representatives is only permitted by those listed on the lobbyist register
- *Public Sector Commissioner’s Circular: 2009-30 Government intellectual property policy*
 - Outlines the protection, management, use and commercialisation of intellectual property
- *Premier’s Circular: 2003/09 Guidelines for dealing with Cabinet documents under the Freedom of Information Act 1992*
 - Outlines processing requirements for Cabinet documents falling within the ambit of a Freedom of Information application
- *Premier’s Circular: 2014/03 Government advertising and communications policy*
 - Outlines campaign and non-campaign advertising

Fraudulent or corrupt behaviour

Fraud is a dishonest activity that causes actual or potential financial loss to any person or organisation. Corrupt conduct occurs when an officer uses or attempts to use their position for personal advantage or to cause detriment to others.

Community confidence in ethical decision making can be lost when fraudulent or corrupt behaviour occurs. This can damage the reputation of the board and board members, as well as the broader public sector.

Board members need to understand and work within the public sector accountability framework that applies to their board, being especially mindful to manage conflicts of interest in the interests of the board and the public.

Section one

Issues and conduct expectations which should be addressed in codes of conduct, where applicable. The following words may be considered a template.

As board members, we will:

- not engage in any fraudulent or corrupt behaviour
- report any information about actual or potentially fraudulent, corrupt or illegal activities to the board chair or, if necessary, the Corruption and Crime Commission
- report suspected breaches of the code of conduct
- abide by our board's risk management plan, applicable corruption resistance policies and accountability requirements.

Section two

Supporting information

Risk management plans and corruption resistance policies and frameworks may strengthen your board's commitment to preventing fraudulent or corrupt behaviour. Further information is available in *Good governance for boards and committees* available at www.publicsector.wa.gov.au and on the Corruption and Crime Commission's website at www.ccc.wa.gov.au

Establishing clear reporting mechanisms for board members, should they witness any of this behaviour may also assist. See the 'Reporting suspected breaches of the code' section on page 32 of this guide for more information.

Section three

Compliance with applicable legislation, which commonly includes:

- Board's enabling legislation (if any)
- *Public Sector Management Act 1994*
 - section 9 – Act with integrity when performing official duties, be scrupulous in the use of official information, equipment and facilities
- *Statutory Corporations (Liability of Directors) Act 1996*
- *Financial Management Act 2006*
- *State Records Act 2000*
- *Criminal Code*
 - Chapter XIII – Corruption and abuse of office
- *Corruption, Crime and Misconduct Act 2003*
 - section 4 – Misconduct
- *Public Interest Disclosure Act 2003*

Compliance with across government requirements, which commonly include:

- Treasurer's Instructions, including:
 - Risk management and security – boards should consider material risks at all levels and take necessary actions to manage those risks, including safeguarding assets from misuse and loss due to theft or damage (Treasurer's Instruction 825)
- State Supply Commission policies – accountable authorities are required to purchase goods and services in accordance with State Supply Commission policies
www.ssc.wa.gov.au
- Western Australian Government purchasing card (corporate credit card) guidelines
www.finance.wa.gov.au

Use of public resources

Board members must ensure efficient and effective operations, avoid extravagant and wasteful use of resources, and record processes used when purchasing goods and services.

Public resources include, but are not limited to, credit cards, motor vehicles, computers, software, photocopiers, mobile telephones, laptops and tablets, printers, other office equipment and board members' time if they are receiving fees for their involvement.

Credit cards are a particular area of risk. Boards should ensure appropriate processes are developed and implemented in relation to the allocation and use of credit cards and monitoring purchases made with them.

Section one

Issues and conduct expectations which should be addressed in codes of conduct, where applicable. The following words may be considered a template.

As board members, we will:

- use the resources of the State, funds, employees and equipment effectively and economically, only for board business
- comply with applicable legislation, whole of government requirements and board policies when using public resources
- not use public resources for personal financial gain or party political work
- operate equipment and property in accordance with the manufacturer's specifications, maintain it in good condition and store it securely
- report any damage to, or loss of, property or equipment immediately to the board (or other responsible person)
- ensure requests by an external party, such as a charitable organisation, to use board facilities are referred to the board for approval.

