

# Code of Conduct of the Professional Standards Councils

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## 1. What is the purpose of this Code?

This Code of Conduct of the Professional Standards Councils (Councils) articulates the values, principles and standards of accountability, integrity and collaboration that are required of the members of the Councils.

In addition to this Code, there may be in each jurisdiction specific codes, policy or legislation further governing the conduct of members of the Councils. Members should familiarise themselves with the relevant documentation relating to each particular jurisdiction.

Information regarding each jurisdiction will be provided to each member by the Professional Standards Authority (Authority).

## 2. Structure

This Code of Conduct is divided into the following sections:

- ✓ **Values and principles**
- ✓ **Code standards**
  - Getting the best results
  - Confidentiality of Councils' business
  - Conflicts of interest
    - Personal interest and public duty
    - Managing conflict
    - Pecuniary interest
    - Non-pecuniary interest
  - Acceptance of gifts and benefits
  - Reporting suspected corrupt conduct
- ✓ **Failure to comply with this Code of Conduct**

## 3. Key definitions

The key definitions of terms used throughout this Code are:

- *Authority* means the Professional Standards Authority which is the common secretariat supporting the Professional Standards Councils
- *Councils* means the Professional Standards Council of each jurisdiction established under the relevant State or Territory professional standards legislation
- *Member of the Councils* means a member or deputy member of the Professional Standards Councils appointed by a Minister in accordance with relevant professional standards legislation
- *Minister* means a Minister who administers the relevant professional standards legislation of a participating State or Territory or the Commonwealth Minister administering the Commonwealth legislation



- *Relevant Commonwealth legislation* means:
  - the *Competition and Consumer Act 2010* and any successor legislation and
  - the *Corporations Act 2001*, the *Australian Securities and Investments Commission Act 2001* and any successor legislation, provided those Acts contain provisions recognising the application of the relevant professional standards legislation to limit occupational liability.
- *Relevant professional standards legislation* means, in respect of each State and Territory, the legislation listed below:
  - *The ACT – Civil Law (Wrongs) Act 2002*
  - *The Northern Territory – Professional Standards Act 2004*
  - *New South Wales – Professional Standards Act 2004*
  - *Queensland – Professional Standards Act 2004*
  - *South Australia – Professional Standards Act 2004*
  - *Tasmania – Professional Standards Act 2005*
  - *Victoria – Professional Standards Act 2003*
  - *Western Australia – Professional Standards Act 1997*

(as amended from time to time or any later legislation replacing that legislation and includes any subordinate legislation made under those Acts)

#### 4. Values and principles

Members of the Councils are appointed by the Minister responsible for professional standards legislation in the relevant jurisdiction.

Members therefore assume a position of public trust. This means they must act ethically to support the continuance of public trust and to observe the highest standards of accountability, integrity and collaboration.

Building on the importance of maintaining public trust, the following values articulate how the Councils drive the principles of ethical and responsible leadership and decision making required to advance the relevant professional standards legislation:

##### i. **Accountability**

- a. Delivering the best results possible for improving professional standards and consumer protection, consistent with the relevant professional standards legislation
- b. Maintaining confidentiality of the Councils' business
- c. Making sure that statutory and legal requirements are complied with

##### ii. **Integrity**

- a. Acting honestly, fairly and in good faith in dealings with other members, responsible Ministers, officials, the Authority and external stakeholders



- b. Declaring and managing all actual, potential and perceived conflicts of interest and duty in accordance with this Code and the highest ethical standards
- c. Adhering to and working in the best interests of the Councils to achieve the best results
- d. Being prepared for each meeting
- e. Requesting a leave of absence if unable to attend a meeting

**iii. Collaboration**

- a. Building respectful, constructive working relationships across the Councils
- b. Always respectfully considering the views and input of other members, the Authority and external stakeholders

## **5. Code standards**

The following sections outline the Code's standards:

### **5a. Getting the best results**

- Strengthening professional standards and consumer protections nationwide are the aim of the Councils through the operation by occupational associations of approved professional standard schemes. This reflects the objects of professional standards legislation in each jurisdiction.
- Members of the Councils are to gain a clear understanding of the role and purpose of the Councils, as well as their statutory and regulatory requirements in line with the relevant professional standards legislation.
- Members will act with reasonable care and diligence, being fully prepared to attend and participate in meetings.

### **5b. Confidentiality of Council business**

- It is critical that all information and documentation obtained by members in their work for the Councils is kept confidential. To this end, members must adhere to the following standards:
  - not disclose official information or documents acquired as a consequence of membership of the Councils other than that required by law or when the member has been given proper authority to do so
  - respect the confidentiality of material presented to the Councils, including discussions with staff of the Authority
  - neither release nor discuss the Councils' business with any person external to the Councils or the Authority without prior approval of the Councils.

