



Parliamentary  
Counsel's Office

## CODE OF CONDUCT

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# CODE OF CONDUCT

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## Introduction

The Parliamentary Counsel's Office (PCO) is the legislative drafting office for New South Wales. It has an obligation to maintain the highest standards of professionalism and confidentiality in providing drafting, publishing and advisory services for its clients and in dealing with the Government, Opposition and other Members of Parliament. It is essential that PCO staff demonstrate to the Government and people of NSW a standard of conduct and ethics in the performance of their duties that maintains confidence and trust.

The purpose of the Code of Conduct is to define the requirements and the expected standards of behaviour of people in their employment at the PCO and to provide guidance to employees concerning the specific action they should take when confronted with ethical issues in the course of performing their roles. In the case of staff who are admitted as barristers or solicitors, there are additional professional and ethical rules and standards that also apply.

This Code should be read in conjunction with relevant legislation, Government policies and directions and PCO policies (see Appendix A). It should also be read in conjunction with the NSW Public Service Commission's *The Code of Ethics and Conduct for NSW government sector employees* (see Appendix B) released on 20 April 2015. The PCO's policies are published on the PCO's intranet.

# 1. General

## Scope

- 1.1 This Code of Conduct applies to every individual employed, appointed or otherwise attached to the Parliamentary Counsel's Office including ongoing, temporary and contracting staff.

The necessity to act impartially and to maintain confidence is of critical importance in the Parliamentary Counsel's Office. The Code places special emphasis on the need for professional impartiality and confidentiality by staff who are employed in the Parliamentary Counsel's Office.

- 1.2 This Code of Conduct establishes standards of behaviour expected of employees and provides guidelines on solving ethical issues that may arise in the course of work duties. The principles underlying the Code are:

1. Respect for the law and system of government.
2. Respect for all people.
3. Act with honesty and integrity.
4. Use of official resources with economy and efficiency.

More detailed information about each principle is provided in this Code and is intended to assist employees in individual decision making. In all circumstances, employees should have regard to the principles that form the basis of this Code.

## Code of Conduct and Ethical Framework

- 1.3 The Code aligns with the Ethical Framework for the Government Sector (established by Part 2 of the *Government Sector Employment Act 2013*), which is based around four core values – integrity, trust, service and accountability. The values are underpinned by eighteen principles which are based on individual behaviour shown below.

Value	Guiding principle
Integrity	Consider people equally without prejudice or favour. Act professionally with honesty, consistency and impartiality. Take responsibility for situations, showing leadership and courage. Place the public interest over personal interest.
Trust	Appreciate difference and welcome learning from others. Build relationships based on mutual respect. Uphold the law, institutions of government and democratic principles. Communicate intentions clearly and invite teamwork and collaboration. Provide apolitical and non-partisan advice.
Service	Provide services fairly with a focus on customer needs. Be flexible, innovative and reliable in service delivery. Engage with the not-for-profit and business sectors to develop and

	<p>implement service solutions. Focus on quality while maximising service delivery.</p>
Accountability	<p>Recruit and promote staff on merit. Take responsibility for decisions and actions. Provide transparency to enable public scrutiny. Observe standards for safety. Be fiscally responsible and focus on efficient, effective and prudent use of resources.</p>

- 1.4 The Ethical Framework is incorporated in *The Code of Ethics and Conduct for NSW government sector employees* released by the NSW Public Service Commission on 20 April 2015. All government sector employees are required to comply with this Code.
- 1.5 The PCO's Code of Conduct supplements this Code by providing requirements and advice specific to the PCO's environment, business and risks.

### Risk management

- 1.6 In addition to general issues of ethical behaviour, the Code aims to reduce the risk of staff acting inappropriately when dealing with colleagues or members of the public by communicating the requirements for:
- ethical decision making,
  - conflicts of interest,
  - acceptance of gifts and benefits,
  - information protection and public comment,
  - participation in external organisations and private employment,
  - use of official resources,
  - reporting suspected wrongdoing,
  - drugs, alcohol and tobacco use,
  - discrimination and harassment,
  - work health and safety.

### Responsibilities

- 1.7 **Employee responsibilities**
- understanding the terms of the Code of Conduct,
  - abiding by the Code of Conduct's guidelines on ethical and professional behaviour,
  - reporting any incidents when the Code of Conduct is, or is perceived to be, breached,
  - consulting management when unsure of what behaviour or action is expected in a workplace or personal situation that compromises ethical behaviour,
  - understanding legislation and the policies and procedures of the PCO that support professional and ethical behaviour.
- 1.8 **Executive and Supervisor responsibilities**
- ensuring employees are aware of the Code of Conduct and they understand its content and requirements,
  - advising staff on what is the PCO's expectations on appropriate and ethical

behaviour,

- investigating incidents when the Code of Conduct may be breached or the behaviour of employees may be in question,
- demonstrating ethical, fair and professional behaviour,
- Senior Executives providing a written declaration of any private, financial, business, personal or other interests or relationships in accordance with *The Code of Ethics and Conduct for NSW government sector employees*.

#### 1.9 **The Parliamentary Counsel's responsibilities**

- approving the content of the Code of Conduct,
- supporting the content of the Code of Conduct and being a model for the principles upon which it is based.

1.10 All staff must also comply with the Mandatory Conduct section of *The Code of Ethics and Conduct for NSW government sector employees* (see Appendix B).

### **Breaches of the Code of Conduct**

1.11 A breach of the Code may lead to performance management or disciplinary action. Such action could range from counselling to dismissal. The decision to take such action will involve the consideration of a number of relevant matters, including protecting the integrity of the NSW public sector, maintaining public confidence and trust and the seriousness of the misconduct.

## **2. Respect for the Law and system of Government**

### **Compliance with the law, government policies and lawful direction**

- 2.1 Employees must comply with any relevant legislative, industrial and administrative requirements and any lawful direction made by a person with the authority to give such a direction.
- 2.2 Employees also need to comply with public sector policies as advised through circulars, memoranda and Treasurer's Directions.
- 2.3 To comply with relevant laws and policies, employees are obliged to know and understand the law applicable to the performance of their duties. To facilitate compliance, executives and supervisors should ensure that:
- all employees are kept fully informed about the key legal requirements relevant to their work,
  - employees are made aware of the potential repercussions of non-compliance with legal requirements that apply to them,
  - appropriate record-keeping systems and practices that capture evidence of compliance and non-compliance are in place. These should be in accordance with the *State Records Act 1998*.
- 2.4 Employees also need to keep up to date with advances and changes in their area of expertise, which may include changes to relevant laws.

### **Responsibility to the government of the day**

- 2.5 Employees are to implement the policies and decisions of the government of the day in an impartial manner and are to participate in the development and implementation of initiatives that flow from those policies.

### **Provide timely, accurate and impartial advice**

- 2.6 Employees are expected to provide advice in a timely and impartial manner. Such advice must be honest, frank, accurate and without material omission, and any limitations on the advice must be made clear. Advice should be developed with an understanding of its implications, anticipate issues and recognise the broader policy directions set by the government. Employees must not withhold relevant information from the government.
- 2.7 Before providing advice employees should, where possible, make adequate inquiries to obtain all relevant information. If any false or misleading information has been provided it must be rectified as quickly as possible.
- 2.8 Employees should also refer to the PCO's Advice Services policy document on the intranet.

