

Code of Conduct

Parliamentary Counsel's Office

11th edition

First issued October 1992

This edition issued April 2007

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Introduction

Public employment carries with it a unique obligation to protect the public interest. This obligation demands that people working in the public sector demonstrate and adhere to standards of conduct and ethics that maintain public confidence and trust.

As a member of staff of the Parliamentary Counsel's Office you have an obligation to the people of New South Wales to carry out the business of the Office with efficiency, fairness, impartiality and integrity.

The Parliamentary Counsel's Office is the legislative drafting office for the State. It has an obligation to maintain the highest standards of professionalism and confidentiality in providing drafting, publishing and advisory services for all of its clients and in dealing with Government, Opposition and other Members of Parliament.

This Code of Conduct, together with, in the case of staff members who are admitted as barristers or solicitors, the professional and ethical rules and standards that apply to those members, establishes standards of behaviour expected of you and provides a guide to solving ethical issues that may arise in the course of your work.

Values embodied in the Code

It is imperative that as a member of staff of the Parliamentary Counsel's Office you maintain the highest standards of conduct.

The Code rests on the basis of a number of values that require you to carry out your duties with:

- honesty
- integrity
- professionalism
- fairness
- timeliness
- conscientiousness
- regard to the public interest
- courtesy.

Principles

The Code is based on a set of principles that apply to all codes of conduct in the New South Wales public sector. These are:

- public confidence
- responsibility to the Government of the day
- responsibility to other clients
- rights and responsibilities of staff.

Public confidence

The public has the right to expect that public sector organisations demonstrate the highest integrity and competence, treating all citizens and clients fairly, reasonably, courteously and equitably.

Responsibility to the Government of the day

The Government of the day is entitled to expect that public servants will provide impartial, accurate and confidential advice and will implement its policies promptly, courteously, efficiently and effectively.

Responsibility to other clients

While arrangements are in place for the legislative drafting and related services of the Office to be available to Opposition and other Members of Parliament, these members are also entitled to expect impartial, accurate and confidential advice and assistance from the Office in relation to their proposals and, within the constraints of the Government's legislative program and Office directives, a prompt, courteous and professional service.

Your rights and responsibilities

Public servants' rights are the normal rights of employees under the common law and within the provisions of legislation and other formal employment arrangements (eg contracts and agreements) applying to them.

You must be familiar with the responsibilities that are part of your employment and be aware that they impose certain conditions. These include adherence to this Code. The main legislation, policies and directions relevant to staff of the Office include:

- Anti-Discrimination Act 1977
- Crimes Act 1900
- Freedom of Information Act 1989
- Independent Commission Against Corruption Act 1988 and the Commission's Guidelines for the Reporting of Corrupt Conduct
- Industrial Relations Act 1996
- Occupational Health and Safety Act 2000
- Ombudsman Act 1974
- Privacy and Personal Information Protection Act 1998
- Protected Disclosures Act 1994
- Public Finance and Audit Act 1983
- Public Sector Employment and Management Act 2002
- State Records Act 1998
- Administration circulars
- Disability Action Plan
- EEO Policy Statement and Plan
- Employer Communication Devices Policy and Guidelines
- Ethnic Affairs Priorities Statement
- Grievance and Dispute Resolution Procedures
- Instruments of delegation
- Ministerial Memoranda
- Policy for Preventing and Dealing with Harassment
- Public Service of New South Wales Personnel Handbook
- Records Management Policy.

Legal staff are also to take into account any obligations imposed on them as legal practitioners.

You need to be aware that sanctions may be applied if the Code is breached. These sanctions vary from counselling to disciplinary action, laying of criminal charges or taking civil action.

Scope

The Code applies to every individual employed, appointed or otherwise attached to the Parliamentary Counsel's Office.

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

Conflicts of interest

To ensure that the work of the Office is impartial and is seen to be so, you must make sure that no opportunity exists for your personal interests, associations and activities (financial or otherwise) to conflict with the proper exercise of your duties.