### **5c. Conflicts of interest**

- A member should avoid conflicts of interest and not allow personal interests, or the interests of any associated person or constituency, to conflict with the interests of the Councils. On appointment, each member must complete a pecuniary interests



declaration form. Pecuniary interests declarations are to be updated by members annually and as circumstances change. The completed form will form part of the Conflict of Interest Register as maintained by the Authority. A copy of the Register is made available at all meetings of the Councils.

- Members are also required to identify any conflicts or possible conflicts of interests at each meeting at which the Councils is to consider a matter for which a conflict is present or may be present.
- A member of the Councils is at risk of having a conflict of interest if there is even a perception that their personal interests (or the interests of people close to them) will conflict with their ability to impartially perform their public and professional duties.
- The perception of a conflict of interest could happen if there is a situation which leads a reasonable person to think that the member could be unfairly influenced. Conflicts of interest can be actual, perceived or potential.
- A key guide to conflicts of interest and how they are managed is the NSW Independent Commission Against Corruption document, *Managing conflicts of interest in the NSW public sector* (2019) at <https://www.icac.nsw.gov.au/prevention/basic-standards/conflicts-of-interest>. The points below are based on the ICAC guidance document.

i. Personal interest and public duty

- There are four elements to consider when determining whether a conflict of interest exists:
  - does the member have a personal interest?
  - does the member have a public duty?
  - is there a connection between the personal interest and the public duty?
  - could a reasonable person perceive that the personal interest might be favoured?
- Personal interest refers to the interests that arise from an individual's private or non-work life that can bring financial or other material benefits or result in disadvantages to the public interest or to other people. A public official's personal interests can include the interests of their close connections, including family connections, and/or the interests of associates.
- Public duty is a broad concept that extends beyond simply performing the tasks assigned to a member of the Councils and complying with policy and procedures. It means a power, authority, duty or function that is conferred on a person as the holder of public office. It includes a duty to serve the public interest, the Councils and the public in an ethical manner.
- For a conflict of interest to arise, there must be a logical overlap or connection between a member's public duty and his or her personal interest(s). Examples are:



- pecuniary (including direct and indirect assets, liabilities, earnings and costs)
- connections to people and entities that have provided or may provide income
- other people or matters that are closely connected to the member
- organisations and clubs and people connected to them
- connections to people and entities who have given benefits or favours.

ii. Managing conflict

- Members of the Councils must declare any conflict of interest that may arise from any matter before the Councils and may elect not to be present for that matter.
- If a member is unsure about a conflict of interest, the member should err on the side of caution and declare a potential conflict of interest to the Councils.
- Options available to the Councils (through the Chair), when considering the conflict of interest and the matter of business, are that the member:
  - not be present
  - be present but abstain from the discussion and voting
  - participate in the discussion but abstain from voting
  - participate fully.
- Given the nature of the Councils' statutory decision-making functions in respect of occupational associations, and the composition of the Councils membership, the main perceived conflict which arises in practice involves membership of occupational associations. That is, where a Councils member is also a member of an occupational association which is the subject of a regulatory decision.
- The general approach to be followed in such cases, subject to the particular circumstances of the matter, is as follows:
  - where a Councils member has declared an interest as a **member** of an occupational association, the member may participate in discussions regarding regulatory decisions affecting the association, but may not vote on the decision
  - where a Councils member has declared an interest as an **office bearer** of an association (or comparable appointment), the member may not participate in discussions regarding decisions affecting the association nor vote on relevant regulatory decisions
  - in **any other case**, where a Councils member has declared an interest, the member may either exclude themselves from





participation in voting and/or discussion, or seek a ruling from the Chair on appropriate action.

- Declarations of conflicts of interest and their management are recorded in the Councils' minutes.

iii. Pecuniary interest

- Pecuniary interests (or financial interests) can be direct or indirect, short- or long-term and can stem from both gains and losses. The pecuniary interests of a member's immediate family members, or any other member of their family economic unit, are normally deemed to be the interests of the member.
- Examples of a pecuniary interest which may arise for a member are:
  - where the member is an office holder, member of the executive or a committee of the association, and receives remuneration (or other benefits) in relation to the role
  - has shares or other interests in an insurance industry provider, or is a director or employee of a broker, underwriter or reinsurer
  - is a director, partner or employee of an entity that provides advice to the Councils such as consultants, actuaries, or other providers, or that make submissions to the Councils and comments on proposed schemes, policies, guidelines, standards or other matters of the Councils
  - other similar interest.
- Members of the Councils must submit a completed Notice of Disclosure where the member has (or is likely to have) an interest in matters being considered by the Councils because of a reasonable likelihood or expectation of appreciable financial gain or loss to the member or another person with whom the member is associated.
- For this Code of Conduct, a member may not have a pecuniary interest in the following circumstances:
  - if the member is unaware of the relevant pecuniary interest of the spouse or other person
  - where the interest is so remote or insignificant that it could reasonably be regarded as not likely to influence any discussion or vote of the member in relation to the matter.

iv. Non-pecuniary interest

- A member should disclose a non-pecuniary interest that is a private or personal interest, for example a friendship, membership of an association, society, or trade union, or involvement or interest in an activity that could influence, or a reasonable person would perceive could influence the member when carrying out his or her public duty.