### **Participation in political activities**

- 2.9 Employees have a right to participate in political activities provided any conflict of interest that arises is adequately recognised and managed.
- 2.10 Employees must ensure that any participation in political matters does not conflict with their primary duty as a public employee to serve the government of the day and other clients of the Office in a politically neutral manner. This is important in maintaining the confidence of the government, Members of Parliament and the public in the impartiality of the actions taken and advice given, and the integrity and effectiveness of the work performed by PCO employees.
- 2.11 If an employee becomes aware that a potential conflict, whether real or apparent, has arisen or might arise, the Parliamentary Counsel must be informed immediately. If a conflict of interest does arise, the employee involved may have to stop the political activity or enter into an appropriate arrangement with the PCO if such an arrangement is feasible. This may involve withdrawing from areas of work giving rise to the conflict of interest.

### **Public Comment**

- 2.12 In the course of their official duties some employees may be called on to make public comment.
- 2.13 "Public comment" encompasses public speaking engagements, comments to radio, television, or print reporters, appearance before parliamentary committees and posts on the internet. It includes letters to newspapers, comments in books, journals or notices, comments made or broadcasted electronically including social media sites, or in any other circumstances where it could be expected that the comments will be spread to the community at large.
- 2.14 While public servants, as members of the community, have the right to make public comment and to enter into public debate on political and social issues, there are some circumstances in which public comment is inappropriate. These circumstances include:

- where the implication can reasonably be drawn that the public comment, although made in a private capacity, is in some way an official comment of the Government or the PCO,
  - where public comment, even though unrelated to an employee's normal duties, amounts to criticism sufficiently strong or persistent to give the impression that the employee is not prepared to implement or administer the policies of the Government of the day,
  - where public comment relates to development of a new legislative proposal or review of an existing legislative proposal that is being considered by the PCO.
- 2.15 A paper should not be presented or published or speaking engagements should not be undertaken with respect to any area of work of the PCO unless the Parliamentary Counsel has been notified. It is immaterial if the person concerned purports to act in a private capacity.

### **Confidentiality of information**

- 2.16 Much of the work of the PCO involves access to, and drafting and publishing of, confidential or sensitive documents.
- 2.17 Employees must maintain the confidentiality of all official information and documents that are not published or normally made available to the public. Employees must take care in maintaining the integrity and security of official documents and information for which they are responsible. This information can only be used in the legitimate exercise of the PCO's functions.
- 2.18 Within their area of responsibility, employees should be aware of the information published by the PCO or normally made available to members of the public on request. Employees may provide such information on request but, if unsure, must refer the request to their supervisor.
- 2.19 Employees may only disclose information not normally provided to the public:
- if it is required as part of their duties,
  - if proper authority has been given to them to do so,
  - when required, or authorised, to do so by law, or
  - when called to give evidence in court or to a parliamentary committee.
- 2.20 Employees must maintain complete confidentiality regarding the legislative drafting work of the PCO, unless the Parliamentary Counsel has indicated that particular information is of such a nature as may be disclosed.
- 2.21 Employees must not disclose any information provided by one client to another client or to any other person (except as required for PCO purposes) without the permission of the client providing the information or unless it has become public information.
- 2.22 Employees must not disclose whether a particular legislative project is or is not being dealt with by the Office without the permission of the client or potential client, or unless it has become public information.
- 2.23 Employees must not make private use of official information. Misuse of official information, whether or not for monetary gain, may be corrupt conduct and subject to disciplinary action. Approval may be given for employees to make use of official documents in defence

- of defamation and associated legal actions.
- 2.24 Employees should also refer to the PCO's Legislation Information Service policy document on the intranet.

### **Media inquiries**

- 2.25 Media inquiries regarding legislation or proposed legislation must be referred to the Department or agency sponsoring it.
- 2.26 Employees should also refer to the PCO's Legislation Information Service policy document on the intranet. This policy provides for direct responses to be given to simple media inquiries for information but the response must be confined to the facts and avoid any discussion of government policy or personal comment.
- 2.27 Information must not be given to the media or the public as to whether or not a particular legislative proposal is being considered in the PCO. Such information is a matter for the sponsoring Department or agency to deal with. If in doubt, the Parliamentary Counsel must be consulted immediately.

### **Security of information**

- 2.28 Employees are to ensure that any information in any form (eg printed or electronic) cannot be accessed by unauthorised persons and that sensitive information is only discussed with persons (inside or outside of the PCO) who are authorised to have access to it.
- 2.29 Employees must ensure that the general office area and their individual work area are secure so that confidential material (such as Cabinet Minutes, drafting instructions, draft Bills and data on the computer system) is given appropriate protection from unauthorised access.
- 2.30 Employees are not to access information unless it is immediately relevant to the work they are performing.
- 2.31 Senior management is responsible for ensuring that the PCO premises are secure and that suitable arrangements are in place to maintain security of confidential and sensitive documents, including delivering these by hand where appropriate.
- 2.32 Confidential information or material is hand delivered to other Government offices or Parliament when required.

### **Records management**

- 2.33 Employees need to be aware of and comply with the *State Records Act 1998* and the PCO's Records Management Policy and Program.
- 2.34 All employees have a responsibility to create and maintain full and accurate records of their activities, decisions and other business transactions, to capture records into LEGIS and other official records systems, and not to destroy records without appropriate authority.
- 2.35 Supervisors have a responsibility to ensure that employees reporting to them comply with their records management obligations.

## 3. Respect for all people

### Professional and appropriate behaviour

- 3.1 The PCO acknowledges and welcomes the fact that many employees, as well as being public officials subject to this Code, are professionals who exercise best technical and professional judgment and adhere to the ethical codes of their profession. In particular, it is noted that all drafters, as government lawyers, are required to have a practising certificate and are required to comply with the respective [barristers'](#) or [solicitors'](#) conduct rules. These rules apply, although it is noted that some of them are expressly excluded from applying to government lawyers. Should any conflict arise between this Code and such a professional standard, the matter should be referred to the Parliamentary Counsel for resolution.
- 3.2 Effectiveness in their duties, sound judgement and quality of service are the standards required of employees. Similarly, supervisors should seek to, and are required to, develop their capabilities and those of the employees they supervise.
- 3.3 Supervisors should assist in implementing this Code by helping to foster the professionalism of all employees within an atmosphere conducive to the promotion of integrity, appropriate behaviour and mutual respect in the workplace.
- 3.4 It is also acknowledged that employees require effective systems and procedures to maximise their work performance. Employees are encouraged to take responsibility for systems improvement and for acting on suggestions for improvements they receive or develop.
- 3.5 Employees should also keep up to date with advances and changes in their area of responsibility, and seek ways of improving their performance. Supervisors should ensure that their employees have access to appropriate training in relation to technological and workplace changes.
- 3.6 Employees should be aware that unlawful or unprofessional conduct, even in a private capacity, may require disciplinary action by the PCO.