The term "conflict of interest" refers to situations where a conflict arises between public duty and private interest which could influence the performance of official duties and responsibilities. The conflict may be actual, potential or one that may be reasonably perceived by a third party.

In many cases only the individual concerned will be aware of the potential for conflict. If you are unsure about whether a situation poses a conflict of interest, you should discuss the matter with the Parliamentary Counsel.

You must act in the general public interest and that of the Government as a whole and not in the interest of yourself or any other individual. You must be able to show that you have done so. In particular, official information must not be used so as to violate any confidence or privilege or to gain improperly any kind of benefit or advantage for any person.

The onus is on you to disclose to 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. 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.

(See also *Public Sector Agencies fact sheet No 3: Conflict of Interests*, NSW Ombudsman, July 2003. A copy of this document is available on the Office's Intranet.)

Political participation

You must ensure that any participation in political matters does not conflict with your duty as a public servant 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 advice given, and the integrity and effectiveness of the work performed, by you.

If you become aware that a potential conflict, whether real or apparent, has arisen or is likely to arise, you must immediately inform the Parliamentary Counsel. If a conflict of interest does arise, you may have to stop participating in political activity or enter into an appropriate arrangement involving your withdrawing from areas of your duties giving rise to the conflict of interest, if such an arrangement is feasible.

Acceptance of gifts or benefits

You must not accept a gift or benefit if it could be regarded by the public as likely to cause you to do your job in a particular way or to deviate from the proper course of duty. You must also not seek a gift or benefit from another party in relation to the carrying out of your duties.

You must report in writing to the Parliamentary Counsel any offer of a substantial gift or benefit, to yourself or to your spouse, partner, dependents or other persons with whom you are closely associated. Any such reports are kept in the Office's Gift Register kept by the Director, Legislative Services and Publications.

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. Token gifts could include such things as chocolates, diaries, or modest refreshments offered at a working meeting or conference. Staff dealing with commercial suppliers must be particularly careful not to accept gifts that may compromise their ability to apply public sector purchasing policies. If you are in any doubt check with the Parliamentary Counsel.

(See also *Gifts, Benefits or Just Plain Bribes?—Guidelines for Public Sector Agencies and Officials*, ICAC, June 1999. A copy of this document is available on the Office's Intranet.)

Personal and professional behaviour

All staff are expected to:

- act honestly and with integrity at all times
- be conscientious and carry out their duties in an efficient, effective and economical manner
- comply with all relevant legislative, industrial, policy and administrative requirements
- maintain appropriate documentation to support any significant decision made and record this information in accordance with the Records Management Policy
- keep up-to-date with advances and changes in their area of expertise
- provide all necessary and appropriate assistance to members of the public and clients of the Office
- treat members of the public, clients of the Office and their colleagues with respect, fairness and courtesy
- provide impartial advice and implement Government policies effectively, regardless of which political party or parties are in office
- not take or seek improper advantage from authority or information gained in the course of employment
- report unethical behaviour or suspected corrupt conduct to the Parliamentary Counsel
- where appropriate make disclosures through the internal reporting procedures established for the *Protected Disclosures Act 1994*.

Senior Parliamentary Counsel's Office staff have a particular responsibility to:

- demonstrate ethical leadership and lead by example
- encourage a harmonious and productive work environment, free from harassment and discrimination, in which all staff members are treated with respect and courtesy
- support and acknowledge individual or group effort and achievement
- keep staff informed of the Code of Conduct and standards of behaviour and ethics required in the workplace
- encourage and develop a learning ethic, access to training and development, a creative approach to problem solving and a high level of staff awareness of the functions and objectives of the Office

- ensure the maintenance of an adaptable, supportive work environment and a flexible approach to work practices, balancing the demands of the Office with the needs of staff inside and outside the workplace.