Incurring expenditure

As board members, we will:

- not approve our own expenditure for travel claims, credit card payments, private telephone subsidies or similar. We will refer these to the board for approval
- analyse financial statements and management reports with due care, and ensure we are properly informed about policies and procedures.

Corporate credit cards

As board members, we will:

- use corporate credit cards only for approved and official purposes, and comply with conditions set by the issuing agency or financial institutions
- not use corporate credit cards:
 - to withdraw cash
 - to purchase fuel for government vehicles
 - for private purchases
 - to purchase assets.

Travel and accommodation

As board members, we will:

- comply with *Premier's Circular: 2014/02 Guidelines for official air travel by Ministers, Parliamentary Secretaries and Government Officers*, including that:
 - our choice of airline will be based on the 'best fare of the day' principle
 - we will not use frequent flyer points or benefits under other incentive or loyalty schemes accumulated in the course of business air travel for private purposes
- understand our board's arrangements for the reimbursement of travel and accommodation expenses, if applicable.

Providing hospitality

As board members, we will ensure the responsible and efficient expenditure of public funds on hospitality, in line with applicable policies and requirements, if we are approving or providing it.

Section two

Supporting information

You may choose to further explore in your code or associated policies:

- **Use of corporate credit cards and incurring expenditure.** Board members who incur expenses must be authorised incurring officers, as provided for in the *Financial Management Act 2006* and relevant Treasurer's Instructions. Where credit cards are required for board business, each corporate credit card is issued to an individual board member and responsibility rests with that person for its appropriate use.
- **Use of resources/equipment,** including how and when official resources are not to be used and any 'acceptable use' conditions for equipment. Board assets are publicly owned and are not provided to members for exclusive or personal use. For example, board members often have access to telephones to conduct business on behalf of the board. As a general rule, board members with access to phones should:
 - keep personal calls to a minimum and not make private commercial business calls
 - keep a record of calls made as part of official board business
 - reimburse the costs of personal calls in excess of permissible personal use allowances (if any).
- **Travel and accommodation.** There are a range of procedures for approval of official travel and accommodation used by boards that vary, depending on each board's operating context. Clearly establish your board's policy and ensure your board members are familiar with it. As a general guide, board members should, before travelling, obtain approval for the travel from the board and record this in the board's minutes.
- **Providing hospitality and entertainment.** Any hospitality provided by a board must be consistent with the board's genuine needs and public duty, in keeping with *Public Sector Commissioner's Circular: 2009-18 Guidelines for expenditure on official hospitality*. Hospitality should not appear overly generous compared to the potential benefits to the board or stakeholder involved.
- **Entering government premises.** Sometimes the board or board members may need to visit a government agency in a formal capacity or to use government facilities and equipment where such arrangements exist. Before doing this, board members should consult with the chief executive officer (CEO) of the relevant government agency as a matter of courtesy, and to ensure they do not become directly involved in operational matters.
- **Engaging consultants or contractors.** Following government guidelines and procedures will ensure consistency when engaging consultants or contractors. It is important for boards to determine whether such a person is to be engaged as an employee, or a contractor, and that the source of the board's power to enter into the relevant contract is clearly identified.

An employee is engaged on a contract of service which implies an employer/employee relationship. This means the board is responsible for the person's wages, workers' compensation, PAYE instalments, group certificate and so on. Boards should ensure that persons employed as employees are recruited, appointed and managed in accordance with the board's powers and authority, applicable industrial instruments and government industrial relations policies, and the public sector standards in human resource management.

A contractor or consultant is engaged on a contract for services, which implies there is no employment relationship. Accordingly, a contractor or consultant submits an invoice for the service performed. Contracts for services must be made following correct purchasing procedures, according to current State Supply Commission guidelines on contracts for professional services.