### Inappropriate conduct

- 3.7 Inappropriate conduct includes harassment, discrimination, bullying, vilification, victimisation, and causing, instructing, inducing, aiding or permitting any such conduct. Inappropriate conduct may be physical, verbal or non-verbal, for example, jokes, gestures, stalking or use of material to convey offensive information.

### Discrimination

- 3.8 Employees must not discriminate against a person because of race, ethnic or national origin, sex, age, marital status, pregnancy, disability, transgender grounds, sexual preference, political or religious beliefs or responsibilities as a carer. Such discrimination may be unlawful.

## **Bullying and harassment**

- 3.9 Employees must not bully or harass anyone. Bullying and harassment are behaviours that are repeated, unwelcome and unsolicited and considered offensive, intimidating, humiliating or threatening by the recipient or others who are witness to or affected by it.
- 3.10 Bullying behaviour may be directed upwards or downwards and towards co-workers. The following could be considered bullying, where repeated or occurring as part of a pattern of behaviour:
- being subjected to constant ridicule and being put down in front of colleagues,
  - being the victim of loud and abusive, threatening or derogatory language,
  - receiving offensive messages by email or telephone, including text messages, or through posts on the internet
  - being subjected to practical jokes.

It should be noted that feedback from a supervisor about poor performance does not constitute bullying, provided it is given in an appropriate and professional manner.

## **Respect for people and property**

- 3.11 Employees are to treat members of the public and their colleagues with respect, fairness and consistency. Employees are to be courteous and sensitive to the needs of others and provide all necessary and appropriate assistance.
- 3.12 Consultative decision making processes should be used where appropriate. Decisions are to be made and conveyed promptly to those with a right to know. Information provided should be accurate, current and complete, and made as clear as possible to the intended audience.
- 3.13 Employees, irrespective of status or position, are to conduct themselves in a manner that will promote cooperation and collaborative and harmonious relations among colleagues.
- 3.14 Employees should exercise care in their use of the PCO's property.

## **Fairness and equity**

- 3.15 Decisions involving individuals should be made on the basis of factual information. These decisions should be made in accordance with established procedures, fairly (that is, without bias based on personal or other grounds), with honesty and integrity, objectively and in conformity with the principles of procedural fairness (including the right to be heard and the right to an impartial decision). The principle of procedural fairness is also known as natural justice.
- 3.16 When dealing with other employees or members of the public, employees are to provide sufficient information and identification to enable follow up action.

## **Personal Information**

- 3.17 Employees need to be aware of and comply with the *Privacy and Personal Information Protection Act 1998*. Particular care must be taken with the collection, storage, use and disclosure of personal information in order to protect individuals' privacy. In general,

employees must not use or disclose personal information for a purpose other than that for which it was collected, unless consent for other uses or disclosure is obtained from the person to whom the information relates.

- 3.18 Personal information about individuals collected or held by employees of the PCO must be held securely to avoid loss, unauthorised access, use, modification or disclosure and all other misuse.
- 3.19 The *Privacy and Personal Information Protection Act 1998* contains criminal sanctions for the unauthorised use and disclosure of personal information by employees.

### **Safety and Security**

- 3.20 Employees are expected to understand their responsibilities and obligations under work health and safety legislation. Employees should be proactive in ensuring that the workplace is safe and secure for everyone, including identifying, assessing and reporting safety risks and hazards.
- 3.21 Employees have an obligation to keep their workplace secure by being aware of and complying with the PCO's security procedures for the floor and building.

## 4. Act with honesty and integrity

### Guide to ethical decision making

- 4.1 Employees should act in a manner which promotes confidence in the integrity of public administration.
- 4.2 Employees need to recognise the professional and ethical dimensions of their work and give proper attention to the values that should guide their decisions and actions.
- 4.3 When faced with a difficult question, employees should consult with their supervisor to resolve the matter. Issues for consideration when faced with an ethical dilemma are included in the Ethical Decision Making guide at the end of this Code. Legal officers may also refer to Drafting Circular 2013–01 *Ethics for legislative drafting officers*.
- 4.4 Good practice guides for ethical decision making and encouraging ethical behaviour are provided in the 'Good practice guides' section of *The Code of Ethics and Conduct for NSW government sector employees* (see Appendix B).

### Conflict of interest

- 4.5 To ensure that the work of the PCO is impartial and is seen to be so, employees must ensure that no opportunity exists for personal interests, associations and activities to conflict with the proper exercise of their duties.
- 4.6 Real or perceived conflicts of interest exist when it is likely that an employee could be influenced or could be perceived to be influenced by a personal interest when performing their official duties. Conflicts of interest may lead to improper decision making, which may constitute corrupt conduct.
- 4.7 Senior Executives must provide a written declaration of any private, financial, business, personal or other interests or relationships in accordance with *The Code of Ethics and Conduct for NSW government sector employees*. A template is provided at Section 4.4 of that Code (attached to this document as Appendix C).
- 4.8 Some situations that may give rise to a conflict of interest affecting performance of official duties include:
  - financial interests (of the employee, a friend or relative) that could influence the impartiality of the performance of duties,
  - personal beliefs or attitudes not relevant to the situation that influence the impartiality of the advice given,
  - party political activities or membership of politically active groups if such membership impacts on official duties,
  - personal relationships with other employees, applicants for positions or business customers,
  - representational duties where an employee who is representing the interests of the PCO is also asked to represent the interests of a community group,
  - a decision or approval of expenditure that will benefit the decision maker, a friend, a relative or an organisation with which the decision maker identifies.
- 4.9 An employee must not create a conflict of interest for another person. For example, if a

person with a conflict of interest passes the decision making process to a subordinate, then a conflict of interest may be created for the subordinate (ie it is possible that the subordinate may try to please the supervisor rather than make a fair decision).

#### **Responsibility of employees with respect to conflict of interest**

- 4.10 In many cases only the individual concerned will be aware of the potential for conflict. Any employee who is unsure about whether a situation poses a conflict of interest should discuss the matter with the Director, Governance and Operations or the Parliamentary Counsel.
- 4.11 The onus is on the employee to disclose to the Director, Governance and Operations or the Parliamentary Counsel if a potential, actual or reasonably perceived conflict of interest arises. Any such disclosure should be made at the first available opportunity.
- 4.12 Employees should also refer to the NSW Ombudsman Fact Sheet concerning conflict of interests available on the PCO's intranet.