- Questions that may help decide whether a conflict of interest may exist or be perceived to exist include:
  - Do I, a relative, friend or associate stand to gain or lose financially or through reputation from the decision of the Councils or action on the matter? Have I contributed in a private capacity in any way to the matter before the Councils?
  - Have I made any promises or commitments in relation to the matter?
  - Have I received a benefit or hospitality from someone who stands to gain or lose from Councils' decision or action?
  - Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with an organisation or individuals, who stand to gain or lose an interest from the Councils consideration of the matter?
  - Could there be benefits for me in the future that could cast doubt on my objectivity?
  - If I do participate in discussion or decision-making, would I be happy if my colleagues and the public become aware of my association or connection?
  - Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?
  - Do I need to seek advice or discuss the matter with an objective party? Am I confident of my ability to act impartially and in the public interest?

#### **5d. Acceptance of gifts, benefits and hospitality**

- Members of the Councils are public officials and should perform their functions with integrity, impartiality and honesty. During a term of appointment, a member may be offered certain gifts, benefits or invitations.
- Members must adhere to the following standards:
  - never solicit or request any gift, benefit or invitation including from any person connected with the member
  - never accept gifts, benefits or invitation that could place the member under an actual or perceived obligation to other organisations or individuals.
- To avoid the possibility of being compromised, only token gifts of nominal value can be accepted in some circumstances. Token gifts are those that have a retail value of less than \$100, are inconsequential or trivial, generally mass produced, often carrying a company logo and are not offered on a frequent basis.
- All gifts, benefits and invitations received by members are to be notified to the Authority which maintains a Register of Gifts. The information provided to the Authority is to include:



- a. Who made the offer
  - b. Who received the gift, benefit or invitation
  - c. Date received
  - d. Value of the gift, benefit or invitation
  - e. Decision made on its allocation in consultation with the Authority.
- Offers of a gift, benefit or invitation made and refused, should also be notified to the Authority.

#### **5e. Reporting suspected corrupt conduct**

- Corrupt conduct can broadly be described as the misuse of public power or position, noting the definitional differences in each jurisdiction's relevant legislation. Corrupt conduct includes:
  - a public official improperly using, or trying to improperly use, the knowledge, power or resources of their position for personal gain or the advantage of others
  - taking or offering bribes and
  - conduct that knowingly or recklessly breaches public trust.
- Members of the Councils are responsible for not only acting honestly but also for disclosing any instances of possible corruption.
- The Chair of the Councils is required to report corrupt conduct or suspected corruption to the relevant agency of the affected jurisdiction. A list of the relevant agencies is below:
  - Commonwealth – Australian Commission for Law Enforcement Integrity at <https://www.aclei.gov.au/>
  - The ACT – Integrity Commission at <https://www.integrity.act.gov.au/>
  - The Northern Territory – Office of the Independent Commissioner Against Corruption at <https://icac.nt.gov.au/>
  - New South Wales – Independent Commission Against Corruption at <https://www.icac.nsw.gov.au/>
  - Queensland – Crime and Corruption Commission at <https://www.ccc.qld.gov.au/>
  - South Australia – Independent Commission Against Corruption at <https://www.icac.sa.gov.au/>
  - Tasmania – Integrity Commission at <https://www.integrity.tas.gov.au/>
  - Victoria – Independent Broad-based Anti-Corruption Commission at <https://www.ibac.vic.gov.au/>
  - Western Australia – Corruption and Crime Commission at <https://www.ccc.wa.gov.au/>



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## 6. Failure to comply with this Code of Conduct

- The Councils are committed to the values, principles and standards outlined in this Code of Conduct. The Councils conduct assessments of their performance.
- Members of the Councils should read and abide by this Code and the relevant professional standards legislation.
- A concern about a breach of any principles outlined in this Code may be raised by any Councils member with:
  - the Chair
  - the Deputy Chair, and/or
  - other Councils members (including in relation to the conduct of the Chair or Deputy Chair).
- The Councils member in question may be referred to the relevant Minister of the Commonwealth, state or territory that nominated the member, by resolution of the Councils.
- The member in question (including the Chair or Deputy Chair) must not:
  - chair the meeting for the period during which the Councils consider and vote on any such resolution; or
  - vote on the proposed resolution.

### 6a. Proposed actions in relation to breaches of this Code of Conduct

- In cases where the Chair or any Councils members consider it necessary or appropriate to take action against a member in relation to a breach of this Code (such as referral to a Minister), procedural fairness should be afforded to the member.
- In such cases, where appropriate and practicable, the member should be:
  - advised of the relevant alleged conduct
  - afforded an opportunity to provide a response and any relevant information, and
  - have any such response or information considered by the Chair and/or Councils membersprior to any proposed action against the member being considered or taken.
- The Chair and Councils members may seek advice from the Chief Executive Officer, including legal advice, in relation to an alleged breach of the Code of Conduct if required.