Section three

Compliance with applicable legislation, which commonly includes:

- Board's enabling legislation (if any)
- *Public Sector Management Act 1994*
 - section 9 – Act with integrity when performing official duties, be scrupulous in the use of official information, equipment and facilities
- *Financial Management Act 2006*
- *State Supply Commission Act 1991*
- *Criminal Code*
 - Chapter XIII – Corruption and abuse of office
- *Corruption, Crime and Misconduct Act 2003*

Compliance with across government requirements, which commonly include:

- *Premier's Circular: 2014/02 Guidelines for official air travel by Ministers, Parliamentary Secretaries and Government Officers*
 - Provides guidance for official air travel arrangements, including information regarding frequent flyer programs
- *Public Sector Commissioner's Circular: 2009-18 Guidelines for expenditure on official hospitality*
 - Expenditure on hospitality is to be consistent with responsibilities of public sector officers. All officers are to be scrupulous in their use of public funds
- *Premier's Circular: 2010/02 State Government boards and committees*
 - Outlines payment of fees to government officers

- *Premier's Circular 2015-01 Government office accommodation policy*
 - Establishes a framework to achieve value-for-money office accommodation that supports agencies' service delivery requirements
- WA Government fleet policy and guidelines www.finance.wa.gov.au
- Western Australian Government purchasing card (corporate credit card) guidelines www.finance.wa.gov.au
- Treasurer's Instructions cover all areas of financial management including:
 - Credit cards – describes credit card use (Treasurer's Instruction 321)
 - Custody of public property – describes asset register requirements (Treasurer's Instruction 406)
 - Motor vehicles – describes use of government vehicles and record keeping requirements (Treasurer's Instruction 411)
- State Supply Commission policies and guidelines
 - Accountable authorities are required to purchase goods and services in accordance with State Supply Commission policies
 - *Sponsorship in Government guidelines – A handbook to assist public authorities* www.ssc.wa.gov.au
- Public sector standards in human resource management
 - Outlines the minimum standards of merit, equity and probity to be complied with in the public sector for a number of human resource activities www.publicsector.wa.gov.au

Record keeping and use of information

All public officers, including board members, are responsible under the *State Records Act 2000* for creating and managing government records appropriately. Correspondence and documents created or received in the course of official business are government records.

Making and maintaining proper records assists with accountability and transparency by demonstrating the basis for decisions and the process used to make them. Documentation enables decisions to be reviewed, including by an independent person or authority. Members of the public can also seek access to information and documents of public sector bodies under the *Freedom of Information Act 1992*.

All decisions made by the board should be documented and appropriate minutes created and retained.

Section one

Issues and conduct expectations which should be addressed in codes of conduct, where applicable. The following words may be considered a template.

Documenting decisions

As board members, we will:

- ensure we follow procedures to accurately document board decisions, events and transactions
- prepare and retain minutes for all official board meetings, including recording any dissent.

Security of information

As board members, we will:

- ensure recorded information under our control, in both paper and electronic form, is kept in a secure place, including when stored on laptops, tablets and USB devices
- be diligent in handling board records and secure sensitive documents, rather than leaving them out in the workplace, meeting rooms, at home or in vehicles where non-board members might access them

- avoid discussing board business in public places where there is a likelihood of being overheard
- dispose of duplicate copies of records and confidential waste in accordance with record keeping and archive procedures.

Amendment or falsification of records

As board members, we will not:

- falsify, destroy, alter or damage any public record
- back-date information or remove folios from files.

Freedom of information

As board members, we will:

- comply with the letter and spirit of the *Freedom of Information Act 1992* to assist the public to gain access to documents and to check personal information in documents
- allow prompt access and ensure personal information held is accurate, complete, up to date and not misleading
- record salient facts in documents
- avoid recording inappropriately disparaging remarks and unsubstantiated personal opinions about individuals on official documents.

Section two

Supporting information

All documents produced by the board form part of the public record. Board members must ensure records are properly organised and securely stored. They must comply with the provisions of the General Retention and Disposal Schedules established by the *State Records Act 2000* and their board's record keeping plan. Board members also have individual responsibility for any document or electronic record in their custody.