#### **Gifts, benefits and the risk of compromise**

- 4.13 The receipt of gifts and benefits can compromise employees in that they may be perceived to be unable to make unbiased decisions in the future with respect to the person or organisation that was the source of the gift or benefit.
- 4.14 Gifts and benefits are "any item, service, prize, hospitality or travel, provided by a customer, client, applicant, supplier, potential supplier or external organisation, which has an intrinsic value and/ or a value to the recipient, a member of their family, relation, friend or associate".
- 4.15 Employees must not solicit or accept for themselves or for another individual, a gift or benefit that is intended to, or is likely to, or could be perceived to cause them to be biased in the course of their duties.
- 4.16 Any offer or receipt of a substantial gift or benefit to an employee or their partner, dependents or other persons with whom they are closely associated must be reported to the Director, Governance and Operations by email. Records of gifts or benefits are kept in the PCO's electronic Gift Register maintained by the Director, Governance and Operations.. The Director will consult with the Parliamentary Counsel in relations to gifts (other than token gifts valued at less than \$25). The recipient is advised of the decision in relation to the gift
- 4.17 Token gifts or benefits may reasonably be accepted provided that there is no possibility that the recipient might be, or might appear to be, compromised in the process. Examples of token gifts are chocolates, diaries, or modest refreshments offered at a work meeting or conference and generally valued at less than \$25.
- 4.18 Staff dealing with commercial suppliers must be particularly careful not to accept gifts that may compromise their ability to apply public sector procurement policies. If there is any doubt, the Parliamentary Counsel should be consulted.
- 4.19 Any attempt to bribe an employee or the acceptance of a bribe is an act of corrupt conduct and must be immediately reported. In certain circumstances it might also constitute a criminal offence.

### **Participation as a volunteer**

- 4.20 Within the context of this code, employees are free to fully participate as volunteers in community organisations, charities and in professional or industrial associations.

### **Private and secondary employment**

- 4.21 Employees must obtain the Parliamentary Counsel's approval to engage in any form of paid work outside PCO duties. This requirement also applies to new employees who, on joining the PCO, have outside employment they wish to continue.
- 4.22 In all cases when outside employment is considered, employees should give PCO first consideration and avoid situations that may give rise to, or the appearance of, a conflict of interest.
- 4.23 Any approved outside employment must be performed wholly in the employee's own time and have no adverse impact on the performance of official duties.
- 4.24 Casual employees, contractors and part-time employees are not required to gain approval for outside employment provided that the work is undertaken during the period that the person is not required to perform duties for the PCO, and provided that those duties are not adversely affected and no conflict of interest arises. Any real or potential conflict should be discussed with the Director, Governance and Operations.

### **Resolution of conflicts of interest**

- 4.25 The Director, Governance and Operations will refer all notified potential, actual or reasonably perceived conflicts of interest to the Parliamentary Counsel for resolution.
- 4.26 There are several options available to the Parliamentary Counsel for dealing with a disclosure of a conflict of interest. Depending on the nature of the conflict, the Parliamentary Counsel might record the disclosure and take no further action, reallocate work to another staff member, provide closer supervision for that particular task, or, in serious cases, instigate disciplinary action.

### **Leaving the PCO**

- 4.27 When leaving employment with the PCO, an employee must return all official property in their possession, including access cards for the building, as well as any documents or items that relate to the work of the PCO and are not otherwise publicly available.
- 4.28 On an employee's last day of duty the employee will be required to have complied with the items on Service First's Employee Termination Checklist, which includes returning government property.
- 4.29 Employees must not use their position to unfairly improve their prospects of future employment. They should not allow their work to be improperly influenced by plans for, or an offer of, employment outside the PCO. If they do, there is a conflict of interest and the integrity of the employee and the PCO is at risk.
- 4.30 All employees must be careful in their dealings with former employees of the PCO and ensure they do not give them, or appear to give them, favourable treatment or access to privileged information.

- 4.31 All employees are encouraged to report to their supervisor any non-routine contact by their former colleagues or employees where attempted influence or lobbying is involved.

#### **Additional responsibilities for executives on leaving the public sector**

- 4.32 Executives in particular must consider the ethical dimensions associated with transfer to private sector employment. Employment activities of executives who have left the PCO should not reflect adversely on the effectiveness of public administration or call into question the impartiality of their activities as public employees.
- 4.33 When an executive is considering accepting a job offer that bears any close or sensitive connection with current activities, the executive is expected to declare the conflict to the Parliamentary Counsel, in good faith.
- 4.34 Former public service executives who move to private employment should abstain from working on or contributing to a matter for which they had previous involvement where there is a conflict of interest.

#### **Signatures and personal references**

- 4.35 Employees should carefully review any document they are asked to sign. Employees should not sign any document they know is not true and correct.
- 4.36 Employees must only sign their own name and must never permit or encourage anyone to sign a name other than their own.
- 4.37 Employees should only use their own name (eg when sending emails) and should not give the impression that they have the authority of another person without their permission.
- 4.38 Supervisors must not coerce employees to sign any document.
- 4.39 Supervisors are not to provide written personal references for any current or former employee on PCO letterhead nor use their title and position for this purpose. References may be provided on a personal basis, but these should be on plain paper and state clearly that they are provided on a personal rather than an official basis.
- 4.40 Letterhead may be used for official references for temporary or casual staff and also for statements of service for permanent staff (limited to giving administrative details of service). Official references or statements of service are provided by the Director, Governance and Operations.
- 4.41 Senior staff and supervisors may act as telephone referees for staff they have supervised for significant periods. However, if a written referee report is requested by the recruiter, the referee should seek advice from the Parliamentary Counsel or the Director, Governance and Operations before sending a written response.
- 4.42 On leaving the PCO, employees may opt to receive a Certificate of Service prepared by Service First.

#### **Drugs, alcohol and tobacco**

- 4.43 While at work, employees must not be under the influence of, or in possession of, drugs that are illegal to possess or distribute. In the context of this Code, “under the influence” is defined as an obvious state of disturbance to one’s physical and/or mental faculties that

- impairs their performance.
- 4.44 Being on duty while under the influence of alcohol could create safety and other risks and would be grounds for disciplinary action.
- 4.45 Employees must not smoke or permit smoking on PCO premises.

### Reporting suspected wrongdoing

- 4.46 Employees are encouraged to report suspected wrongdoing within the PCO. There are four categories of serious wrongdoing applicable to the PCO where the *Public Interest Disclosures Act 1994* provides formal protection for public officials who make disclosures. Those categories are corrupt or unlawful conduct, maladministration, serious and substantial waste and government information contravention.

**Corrupt or unlawful conduct** in the course of employment may include:

- theft and misappropriation of PCO material or financial resources,
- offering or accepting bribes, commissions or secret payments,
- accepting a gift or benefit that is intended to, or is likely to cause the employee to act in a partial manner,
- fraudulent or criminal conduct,
- forgery and making false or fraudulent claims,
- misuse or unauthorised disclosure of information, held or maintained by the PCO,
- wilful damage to the PCO or other resources,
- discriminatory behaviour,
- assault or other forms of unlawful violence against a person.

Certain types of corrupt conduct may amount to a breach of NSW or Commonwealth law and may be referred to the police for investigation.

**Maladministration** involves action or inaction of a serious nature that is:

- contrary to law,
- unreasonably unjust,
- oppressive,
- improperly discriminatory,
- based on improper motives.

**Serious and substantial waste** is the uneconomical, inefficient or ineffective use of resources that results in a loss or wastage of public funds or resources.

**Government information contravention** is the failure by an agency to exercise its functions in accordance with the *Government Information (Public Access) Act 2009*.

