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Scope

This Code of Ethics and Conduct (**Code**) incorporates the:

- [Code of Ethics and Conduct for NSW government sector employees](#)
- *NSW Government Sector Core Values (Ethical framework for the government sector)*, and
- [Managing Gifts and Benefits: Minimum Standards](#)

The Code applies to all staff of the Ombudsman's Office (**Office**). For the purposes of this Code, 'staff' is defined to include:

- ongoing, temporary and casual employees of, and employees on secondment to the Office
- statutory officers
- contractors and agency staff engaged to perform work for, or on behalf of the Office
- students and volunteers engaged with the Office for the purposes of work experience or in any other capacity
- consultants whose engagement requires adherence to the Code.

The Code must be applied at all times in working relations with colleagues, clients and customers, stakeholders and the government of the day.

Together with the Code, staff must comply with any relevant legislative, industrial and administrative requirements, other Office policies, and any lawful direction made by a person with the authority to give such a direction.

Roles and responsibilities

Ombudsman The Ombudsman is responsible for:

- leading and promoting the Code within the Office
- ensuring the general conduct and management of the functions and activities of the Office are in accordance with the core values of the NSW public sector and the Office

Chief Operating Officer The Chief Operating Officer is responsible for:

- overseeing the implementation of systems and processes that support adherence to the Code
- through the Senior Governance and Risk Officer, monitoring compliance with the Code
- approving amendments to the Code
- approving the appropriate disposal of surrendered gifts and benefits in accordance with the Code.

Staff Staff are responsible for:

- understanding and abiding by the Code
- understanding legislation and Office policies and procedures that support professional and ethical behaviour, and demonstrating those behaviours
- seeking assistance from a manager when unsure of what behaviour or action is expected
- promoting the Code through demonstrating ethical and professional behaviour
- reporting possible breaches of the Code to relevant officers

Managers and Executive Members of the Executive and managers that supervise staff are also responsible for:

- leading, modelling and promoting implementation of the Code and ethical, fair and professional conduct within the Office
- ensuring Office culture, practices and systems (including recruitment and promotion) operate consistently in accordance with the Code

- ensuring relationships with suppliers and other contractors remain on a professional footing
- implementing strategies that may assist in preventing breaches of the Code, including but not limited to:
 - ensuring that any real or perceived conflicts of interests are avoided or effectively managed
 - ensuring staff have been issued with the Code and understand its requirements
 - ensuring staff complete all compulsory training on the Code and associated policies
- act promptly and with due process to address and investigate alleged breaches of the Code

Manager, People and Culture The Manager, People and Culture is responsible for ensuring training on the Code is included in Induction for new starters.

Senior Governance and Risk Officer The Senior Governance and Risk Officer is responsible for:

- monitoring the implementation of and maintaining the Code in accordance with relevant compliance requirements
- registering conflicts of interests, gifts and benefits, secondary employment and personal interest declarations in accordance with the Code
- receiving, registering and storing surrendered gifts and benefits in accordance with the Code
- providing reports to the Executive regarding the Office’s implementation of activities to support staff awareness of the Code, and Office compliance with related legislation and relevant government directives.

Values

The values of the NSW government sector and the Ombudsman’s Office are set out below.

Staff are required to exercise their functions in accordance with both the values of the NSW government sector and the values of the Ombudsman’s Office.

NSW government sector values
<p>Integrity</p> <ul style="list-style-type: none"> • 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.
<p>Trust</p> <ul style="list-style-type: none"> • 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.
<p>Service</p> <ul style="list-style-type: none"> • 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.
<p>Accountability</p> <ul style="list-style-type: none"> • 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.

Ombudsman's Office values

Integrity

We act lawfully, honestly, ethically and are committed to producing high-quality work in a consistent manner.

Impartiality

We operate independently from government and act in a non-partisan manner, providing services informed by evidence to advocate for the public interest.

Fairness

We strive to ensure people are treated fairly and reasonably by the government agencies with which they interact. We treat complainants and the employees of the agencies whose conduct we investigate fairly.

Transparency

We document our operations and processes and communicate openly with our stakeholders and provide key information about the findings, recommendations and outcomes of our work.

Professionalism

We work with government agencies and non-government organisations through relationships based on professionalism, trust and respect to find proactive and positive resolutions in the interest of the people and communities of NSW. We interact with the public and external stakeholders to understand their diverse contexts and emerging needs.

Respect

We work with complainants, stakeholders and our colleagues in an inclusive manner, treating them with dignity and respect, and mindful of diversity.

Conflicts of interests

What is a conflict of interests?