You may choose to further explore in your code or record keeping plan or associated policies:

- how records are to be kept and the requirements for removing files from the workplace, for example, working from home or using electronic devices
- the secure and proper disposal of government documents and hard drives
- release of information (which may include freedom of information, and not inappropriately releasing information to offer an advantage or create disadvantage for any particular person or group)
- whether it is appropriate to provide public access to some board papers such as agendas and minutes (edited to ensure confidential information is not inadvertently published), as is done, for example, by some boards or committees such as the State Records Commission and Environmental Protection Authority.

Section three

Compliance with applicable legislation, which commonly includes:

- Board's enabling legislation (if any)
- *Public Sector Management Act 1994*
 - section 7 – Public administration and management principles
- *State Records Act 2000*
- *Financial Management Act 2006*
- *State Supply Commission Act 1991*
- *Freedom of Information Act 1992*
- *Criminal Code*
 - section 83 – Corruption
 - section 85 – Falsification of records by a public officer
- *Corruption, Crime and Misconduct Act 2003*

Compliance with across government requirements, which commonly include:

- *Premier's Circular: 2003/17 Requirements for Western Australian Government publications and library collections*
 - Outlines requirements to lodge publications with state and national libraries
- Treasurer's Instructions, including:
 - Employment records – employment record maintenance (Treasurer's Instruction 501)
 - Record of attendance and time worked – maintenance of officers' attendance records (Treasurer's Instruction 502).

Conflicts of interest and gifts and benefits

Board members have an obligation to perform their official duties in the public interest and not to use their position or authority for personal gain or to cause detriment to others. This includes identifying, declaring and appropriately managing any conflicts of interest in the public interest and the interests of the board.

Conflicts of interest arise where there is a conflict between the performance of a public duty and private, or personal, interests. Conflicts may involve personal, financial or political interests and may be actual, perceived or potential.

Conflicts of interest can be a key risk area for board members. It is almost inevitable board members will have a conflict at some point as they are either appointed to represent particular stakeholders, or for their expertise and relationships with local governments, communities and private industry.

It is not wrong to have a conflict of interest. What is important is that the board manages a conflict in the public interest and in accordance with any applicable legislation or requirements, acknowledging the fiduciary relationship of board members to their board. It is also critical for members to consider the public perception of a conflict of interest, regardless of whether it actually exists. A poorly managed perceived conflict of interest can be just as damaging to the board's reputation and operations as a poorly managed actual conflict of interest.

Section one

Issues and conduct expectations which should be addressed in codes of conduct, where applicable. The following words may be considered a template.

Conflicts of interest

As board members, we will:

- keep our private commercial or political interests separate from our official board role
- openly declare, in the first instance to the chair (or in the case of the chair him or herself, to the deputy chair), matters relating to a private interest that may conflict, or be perceived to conflict, with our public duty

- follow any legislated requirements for managing conflicts as well as management strategies contained in relevant board policies, such as a conflict of interest policy. This may involve removing ourselves from discussion and decision making on the matter
- ensure the board meeting minutes record any issues of conflict and the steps taken to manage the conflict, so they are transparent and capable of review.

Gifts and benefits

As board members, we will:

- carefully consider any offers of gifts, benefits or hospitality and ensure any decision to accept is done openly, placed on the record, and is consistent with our code, conflicts of interest or gifts, benefits and hospitality policy where such a policy applies
- not accept gifts, benefits or hospitality:
 - likely to place us under an actual or perceived financial or moral obligation to other organisations or individuals
 - if they could reasonably be seen by the public, knowing the full facts, as intended or likely to cause us to act in a particular way or deviate from our public duty
- maintain a register of all gifts accepted, and ensure these are of token value only
- not demand or accept in connection with our official duties any fee, commission, reward, gratuity or remuneration of any kind which is outside the scope of our entitlements
- not use our public position for personal profit or gain or to cause detriment to others.

Section two

Supporting information

Private interests

Conflicts between private interests and public duties can arise in, but are not limited to, the following situations where a board member:

- stands to make a financial gain from a board decision
- holds membership of another organisation likely to benefit from, or be disadvantaged by, a board decision
- has a spouse, children, close relatives or associates who stand to make a financial gain or loss or are members of an organisation affected by a board decision.