- 4.47 The PCO's Public Interest Disclosures – Policy and Procedures<sup>1</sup> document explains how employees can report these concerns in such a way as to obtain the protection of the *Public Interest Disclosures Act 1994*.

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<sup>1</sup> Currently appears on the intranet as 'Protected Disclosures – Internal Reporting Policy'. The policy is due to be reviewed and renamed in 2015. When the new version is released, this footnote will be removed.

## 5. Use of official resources with economy and efficiency

### General principles

- 5.1 Employees are to be economical and efficient in the use and management of public resources. Employees must not create a risk or liability for the PCO by their use of facilities or equipment (eg by breaching software copyright).
- 5.2 Limited personal use of employer communication devices (eg computers, mobile phones or similar devices, landline telephones, fax machines, email, internet) by the employee is permitted, provided the use is infrequent, brief, involves minimal cost and does not interfere with the performance of work.

### Private use

- 5.3 Official facilities and equipment may only be used for private purposes when approval has been given by a supervisor. Self approval is not permitted.
- 5.4 Approval should only be granted where private use would not disrupt official business, the equipment is not at risk of damage, loss or deterioration and the user meets the cost of consumables.
- 5.5 Stationery, letterhead and official logos must only be used for official business. Employees should not seek to make private use of the services of other employees whilst on duty. Employees who are asked to perform tasks that are not work related in work time should refuse.
- 5.6 The PCO's facilities and equipment must not be used for private employment or for private financial gain by employees (except where employees have been contracted to supply services to the PCO, in which case the use of the facilities should be clarified in the contract).
- 5.7 Where the PCO's software licence permits employees to use software on a home computer, it must not be used in connection with private employment or commercial use.
- 5.8 Whilst the PCO carries its own insurance, employees who borrow departmental property must minimise the risk of loss or damage. Items borrowed without approval may not be covered by insurance.

### Communication devices

- 5.9 All usage of the PCO's electronic communication facilities such as computers or similar devices, network, internet, intranet and email should be lawful, appropriate and ethical. These facilities are not to be used in any way that:
  - is misleading or deceptive,
  - could damage the PCO's reputation,
  - could result in victimisation, harassment or vilification,
  - is offensive, obscene, threatening or defamatory,
  - violates Australian or state regulations or laws (including "computer hacking"),

- is intended to have a destructive effect on storage, processing or communications network facilities.

5.10 For mobile phones issued by the PCO, it is the responsibility of the employee to account for any personal usage. In certifying accounts and paying for such personal usage, employees should consult the PCO's Mobile Communication Device Policy<sup>2</sup> on the intranet for more detailed information concerning the use of PCO mobile phones.

### **Intellectual property**

- 5.11 The PCO controls and manages all copyright created by its employees while under the direction and control of the PCO.
- 5.12 Where the PCO has requested certain material to be prepared then copyright in that material will belong to the PCO.
- 5.13 Where employees develop material in their own time or during working hours for their employment with the PCO, the copyright in that material will belong to the PCO.
- 5.14 Unauthorised use of the PCO's intellectual property is not permitted.
- 5.15 It is noted that the Crown has copyright in the legislation of New South Wales. In order to facilitate public access to legislation, the Crown generally does not enforce copyright for most published legislative material (in accordance with the Crown copyright notice). Further copyright information appears on the PCO's corporate website.

### **Expenditure**

- 5.16 Employees must have the necessary delegation before incurring or authorising any expenditure on behalf of the PCO.
- 5.17 Contractors cannot be given delegated authority to incur expenses. Only public service employees can receive delegated authority to approve and authorise expenditure, purchasing, leasing, leave, recruitment or contracting.
- 5.18 Employees must follow the PCO's procurement policies and practices in relation to all expenditure.

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<sup>2</sup> Currently appears on the intranet as the 'Mobile Phone Policy'. The policy is due to be reviewed and renamed in 2015. When the new version is released, this footnote will be removed.

## 6. Ethical decision making guide

### ETHICAL DECISION MAKING

When we are faced with an ethical dilemma, each of us should ask ourselves the following questions:

- Is it legal?
- Is it consistent with the principles and policies of the PCO and the NSW public sector?
- Do I think it's the right thing to do?
- What will the consequences be for my colleagues, the PCO and me?
- What will the consequences be for other parties?
- Can I justify my actions?
- What would be the reaction of my family and friends if they were to find out?
- What would happen if my conduct became front page news?

If you are unsure of the answer or what to do, speak to your supervisor or a more senior officer.

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## Appendix A – Reference material

The PCO's Code of Conduct does not stand alone. Government sector employees are also subject to *The Code of Ethics and Conduct for NSW government sector employees* published by the NSW Public Service Commission (Appendix B). Also this Code of Conduct should also be read in conjunction with the relevant NSW laws which employees are obliged to follow.

### Relevant Legislation

Relevant legislation (as at the date of publication of this policy) includes:

- *Anti-Discrimination Act 1977*
- *Crimes Act 1900*
- *Government Information (Public Access) Act 2009*
- *Health Records and Information Privacy Act 2002*
- *Independent Commission Against Corruption Act 1988*
- *Industrial Relations Act 1996*
- *Work Health and Safety Act 2011*
- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998*
- *Public Finance and Audit Act 1983*
- *Public Interest Disclosures Act 1994*
- *Government Sector Employment Act 2013*
- *State Records Act 1998*

### Relevant PCO Policies

Relevant PCO policies (as at the date of publication of this policy) include:

- *Advice Services*
- *Employer Communication Devices Policy and Guidelines*
- *Grievance and Dispute Resolution*
- *Legislation Information Services*
- *Mobile Phone Policy*
- *Policy for Preventing and Dealing with Harassment and Bullying*
- *Protected Disclosures – Internal Reporting Policy*
- *Records Management Policy*

### NSW Government Memoranda and Circulars

- Managing conflicts of interest guidelines – refer ICAC Guidelines and NSW Ombudsman Fact Sheet
- Memorandum 2007–02 Dignity and Respect: Policy and Guidelines on Preventing and Managing Workplace Bullying
- Memorandum 2007–01 Public Disclosure of Information arising from NSW Government Tenders and Contracts

- Memorandum 1996–11 Dealing with Employee Work-Related Concerns and Grievances, and Harassment Free Workplace
- Circular 1999–09 Use of Employer Communication Devices - and related Protocol for Acceptable Use of the Internet and Electronic Mail Use

**Websites**

- [www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au)
- [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)
- [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)
- [www.corruptionprevention.net](http://www.corruptionprevention.net)
- [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)
- [www.psc.nsw.gov.au](http://www.psc.nsw.gov.au)

## **Appendix B – NSW Government Code of Ethics and Conduct**

From 20 April 2015, all NSW Government sector employees are subject to *The Code of Ethics and Conduct for NSW government sector employees* published by the NSW Public Service Commission. The Code is contained in Section 2.2 of *Behaving Ethically: A guide for NSW government sector employees* published on the Public Service Commission website.