A conflict of interests exists where a reasonable, informed observer would perceive a staff member's public duty might be influenced by their own, or someone else's, private interests.

A conflict of interests has three elements:

- (i) **Public duty**
The staff member's duty as an Ombudsman officer – what their role requires them to do.
- (ii) **Private interest**
The staff member's personal interests, or the interests of a member of their immediate family, relatives, friends, acquaintances, or business or community associates of any kind. A private interest may be material (involving money or some other tangible benefit) or non-material. Private interests can arise from personal, social or work relationships, memberships, work or educational history, property ownership, political affiliations, religious beliefs or experiences (positive or negative) you have had with a particular individual or organisation.
- (iii) **Conflict**
A connection between the private interest and the performance of a particular public duty where a reasonable person would consider the private interest could influence that performance.

The chances of a conflict arising, and the type of conflict that arises, will depend in part on the staff member's role. Someone working in corporate will face different types of conflicts to someone working in investigations.

Managing conflicts of interests involves disclosure, management and, where possible, avoidance.

Avoiding conflicts of interests

Taking action to avoid conflicts of interests where possible is ideal. Depending on a staff member's role, this might mean having no involvement in the handling of complaints made by a family member, relation, friend or association, declining social invitations from agencies that the Ombudsman oversees or suppliers, not pursuing secondary employment opportunities and declining social media interactions or invitations from agencies the Ombudsman oversees.

Disclosing conflicts of interests

Staff must declare in writing any conflict of interests they have or believe they might have when:

- commencing employment or changing roles within the Office
- commencing a new investigation or major project (considering the private interests of staff and their immediate family members such as partners, siblings and children)
- participating in recruitment selection or procurement panel
- they have a change in manager
- entering a close personal relationship with someone else working at the Office or in a NSW government agency (noting that such relationships are not prohibited)
- new circumstances arise that might give result in a conflict.

The Ombudsman and each member of the Executive are also required to declare annually, or when appointed to a new role, any private, financial, business, personal or other interests or relationship that may give rise to conflicts of interests.

Conflicts of interests register

All declarations are recorded by the Senior Governance and Risk Officer on a central register which may only be accessed by the Ombudsman, Chief Operating Officer, Legal Counsel and Senior Governance and Risk Officer. Executive members and Managers may be provided with reports of conflicts of interests pertaining to their supervisees by request to the Senior Governance and Risk Officer.

De-identified statistical reports may be provided to the Ombudsman and Executive for the purposes of ensuring visibility and effective management of risks.

Managing conflicts of interests

All conflicts, whether potential, actual or perceived, must be managed. Key steps in managing conflicts are as follows:

Assessing the risk Determining the level of risk is an important step in determining appropriate management action. Factors to consider in assessing risk are outlined in the conflict of interests declaration form.

Considering management options One or a combination of the following four options may be selected to manage a conflict:

- take no further action (usually for low-risk conflicts)
- change the staff member's relevant activities
- manage the staff member's personal interest
- increase probity through additional documentation, monitoring and/or assurance.

Documenting action Management action must be clearly documented and emailed to the Senior Governance and Risk Officer.

Implementing and monitoring Managers are responsible for the implementation and monitoring of management action and staff must comply with the identified strategies.

Gifts and benefits

What are gifts and benefits?

Gifts and benefits includes any item, service, prize, ticket, meal, hospitality or travel (in cash or non-cash form), provided by a complainant, client, applicant, supplier, potential supplier or agency the Office oversees, which has an intrinsic value and/or a value to the recipient, a member of their family, relation, friend or associate.

Prohibited gifts and benefits

Staff must never seek or solicit a gift or benefit.

Staff must not accept a gift or benefit:

- as an inducement to act a certain way
- where there could be a perception it has been offered as an inducement to act in a certain way or would influence a staff member to act in a certain way
- if acceptance does or could create a conflict of interests
- if acceptance could be perceived as undermining the values of the Ombudsman or the NSW government sector
- relating to any procurement activity or offered by any entity with whom the Office has a business relationship
- if it is cash, cheques, money-orders, gift vouchers, debit cards, pre-paid cards, or is similar to cash
- if its value is more than \$25 and it does not meet the criteria for acceptance as explained under *Value thresholds, declaring and surrendering* below

Staff must also not arrange for, or permit, a family member, relation, friend or associate to accept a gift or benefit in the above circumstances.

Risk factors and roles prohibited from accepting gifts and benefits

In assessing whether or not to accept a gift or benefit, staff must consider the specific risks that relate to their work. Roles that involve investigative, oversight, procurement, contract management or similar functions, or have a high level of discretionary power, have a high level of risk attached to them in relation to gifts and benefits.