Competing interests

During their official capacity as a board member (i.e. during board deliberations and official duties), the board member's primary responsibility is to the board on which they serve. Loyalty to the board overrides any responsibility a board member may have as an individual nominated to represent the interests of a particular group or sector. This includes a public officer who may have been appointed to a board to represent their employer. When conducting the business of the board, the public officer's duty as a board member prevails if a conflict arises with the performance of his or her other public sector duties.

Gifts and benefits

The offer of gifts, benefits and hospitality can introduce a personal interest where one may not have existed previously.

Policies

You may choose to further explore in your code or associated policies:

- whether to include a standing agenda item for all board meetings for the declaration of conflicts of interest
- identifying, declaring and managing conflicts of interest (perceived, potential and actual), such as:
 - examples specific to the board, including relationships with contractors
 - action required to manage a conflict
 - reference to any legislation prohibiting decision making in certain circumstances
- the offer and acceptance of gifts and benefits, such as:
 - whether gifts can be accepted at all and when it is not appropriate to accept gifts
 - gifts that can never be accepted, for example, cash, vouchers or gifts easily converted to cash, or gifts from potential contractors or tenderers for the supply of goods or services to the board or an associated entity
 - reference to any legislation prohibiting decision making in certain circumstances
 - the need to record all gifts and benefits accepted or provided by the board or board members in a register. Boards may also wish to record gifts offered by people or organisations but declined by individual members or the board as a whole
 - the practice of providing guidelines to tenderers and contractors to inform them about the board's code of conduct and gifts and benefits policy.

The Integrity Coordinating Group has a range of resources on conflicts of interest and gifts and benefits, available at www.icg.wa.gov.au

The State Supply Commission's *Sponsorship in Government guidelines – A handbook to assist public authorities* addresses managing conflicts of interest in sponsorship arrangements, available at www.ssc.wa.gov.au

Section three

Compliance with applicable legislation, which commonly includes:

- Board's enabling legislation (if any)
- *Public Sector Management Act 1994*
 - section 9 – Principles of official conduct by public sector bodies etc.
 - section 102 – Employees not to be employed outside Government etc. without permission
- *Financial Management Act 2006*
- *State Records Act 2000*
- *Criminal Code*
 - section 82 – Bribery of a public officer
 - section 83 – Corruption
 - section 88 – Bargaining for public office
- *Electoral Act 1907 and Electoral Regulations 1996*
 - regulation 28(3) – Public employees standing for election
- *Australian Constitution*
 - section 44 – Disqualification, officers of the crown standing for federal elections
- *Corruption, Crime and Misconduct Act 2003*

Compliance with across government requirements, which commonly include:

- *Public Sector Commissioner's Circular: 2009-13 Contact with lobbyists code and the register of lobbyists*
 - Lobbying is only permitted by those listed on the lobbyist register
- *Public Sector Commissioner's Circular: 2009-18 Guidelines for expenditure on official hospitality*
 - Expenditure on hospitality is to be consistent with responsibilities of public sector officers. All officers are to be scrupulous in their use of public funds
- *Public Sector Commissioner's Circular: 2012-02 Self-managed superannuation funds (SMSF) - outside employment*
 - Treated as outside employment under section 102 of the *Public Sector Management Act 1994*

Reporting suspected breaches of the code

Through their decisions and actions, the board chair and members can create confidence that reports of suspected breaches of the code of conduct from board members will be treated seriously and appropriate action taken.

The board should ensure it establishes and promotes accessible reporting mechanisms, managed by skilled people. The board should also be aware of the authority under which it may take action should a breach of the code be found to have occurred.

Section one

Issues and conduct expectations which should be addressed in codes of conduct, where applicable. The following words may be considered a template.

As board members, we will:

- familiarise ourselves with the board's reporting mechanisms
- report suspected breaches of the code of conduct.

Section two

Supporting information

You may choose to further explore within your code or associated policies and reporting framework:

- how reports of suspected breaches of the code can be made within the board and externally where appropriate, and expectations about the type of information or matters that may be reported. Some breaches of the code may be considered misconduct under the *Corruption, Crime and Misconduct Act 2003* and must be reported to the Corruption and Crime Commission or the Public Sector Commission as appropriate
- the rights and responsibilities of those reporting
- who can receive and deal with reports of suspected breaches of the code within the board, for example, the board chair, a confidential ethics line, human resource officers and the board's public interest disclosure officer
- ensuring that those identified to receive a report understand their obligations when they receive reports and have the skills to appropriately deal with or refer matters.