The Code appears on the following pages and is current at the date of issue of this document. Please refer to the Public Service Commission website for the current version of the Code.

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

## Contents

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Mandatory conduct

Good practice guides

Breaches of this Code

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

## Preliminary

### Purpose

The purpose of the Code is to identify mandatory requirements and best practice conduct for all government sector employees which is consistent with Part 2 of the GSE Act (the *Ethical framework for the government sector*).

The Ethical Framework is to be demonstrated by employees in their working relations with other government sector employees, clients and customers, stakeholders and the government of the day.

The Code applies at all times when employees are acting in the course of, or in connection with, NSW government sector employment.

The Code also specifies actions to be taken if there are breaches, or allegations of breaches, of the Code.

Employees of Separate Public Service Agencies (GSE Act, Schedule 1, Part 3) are covered by the Code, subject to section 13(4) of the GSE Act. As at the date of publication of the Code, all heads of Separate Public Service Agencies are statutory officeholders, not employees of their agencies, and therefore are not covered by the Code. Nevertheless, they are invited to accept coverage voluntarily.

### Relationship to Department and agency codes of ethics and conduct

The Code applies to NSW government sector employees, irrespective of the Department or agency for which they are working. Agency heads may choose to extend this Code's application to contractors and volunteers engaged by the agency, if appropriate.

Departments and agencies may supplement this Code – but not alter or subtract from it – with requirements and advice specific to their organisation's operating environment and business risks. This material may be incorporated into this Code to form a single consolidated document, or published separately.

The Public Service Commission (02 9272 6000) is available to advise on how to integrate agency codes of

ethics and conduct with this sector-wide Code.

### Review

The Code may be amended from time to time by the Public Service Commissioner.

### Legislation

A principle of the Ethical Framework is to uphold the law. The law includes, but is not limited to:

- *Government Sector Employment Act 2013* sections 25 and 30 (regarding the general conduct and management of organisations in accordance with the core values) and section 63 (regarding workforce diversity and the integration of workforce diversity into agency workforce planning)
- *Public Finance and Audit Act 1983* sections 11 and 45C (regarding the system of internal control over the financial and related operations of agencies)
- *Anti-Discrimination Act 1977* (regarding equal employment opportunity and equal access to services)
- *Government Information (Public Access) Act 2009* (regarding public access arrangements to agency information)
- *Public Interest Disclosures Act 1994* (regarding receiving, assessing and dealing with public interest disclosures)
- *Independent Commission Against Corruption Act 1988* (regarding reporting of any matter suspected on reasonable grounds to involve corrupt conduct and to comply with any requirement or direction of the ICAC in relation to a referral of matters by the ICAC)

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

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- *Privacy and Personal Information Protection Act 1998* (regarding the protection of personal information, and the protection of the privacy of individuals generally)
- *Public Works and Procurement Act 1912* (regarding the procurement of goods and services by government agencies)
- *Health Records and Information Privacy Act 2002* (regarding the fair and responsible handling of health information)
- *Work Health and Safety Act 2011* (regarding the health and safety of employees and the maintenance of healthy and safe workplaces)
- *Government Advertising Act 2011* (regarding requirements to issue advertising compliance certificates)
- *Ombudsman Act 1974* (regarding obligations to cooperate with investigations by the Ombudsman and obligations relating to reportable conduct concerning child protection matters)
- *State Records Act 1998* (regarding the creation, management and protection of agency records and public access to those records)
- *Children and Young Persons (Care and Protection) Act 1998* (regarding obligations relating to the care and protection of, and provision of services to, children and young persons, including obligations relating to exchange of information and co-ordination of services between agencies)
- *Child Protection (Working with Children) Act 2012* (regarding obligations to obtain checks and clearances for employees engaged in child-related work)
- *Crimes Act 1900* (regarding criminal offences).

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

## The *Ethical framework for the government sector*

### Introduction

Part 2 of the GSE Act establishes the *Ethical framework for the government sector*.

The objective, core values and principles of the Ethical Framework are to be demonstrated in the conduct of all government sector employees and heads of government sector agencies.

### *Ethical framework for the government sector*

#### Objective

- Recognise the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day
- Establish an ethical framework for a merit-based, apolitical and professional government sector that implements the decisions of the Government of the day.

#### Core values

The core values for the government sector and the principles that guide their implementation are:

#### Integrity

- Consider people equally without prejudice or favour
- Act professionally with honesty, consistency and impartiality
- Take responsibility for situations, showing leadership and courage
- Place the public interest over personal interest.

#### Trust

- Appreciate difference and welcome learning from others
- Build relationships based on mutual respect
- Uphold the law, institutions of government and democratic principles

- Communicate intentions clearly and invite teamwork and collaboration
- Provide apolitical and non-partisan advice.

#### Service

- Provide services fairly with a focus on customer needs
- Be flexible, innovative and reliable in service delivery
- Engage with the not-for-profit and business sectors to develop and implement service solutions
- Focus on quality while maximising service delivery.

#### Accountability

- Recruit and promote employees on merit
- Take responsibility for decisions and actions
- Provide transparency to enable public scrutiny
- Observe standards for safety
- Be fiscally responsible and focus on efficient, effective and prudent use of resources.

#### General provisions

The Public Service Commissioner has the function of promoting and maintaining the government sector core values.

There is no hierarchy among the core values and each is of equal importance.

Nothing in the Ethical Framework gives rise to, or can be taken into account in, any civil cause of action.

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

## Mandatory conduct

Note: This Part of the Code sets out the mandatory provisions of the Code that apply to all government sector employees and heads of government sector agencies.

All government sector employees have responsibilities to:

- Demonstrate high levels of personal conduct consistent with the Ethical Framework
- Seek assistance when unsure about how to implement the Ethical Framework
- Promote the implementation of the Ethical Framework to their colleagues
- Report possible breaches of the Ethical Framework to relevant officers.

All managers and executives have the responsibilities of government sector employees (above), and in addition have responsibilities to:

- Lead and promote implementation of the Ethical Framework in their workplace
- Ensure their workplace culture, practices and systems (including recruitment and promotion) operate consistently with the Ethical Framework
- Recognise and promote employee and team conduct that exemplifies the Ethical Framework
- Act promptly and with due process to prevent and address any breaches of the Ethical Framework
- In the case of a senior executive (including an acting senior executive), declare in writing private interests that have the potential to influence, or could be perceived to influence, decisions made or advice given by the senior executive
- Ensure that any real or perceived conflicts of interests are avoided or effectively managed.