Reporting bribes or attempted bribes

If a staff member is offered a gift or benefit and they believe the intention of the person was to influence the way they do their work, or that might otherwise be considered a bribe, they must refuse the offer. Any attempt to bribe a staff member, or acceptance of a bribe, is corrupt conduct and must be reported immediately to a member of the Executive. It may also constitute a criminal offence.

Value thresholds, declaring and surrendering

(i) Under \$25

Where gifts or benefits, either in a single instance or cumulatively from the same source within a six-month period, are valued below \$25 and there is nothing in the Code indicating they should be refused, they may be accepted and retained by the receiver without approval, and are not required to be declared or recorded in the register. Staff must reasonably estimate the retail value of the item before opting to accept and retain. Staff must not seek to underestimate the value in order to avoid declaring and surrendering a gift or benefit.

(ii) \$25 - \$100

Gifts or benefits valued between \$25 and \$100, either in the single instance or cumulatively from the same source within a six-month period, may only be accepted where the gift or benefit is not prohibited (see *Prohibited gifts and benefits* above) and there are strong reasons why they should be accepted. Approval by the receiving staff member's manager is required and the item must be declared and recorded in the register and surrendered to the Senior Governance and Risk Officer.

All offers of gifts or benefits over \$25, whether accepted or not, must be declared and recorded in the register.

(iii) Over \$100

Gifts or benefits over \$100, either in the single instance or cumulatively from the same source within a six-month period, must be declined. Where it is not possible to decline acceptance, the gift or benefit must be registered and then surrendered to the Senior Governance and Risk Officer, who will inform a member of the Executive.

All offers of gifts or benefits over \$100, whether accepted or not, must be declared and recorded in the register.

(iv) Inadvertent acceptance of a gift or benefit

Occasionally a gift or benefit may be inadvertently accepted, such as a card which following receipt is found to contain a gift voucher or money, or a wrapped gift not opened in front of the giver. Inadvertent acceptance of a prohibited gift or benefit in good faith will not be a breach of the Code provided staff immediately in accordance with the management process set out above.

If an accepted gift is found to be prohibited, it must be immediately declared and advice sought from an Executive member as to the appropriate disposal. If not prohibited, the gift or benefit must be managed in accordance with the Code.

Disposal of surrendered gifts and benefits

The Chief Operating Officer is responsible for determining appropriate disposal of gifts or benefits which have been surrendered to the Senior Governance and Risk Officer in accordance with the Code.

In the case of perishable items such as chocolates or food hampers, an appropriate method of disposal is often to share the item amongst staff or donate to charity. Where it is required that the gift will be shared amongst staff then a physical surrender of the gift is not required, however the disposal method must be recorded in the register.

All non-perishable goods will be stored in a secure cupboard and an inventory of contents maintained by the Senior Governance and Risk Officer. At the end of the financial year a review of the contents will be conducted against the inventory. The disposal of the gifts must occur at least once per year and be recorded.

Recording of declarations and gifts and benefits register

Staff must declare gifts and benefits as soon as practical by completing the declaration form and providing to their manager. If the gift or benefit was accepted, the manager must complete the relevant section regarding how it will be disposed. Once complete this form must be emailed to the Senior Governance and Risk Officer who will review the approved action for compliance with the Code and update the Gifts and Benefits Register, which may only be accessed by the Ombudsman, Chief Operating Officer, Legal Counsel and Senior Governance and Risk Officer.

Hospitality

Acceptance of hospitality should be considered in terms of risk.

Examples of low-risk hospitality include:

- functions where staff attend in an official capacity representing the Office
- hospitality provided as part of a conference package where the Office has paid a fee for the staff member to attend
- catered briefings or lunches where invitees from a range of organisations are present
- occasional working lunches, where the hospitality is incidental and of low value

Examples of higher risk hospitality include:

- restaurant meals
- invitations to corporate boxes or marquees
- invitations to functions held in private homes
- invitations which extend to family members, relations, friends and associates.

High risk hospitality should not be accepted. If hospitality is accepted in good faith, but a third-party attempts to use the occasion to raise a materially significant matter relating to their business or private affairs, staff should politely decline to discuss the matter and, if appropriate, propose that a formal meeting be organised for a later date.

The value thresholds and declaration requirements outlined in *Value thresholds, declaring and surrendering* above apply to the receipt of hospitality.

Travel and accommodation

Staff should never seek or solicit an upgrade from a travel or accommodation provider in relation to official travel for work.