Your board may also promote reporting avenues to board members to ensure they know how to report suspected breaches of the code of conduct, and the support available to board members who report instances of this behaviour.

Section three

Compliance with applicable legislation, which commonly includes:

- Board's enabling legislation (if any)
- *Public Sector Management Act 1994*
 - section 9 – Comply with the provisions of any code of conduct applicable to the public sector body or employee concerned
 - section 21(1)(d) and (e) – Public Sector Commissioner to assist public sector bodies to comply with codes of conduct, and to monitor compliance with the principles in section 9
- *Occupational Safety and Health Act 1984*
- *Criminal Code*
 - Chapter XIII – Corruption and abuse of office
- *Corruption, Crime and Misconduct Act 2003*
 - section 25 – Any person may report misconduct
 - section 28 – Certain officers obliged to notify serious misconduct
 - section 45H – Certain officers obliged to notify minor misconduct
- *Public Interest Disclosure Act 2003*

Compliance with across government requirements, which commonly include:

- *Public Sector Commissioner's Circular: 2012-05 Code of practice occupational safety and health in the WA public sector*
 - Promotes strategies to help CEOs, managers and employees improve the work environment and ensure compliance with the *Occupational Safety and Health Act 1984*

Making your code of conduct operational

Your board can undertake a number of activities to ensure your code of conduct becomes part of the accepted way of doing business. These are outlined below.

Raising awareness – promoting your code

The successful integration of your code into behaviour and action will require ongoing promotion, rather than relying on a once-off induction or training program. You may consider the following strategies to raise awareness.

- Include conduct and integrity expectations in role statements and attach a copy of the code to appointment letters to your board members.
- Incorporate the code of conduct into induction for new board members.
- Introduce your code as an agenda item and minute this introduction.
- Have each board member (and chair) sign the code to confirm they have read it.
- Publish the code on your intranet, have hard copies available and promote your code within any board publications.
- Reference the code in other documents, such as the board charter, statement of intent and strategic plan.
- Reference the code in performance agreements if they are in place and discuss and evaluate conduct expectations during performance management.
- Extend communication about the board and code of conduct to stakeholders including contractors, suppliers and clients.
- Use the code of conduct (and associated policies and guidelines) as the base for your board's 'Accountable and ethical decision making' training program.
- Consider times when reminders may be required, for example, at Christmas when gifts are more likely to be offered to the board and board members.

Embodying integrity – the board chair

Codes of conduct and policies become custom and practice over time. Board chairs can positively influence board members' behaviour by modelling expected behaviour.

From time to time, board members seek information and advice from their board chairs. To be able to provide this advice, board chairs should ensure they inform themselves about the code and associated policies or know where to refer board members. It is also important board chairs make board members aware of the expected standards of conduct and promote an active dialogue about integrity risks and issues.

Further information about the board chair's role is available in the 'Good governance for boards and committees' section of the Commission's website www.publicsector.wa.gov.au

Monitoring compliance with your code

CI No. 8 requires boards to ensure compliance with their code of conduct. Information about compliance may also be useful if required to report back to the Public Sector Commissioner.

To facilitate this, it is useful to establish a system for monitoring compliance. Monitoring activities may include:

- using review processes to assess compliance with the code and adherence to associated policies and guidelines, for example, a review of the board's gifts register and procurement decisions
- analysing information obtained through board consultative committees or client perception surveys
- considering feedback, complaints or issues raised about non-compliance.

Taking action in response to your code

Acting on suspected non-compliance involves taking fair and prompt action to prevent and deal effectively with the matters. This creates confidence amongst board members and employees that the board takes conduct issues seriously and will take action when suspected breaches are reported.

Prior to taking action on suspected breaches, ensure your board has appropriate authority to do so and is clear about the correct process to be used for board members or employees.