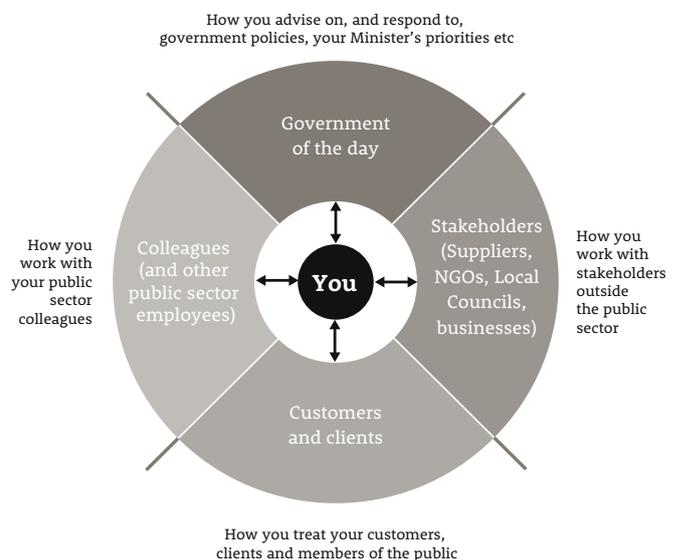
Department Secretaries and heads of agencies have the responsibilities of executives (above), and in addition have responsibilities to:

- Lead and promote implementation of the Ethical Framework in their agency
- Ensure the general conduct and management of the functions and activities of their Department or agency are in accordance with the core values of the Ethical Framework
- Oversee the implementation of the Ethical Framework and make improvements where necessary.

### When is the Ethical Framework to be applied?

The Ethical Framework is to be applied at all times in working relations with colleagues, clients and customers, stakeholders and the government of the day.

These working relations are depicted in the diagram below:



### How do I act in the public interest?

You should treat all people with whom you have contact in the course of your work:

- Equally without prejudice or favour
- With honesty, consistency and impartiality.

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

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You should also, in the course of your work:

- Place the public interest over your personal interest
- Uphold the law, institutions of government and democratic principles
- Provide apolitical and non-partisan advice
- Provide transparency to enable public scrutiny
- Be fiscally responsible and focus on efficient, effective and prudent use of resources.

Acting in the public interest requires leadership, courage and innovation to develop practical recommendations and actions that are consistent with the core values and will help the Government of the day achieve its objectives. Acting in ways that are expedient or convenient, but which do not promote the integrity, trust, service and accountability of the public sector, is not in the public interest.

### How do I manage conflicts of interests?

Sometimes you may find that your private interests make it difficult for you to perform your duties impartially in the public interest. This may happen when there is a direct conflict between your current duties and responsibilities and your private interests (an 'actual' conflict of interests); when a person could reasonably perceive that your private interests are likely to improperly influence the performance of your official duties, whether or not this is in fact the case (a 'reasonably perceived' conflict of interests); or when you have a private interest that could conflict with your official duties in the future (a 'potential' conflict of interests). Actions you should take include:

- Always disclose actual, potential or reasonably perceived conflicts of interests to your manager as soon as you become aware of the conflict
- Where a conflict of interests occurs it should always be resolved in favour of the public interest, rather than your own.

To resolve any conflicts of interests that occur, or could occur, a range of options is available depending on the significance of the conflict. These options include, but are not limited to<sup>i</sup>:

- Informing likely affected persons that a disclosure has been made, giving details and the agency's view that there is no actual conflict or the potential for conflict is minimal

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<sup>i</sup> For further detail on how to manage actual, potential or reasonably perceived conflicts of interests, see the NSW Ombudsman Fact Sheet Conflicts of Interests at [www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0004/3685/FS\\_PSA\\_03\\_Conflict\\_of\\_Interest.pdf](http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0004/3685/FS_PSA_03_Conflict_of_Interest.pdf).

- Appointing further persons to a panel/committee/team to minimise the actual or perceived influence or involvement of the person with the actual or reasonably perceived conflict
- Where the persons likely to be concerned about a potential, actual or reasonably perceived conflict are identifiable, seeking their views as to whether they object to the person having any, or any further, involvement in the matter
- Restricting the access of the person to relevant information that is sensitive, confidential or secret
- Directing the person to behave at all times in ways that are consistent with their agency's responsibilities and functions
- Removing the person from duties or from responsibility to make decisions in relation to which the 'conflict' arises and reallocating those duties to another employee (who is not supervised by the person with the 'conflict')
- Persons with a 'conflict' who are members of boards or committees absencing themselves from or not taking part in any debate or voting on the issue.

### As a senior executive, how do I declare private interests?

A senior executive (including an acting senior executive) must make a written declaration of private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence, decisions made or advice given by the senior executive.

Where a senior executive has no such private interests to declare, s/he must declare a "nil return".

After a senior executive makes an initial declaration, a fresh declaration must be made:

- As soon as practicable, following any relevant change in the senior executive's private interests
- As soon as practicable, following the senior executive's assignment to a new role or responsibility
- At least annually.

A template form for making a private interests declaration is included in Section 4.4 of *Behaving Ethically: A guide for NSW government sector employees*. The form may be used as is, or augmented by a department/agency to reflect the operating environment and/or business risks which are specific to the department/agency.

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

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A *senior executive* must provide their declaration to:

- In a department, the Secretary
- In an executive agency related to a department, the agency head
- In a separate Public Service agency, the agency head
- In the Teaching Service, NSW Police Force, Transport Service of NSW and any other service of the Crown, the head of the service.

A *Department Secretary* must provide their declaration to the Secretary of the Department of Premier and Cabinet.

The *Secretary of the Department of Premier and Cabinet* must provide their declaration to the Public Service Commissioner.

A *head of an executive agency related to a department* must provide their declaration to the Department Secretary.

A *head of a transport-related service* must provide their declaration to the Secretary of the Department of Transport.

A *head of any other service of the Crown* must provide their declaration to the Secretary of the Department of Premier and Cabinet.

A person to whom a declaration is to be provided is responsible for ensuring:

- Senior executives complete declarations
- Handling and storage of declarations complies with the requirements of the *Privacy and Personal Information Protection Act 1998*.

### How do I treat colleagues, customers, clients and stakeholders?

All government sector employees are to treat their colleagues, customers, clients and stakeholders in their agency and in other agencies, and the government of the day by:

- Considering people equally without prejudice or favour
- Acting professionally with honesty, consistency and impartiality
- Taking responsibility for situations, showing leadership and courage
- Placing the public interest over personal interest
- Appreciating difference and welcoming learning from others

- Building relationships based on mutual respect
- Upholding the law, institutions of government and democratic principles
- Communicating intentions clearly and inviting teamwork and collaboration
- Providing apolitical and non-partisan advice
- Providing services fairly with a focus on customer needs
- Being flexible, innovative and reliable in service delivery
- Engaging with the not-for-profit and business sectors to develop and implement service solutions
- Focusing on quality while maximising service delivery
- Recruiting and promoting employees on merit
- Taking responsibility for decisions and actions
- Providing transparency to enable public scrutiny
- Observing standards for safety
- Being fiscally responsible and focus on efficient, effective and prudent use of resources.

### How should I interact with lobbyists?

All government sector employees and heads of government sector agencies must comply with Premier's Memorandum M2014-13- NSW Lobbyists Code of Conduct published on the Department of Premier and Cabinet's website, as amended from time to time.

### How do I use public resources appropriately?

You must use public resources in an efficient, effective and prudent way. Never use public resources – money, property, equipment or consumables – for your personal benefit, or for an unauthorised purpose.