Where a travel or accommodation provider offers a travel or accommodation upgrade for operational reasons, at no charge to the staff member or the Office, they may accept the upgrade, but must declare it.

Offering gifts, benefits and hospitality

Staff providing gifts, benefits and hospitality must ensure:

- it is provided for a business purpose
- costs are proportionate to the benefits obtained and would be considered reasonable in terms of community expectations
- the gift or benefit is purchased through a transparent and appropriate process and appropriately documented
- expenditure must not provide a personal benefit to staff members or their families or friends
- generally, hospitality should not be extended to consultants or other providers of goods or services unless authorised by a member of the Executive.

Secondary employment

The Ombudsman acknowledges that staff may wish to undertake work in addition to their employment with the Office (**secondary employment**). Secondary employment includes paid work for another employer, self-employment, or voluntary work whether for charitable or non-charitable purposes.

Risks Secondary employment can introduce significant conflict of interests risks, especially if the secondary employment has not been declared and/or authorised. Secondary employment may also impact a staff member's personal health and welfare, potentially diminishing their ability to perform their role within the Office and/or creating health and safety risks within the workplace.

Applications and approval Staff must not engage in secondary employment without prior approval of the Ombudsman or their delegate using the prescribed form.

Approval must be sought by staff who work on a full-time, part-time or temporary basis. It must also be sought for secondary employment during periods of full time or part-time leave (with or without pay), long service leave and extended leave.

Applications will only be approved where conflicts of interests and other risks can be resolved or effectively managed. If, following approval, it becomes apparent that risks are not being effectively managed, approval may be withdrawn.

Staff will be consulted prior to any approval being withdrawn, and will have the opportunity to respond. Where after consultation approval is withdrawn, reasons will be provided in writing. An employee may request the decision to decline an application be reviewed by another member of the Executive team.

Managing conflicts of interests When undertaking secondary employment, staff must advise their supervisor of any particular conflict of interests that arise and complete a conflict of interests declaration as soon as possible.

Monitoring and reporting All secondary employment applications and approvals are registered on the secondary employment register maintained by the Senior Governance and Risk Officer, which may only be accessed by the Ombudsman, Chief Operating Officer, Legal Counsel and Senior Governance and Risk Officer.

Supervisors must monitor the work performance of staff who have approved secondary employment to ensure the staff's secondary employment does not adversely affect the proper and efficient performance of their duties, or creates a work health or safety risk. If either of these issues arise, secondary employment approval may be withdrawn.

Use of Office resources

Staff must use Office resources efficiently and prudently. Any use of Office resources for private purposes must be minimal, reasonable and in accordance with relevant Office policies.

Staff must:

- ensure decision making relating to the use of Office resources is reasonable and appropriately authorised
- treat Office resources with care and ensure where appropriate that they are secured against theft or misuse
- not create a risk or liability for the Office by the use of Office resources (e.g. by breaching copyright or other intellectual property obligations)
- use Office resources economically.

See also the Office's Use of Information and Communication Technology Devices Policy or any equivalent replacement policy.

Participation in political or other activities

Staff must perform their functions in an impartial, apolitical manner.

Staff have a right to participate in political and community activities and to pursue private interests, provided that:

- participation does not interfere with Office duties
- participation does not conflict with their duty as a public servant to perform their duties in a politically neutral manner and

- any conflict of interest (actual, perceived or potential) that arises is declared and dealt with in accordance with this Code.

Public comment

Definition of public comment

Public comment is any comment made where it is expected that it will be seen or heard by members of the public. This includes public comment through open social media accounts. Staff must not make any comment on behalf of the Ombudsman unless authorised to do so. All media inquiries must be referred to the Communications, Media and Training Manager or, in their absence, the Chief Operating Officer.

As private individuals, staff have the right to participate in public debate on political and social issues. However in doing so, staff must not make any comment that is capable of being perceived as official comment by the Office.

Staff must not engage in unlawful or improper conduct, even in a private capacity that has the potential to damage public trust in the Office.

When exercising their right to participate in public debate in a private capacity, staff must ensure that their conduct:

- is not incompatible with their duties as a staff member and
- complies with Office policies on use of official resources and communication technology.

Public comments by union delegates and office holders

If staff are elected or nominated as spokesperson for a professional association or union, they are entitled to make public comments in relation to Office matters in so far as it is clear that those comments represent the association or union views, and not necessarily those of the Ombudsman. If staff are making such public comments, they must clearly acknowledge the capacity in which they are expressing their views.