Review and update your code

Regularly reviewing and updating your code ensures it continues to address current and emerging conduct risks. Your code may not require an update with every review, however, without a review process it may quickly become out-dated. Designate a position or member to review the code as scheduled.

Codes may also need to be reviewed and updated outside scheduled review periods, in response to:

- new or amended legislation or subsidiary legislation
- changes to board or government policy
- findings made by integrity agencies that identify risk areas that have not been addressed within your code
- findings from reviews or feedback from members or employees
- complaints about how your board manages part or all of its functions.

Not all issues will arise from a deficiency in a code. Some may relate to a lack of knowledge or understanding and this may be better addressed through ongoing discussion about the code and board requirements.

If you have further queries about developing your code, contact a consultant at the Public Sector Commission.

The Commission's Advisory Line on 6552 8888 provides general advice to assist compliance with the:

- Public sector standards in human resource management and associated Commissioner's Instructions
- applicable sections of the *Public Sector Management Act 1994*, including the principles of human resource management and official conduct (sections 8 and 9)
- *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*
- Reporting of minor misconduct under the *Corruption, Crime and Misconduct Act 2003*
- *Public Interest Disclosure Act 2003*.

For more information, visit www.publicsector.wa.gov.au

Resources

Public Sector Commission www.publicsector.wa.gov.au

- Commissioner's Instructions, including CI No. 7 and CI No. 8
- Public Sector Commissioner's Circulars
- Good governance for boards and committees
- *Board essentials*
- Accountable and ethical decision making
- Integrity promotion and prevention of misconduct
- Oversight of minor misconduct
- Public interest disclosures

Australian Standard on Fraud and Corruption Control AS 8001-2008 www.standards.com.au

Corruption and Crime Commission www.ccc.wa.gov.au

Department of Commerce – Circulars www.commerce.wa.gov.au

Department of the Premier and Cabinet – Premier's Circulars www.dpc.wa.gov.au

Department of Treasury – Treasurer's Instructions www.treasury.wa.gov.au

Disability Services Commission www.disability.wa.gov.au

Information on the working with children check and legislation www.checkwwc.wa.gov.au

Integrity Coordinating Group – for information on integrity in decision making, conflicts of interest and gifts, benefits and hospitality www.icg.wa.gov.au

Office of the Auditor General www.audit.wa.gov.au

Office of the Information Commissioner www.foi.wa.gov.au

Ombudsman Western Australia www.ombudsman.wa.gov.au

Risk management – Principles and guidelines AS/NZS ISO 31000:2009
www.riskmanagement.com.au

State Law Publisher – copies of Western Australian legislation www.slp.wa.gov.au

State Records Office www.sro.wa.gov.au

Appendix A — Sample structure for a code of conduct

A sample structure for a code of conduct is provided on the following pages. It is available in a Word format from the Commission's website.

Sample structure for a code of conduct

[Your board or committee name goes here] Code of conduct

Message from the Chair

[Insert message from your board chair:

- encouraging board members to read and be familiar with their code, and outlining that members are expected to comply with the code and other applicable requirements
- clearly explaining when the code will apply and to whom. For example, you may wish to clarify it applies at board meetings, during official board visits and at events where individuals represent the board. Note that the code applies to the chair and all board members, and advise whether or not it applies to others, such as departmental employees supporting the board.]

Values, vision and mission

In all our operations and relationships we value:

- [set out your values, vision and mission]

Board members commit to:

- upholding the principles of the Code of Ethics and this code of conduct
- taking responsibility for contributing in a constructive and positive way to enhance good governance and the board's reputation.

Conduct areas

[Refer to template wording in ‘section one’ of the seven relevant conduct areas in this guide.]

1. Personal behaviour
2. Communication and official information
3. Fraudulent or corrupt behaviour
4. Use of public resources
5. Record keeping and use of information
6. Conflicts of interest and gifts and benefits
7. Reporting suspected breaches of the code

Breaches of the code of conduct

- [Include information about how breaches of the code may be dealt with, including any obligations to refer to or notify central agencies, for example, the Corruption and Crime Commission.]

Review date

- [Date the code will be reviewed.]



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