If you are responsible for receiving, spending or accounting for money, ensure you know, understand and comply with the requirements of the *Public Finance and Audit Act 1983*, the *Public Works and Procurement Act 1912* and the *Government Advertising Act 2011*.

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

## Behaviour contrary to the Code

### The effect of behaviour that is contrary to the Code

Behaviour contrary to this Code and to the *Ethical framework for the government sector* can bring individual employees into disrepute, undermine productive working relationships in the workplace, hinder customer service delivery, and damage public trust in your agency or the broader government sector.

If you are unsure of what is appropriate conduct under any particular circumstances, discuss the matter with your supervisor, manager or the relevant member of your agency's executive. Heads of government sector agencies may also contact the Public Service Commissioner.

### If you see behaviour contrary to this Code

If you see someone act in ways that are contrary to this Code, you should in the first instance discuss that person's behaviour with your immediate supervisor or manager, or report your concerns to any member of the agency's executive.

If you believe certain conduct is not just unethical, but may also be corrupt, a serious and substantial waste of government resources, maladministration or a breach of government information and privacy rights, then report your concerns to your agency's Public Interest Disclosures Coordinator or Disclosures Officer, the head of your agency or the relevant investigating authority (such as the Ombudsman, Independent Commission Against Corruption or the Auditor-General). Under the *Public Interest Disclosures Act 1994*, it is both a criminal offence and misconduct to take reprisals against an employee who makes a public interest disclosure.

### Actions when allegations are made

If it is alleged that you have acted in a way that is contrary to this Code, you will have an opportunity to provide your version of events. How this will happen will be proportionate to the seriousness of the matter.

In those cases where the allegation is minor or of a low level, your manager will usually discuss this matter directly with you. If the allegations are more serious, a formal process may be required.

If you are investigating an allegation of a behaviour that is contrary to this Code, you must ensure your decision-making is fair and reasonable by acting consistently with four principles:<sup>i</sup>

- Procedural fairness for both the complainant and staff member
- Investigations should be handled expeditiously. This will minimise the potential for breaches of confidentiality and lack of procedural fairness
- Confidentiality for all parties, where practicable and appropriate, until such time as the investigation process is completed
- Meticulous recordkeeping, including recording of reasons for all significant decisions.

For employees of Public Service agencies, the GSE Act and GSE Rules set out how allegations of misconduct are to be dealt with.

Government sector agencies that are not part of the Public Service (the Teaching Service, Police Force, Health Service, Transport Service and other services of the Crown) are not bound by the misconduct provisions in the GSE Act and GSE Rules unless so prescribed. Non-Public Service agencies have their own legislative and/or policy requirements for dealing with allegations of misconduct.

For employees in the Public Service, Part 8 of the GSE Rules sets out the procedural requirements for dealing with allegations of misconduct, which include requirements that you be advised of the detail of the allegation; the process to be undertaken to investigate and resolve the matter; and that you be provided an opportunity to respond to the allegations.

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<sup>i</sup> NSW Ombudsman ([www.ombo.nsw.gov.au/data/assets/pdf\\_file/0017/3707/FS\\_PSA\\_14\\_Natural\\_justice\\_Procedural\\_fairness.pdf](http://www.ombo.nsw.gov.au/data/assets/pdf_file/0017/3707/FS_PSA_14_Natural_justice_Procedural_fairness.pdf)).

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

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For employees in the Public Service, the GSE Act sets out the actions that a Public Service agency head may take where there is a finding of misconduct against an employee. These actions are as follows:

- Terminate the employment of the employee (without giving the employee an opportunity to resign)
- Terminate the employment of the employee (after giving the employee an opportunity to resign)
- Impose a fine on the employee (which may be deducted from the remuneration payable to the employee)
- Reduce the remuneration payable to the employee
- Reduce the classification or grade of the employee
- Assign the employee to a different role
- Caution or reprimand the employee.

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

## Good practice guides

The following good practice guides are provided for use by all government sector employees:

### Good practice guide 1 - deciding and acting ethically

To make the best-available decision:

- **Scope the problem**

Clarify the scope of the problem, and consider carefully how the problem affects (or may affect in the future) work colleagues; clients and customers; stakeholders; and the government of the day. Wherever possible, consult affected people and communities.

- **Develop options**

Develop a mix of options that address these questions:

- » Duties: What are your responsibilities as defined by the law, Government policies, agency procedures, and your role description? Is it legal? Is it consistent with the principles & policies of the agency and the NSW government sector?
- » Results: Which options will yield the greatest benefit (or least harm) to the most people, and minimise the number of people who might be disadvantaged – in the short and longer term? What will the consequences be for my colleagues, the agency and yourself? What will the consequences be for other parties?
- » Justice: Which options support due process, transparency, fair compensation for any loss, and fair treatment of those affected by any decision?
- » Rights: Which options support the legal rights of citizens?
- » Public interest: Which options best advance the public interest, without regard to your own reputation, career, personal views or potential for personal gain or loss?
- » Resources: What is the likely impact

on government finances, workforce, infrastructure and other assets?

- » Innovation: Can the issue be addressed in new ways (such as the redesign of services, reengineering of work practices, or a new model of service delivery)?

- **Evaluate and decide**

Choose the option that best addresses the above issues and is in the public interest, supports integrity, builds trust, delivers better services and ensures accountability. To establish if your actions are consistent with the Ethical Framework consider your answers to the following questions:

- » Integrity: Would your colleagues say you had considered the views of all interested parties and acted in the right way, even if it was at your personal cost?
- » Trust: Would your action, if it became public, build confidence in the public sector?
- » Service: Would your clients and customers say your actions improved the quality of the services they receive?
- » Accountability: Would the head of your agency say your actions are consistent with the Ethical Framework and the law?

- **Implement**

Implement the decision in ways that are consistent with the objectives, values and principles of the Ethical Framework.

- **Review and identify opportunities for continuous improvement.**

## Section 2: Commissioner's directions

# 2.2 The Code of Ethics and Conduct for NSW government sector employees

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### Good practice guide 2 - encouraging ethical behaviour by other employees

Ways to support the ethical behaviour of other employees include:

- **Personal**

Encourage your colleagues to act ethically by making ethical decisions and acting ethically yourself.

- **Interpersonal**

Encourage all employees to openly discuss ways to better implement the Ethical Framework in their individual actions, your team's practices and in your services to clients and customers.

- **Organisational**

Ensure the leadership, culture, governance, management and work practices, individual employee behaviour and customer services of your workplace are consistent with the Ethical Framework.

The Public Service Commission will provide additional advice and guidance to the government sector as needed to support conduct that is consistent with the objective, core values and principles of the Ethical Framework.

## **Appendix C – Template for Declaration by Senior Executives**

From 20 April 2015, Senior Executives must provide a written declaration of any private, financial, business, personal or other interests or relationships in accordance with *The Code of Ethics and Conduct for NSW government sector employees*.

A template is provided at Section 4.4 of *Behaving Ethically: A guide for NSW government sector employees*. That section and template are reproduced on the following pages and are current at the date of issue of this document. Please refer to the Public Service Commission website for the current version of the template.