Professional behaviour

Workplace health, safety and security

Staff are expected to understand their responsibilities and obligations under work, health and safety legislation and be proactive in ensuring the workplace is safe and secure for everyone, including identifying, assessing and reporting safety risks and hazards.

Staff have a duty to:

- take reasonable care for the health safety and welfare of themselves and others when performing their work
- adhere to Office security policies and procedures
- co-operate with managers to ensure compliance with relevant work, health and safety laws.

Professional presentation

Staff must present themselves professionally at all times. This includes maintaining a clean, neat and tidy appearance. Staff must dress appropriately to their duties including when attending external meetings, hearings, presentations or other activities which involve engaging in person with external stakeholders including the public. Clothing and attire must not present a health or safety risk nor be reasonably seen to be offensive to colleagues or external stakeholders.

Use of alcohol and drugs

Staff are responsible for ensuring that their capacity to perform their duties is not impaired by the use of alcohol or drugs, and that use of such substances does not put staff or any other person's health and safety at risk. Staff must not be under the influence of alcohol or other drugs while at work.

Staff are encouraged to disclose any alcohol or drug-related problems they may be experiencing so that appropriate action can be taken to provide relevant support and maintain a safe workplace. Staff may access counselling support from the Employee Assistance Provider.

Working with others

All staff are to treat their colleagues, customers, clients and internal and external stakeholders with dignity and respect, and in accordance with the Ombudsman values and NSW Government Sector values set out above.

The Ombudsman expressly prohibits any form of discrimination, harassment or bullying. Such behaviour may also be unlawful.

Deliberately submitting a workplace complaint or allegation with false statements or for malicious, vexatious or frivolous purposes may attract misconduct action.

Lobbyists

Staff must comply with the NSW Government Lobbyist Code of Conduct published on the NSW Electoral Commission's website.

Child protection notifications

Reportable conduct scheme The Ombudsman is a 'public authority' for the purpose of the *Children's Guardian Act 2019*. This means that if staff become aware of reportable allegations or a conviction that the person considers is a reportable conviction, they must report the matter to the Ombudsman. The Ombudsman must then give the Children's Guardian written notice of the reportable allegation or conviction considered to be a reportable conviction. For information about the reportable conduct scheme, see www.kidsguardian.nsw.gov.au.

Mandatory reporters Staff whose functions include the delivery of welfare service to children, and managers of those staff, are 'mandatory reporters' for the purposes of the *Children and Young Persons (Care and Protection) Act 1998 (CYP Act)*. If a mandatory reporter has reasonable grounds to suspect that a child is at risk of significant harm, and those grounds arise during the course of the performance of their functions as an Ombudsman officer, they have a duty to report, as soon as practicable, the name (or a description) of the child, and the grounds for suspecting that the child is at risk of significant harm, to the Department of Communities and Justice.

The secrecy obligations imposed by the Ombudsman Act do not prevent a report from being made. An individual who makes a report or provides information in good faith also has the protection afforded under the CYP Act.

Other staff Any other staff member who, in the course of their duties, receives information that leads them to suspect or believe that a child or young person, or class of child or young persons, is at risk of significant harm, should report the grounds for that suspicion or belief to the Department of Communities and Justice, in accordance with the CYP Act.

The secrecy obligations imposed by the Ombudsman Act do not prevent a report from being made. An individual who makes a report or provides information in good faith also has the protection afforded under the CYP Act.

Reporting obligations

Self-reporting: bankruptcy and serious criminal offences

If a staff member becomes bankrupt, they must immediately notify their manager and the Manager, People and Culture.

Staff must also immediately notify their manager if they are charged, convicted or found guilty of:

- a serious offence; or
- any offence which may impact their ability to undertake part or all of the inherent requirements of their role.

A 'serious offence' means an offence punishable by imprisonment for life or for 12 months or more (including an offence committed outside NSW that would be an offence punishable if committed in NSW). Following careful consideration, the Ombudsman may suspend a staff member suspected of misconduct from duty until misconduct proceedings or the criminal charge has been dealt with.

Reporting breaches of this Code

A breach of this Code may amount to misconduct.

If a staff member sees another member of staff act in a way that is contrary to the Code, they must report the incident in accordance with:

- the Office's Internal Reporting Policy, in the case of a breach that may amount to a public interest disclosure (PID), or
- the Office's Dealing with Misconduct Allegations Procedure, in all other cases.

Staff members who have any concerns about making reports can speak with the Manager, People and Culture or a member of the Executive. All reasonable steps will be taken to support staff who make reports.

Ombudsman approval

A handwritten signature in black ink, appearing to read 'Paul Miller', written in a cursive style.

Paul Miller
NSW Ombudsman