If you have an ethical or moral objection to a task you are asked to undertake, you must seek resolution of the issue through discussion with the Parliamentary Counsel.

When dealing with colleagues, clients or members of the public, you must not harass or discriminate on the grounds of sex, transgender, marital status, pregnancy, age, race, colour, nationality, ethnic or national origin, physical or intellectual impairment, male or female homosexuality or carer responsibilities. In addition, you must not harass or discriminate on the grounds of political or religious conviction, but this is not to be taken to prevent appropriate action being taken under other provisions of the Code. Managers and supervisors must understand and apply Equal Employment Opportunity principles and the Harassment Prevention Policy.

Accountability

You are responsible for your own acts and omissions and will be held to account for them. If you are a manager or supervisor, you are also responsible for the acts and omissions of the staff in the areas over which you have control and of which you know or ought to know. Managers and supervisors must ensure that staff understand the duties of their positions and the results expected.

Fairness and equity

You must ensure that all matters being handled by you or under your supervision are dealt with consistently, promptly and fairly. Matters must be dealt with in accordance with approved procedures, quickly and without discrimination on any improper grounds.

When using discretionary powers you must ensure that all relevant facts and the merits of each particular case are considered. The rules of procedural fairness require that people significantly affected by a decision have a right to put their case forward and for the decision to be made impartially. You must observe these principles.

Public comment and media inquiries

Public comment includes public speaking engagements, comments on radio and television and views expressed in letters to newspapers or in books, journals or notices, where it might be expected that the publication or circulation of the comment will spread to the community at large or to a significant group within the community.

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 include circumstances:

- 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 Parliamentary Counsel's Office
- where public comment, even though unrelated to your normal duties, amounts to criticism sufficiently strong or persistent to give the impression that you are 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 Parliamentary Counsel's Office.

Media inquiries regarding legislation or proposed legislation must be referred to the Department or agency sponsoring it. Other media inquiries should generally be referred to The Cabinet Office or the Premier's Media Director.

Simple media inquiries for information of the kind handled by the Office's Legislation Information Service may be responded to directly, but you must confine yourself to the facts and avoid discussing Government policy or offering personal comment.

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 Office. Such information is a matter for the sponsoring Department or agency to deal with.

If in doubt, consult the Parliamentary Counsel immediately.

As a matter of simple courtesy, if for no other reason, a paper should not be published, and a speaking engagement should not be arranged or undertaken, with respect to any area of the work of this Office unless the Parliamentary Counsel has first been notified. It is immaterial whether or not the person concerned purports to act in a private capacity.

Use of official information

Much of the work of the Parliamentary Counsel's Office involves access to, and drafting and publishing of, confidential or sensitive documents. You must take care in maintaining the integrity and security of official documents and information for which you are responsible. This information can only be used in the legitimate exercise of the Office's functions.

Misuse of official information is specifically included in the definition of corrupt conduct in the *Independent Commission Against Corruption Act 1988*, as follows:

any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Misuse of information includes:

- disclosing information to a member of the public or to other public servants or Government departments or agencies without proper authority
- accessing official information for personal benefit or advantage, or for the personal benefit or advantage of another person
- seeking to take advantage of another person on the basis of information held in official records
- providing or trading confidential information for use by unauthorised persons such as private investigators, banks or credit agencies
- speculating in shares, commodities or property on the basis of confidential information about the affairs of a business or of proposed Government actions.

You may only disclose official information when you have or have been given the proper authority, or when required to do so by law.

Confidentiality

You must maintain complete confidentiality regarding the legislative drafting work of the Office, unless the Parliamentary Counsel has indicated that particular information is of such a nature as may be disclosed.

You must not disclose any information provided by one client to another client or to any other person (except as required for Office purposes) without the permission of the client providing the information or unless it has become public information.

You must not disclose whether a particular legislative project is or is not being dealt with in the Office, without the permission of the client or potential client or unless it has become public information. Inquiries from the media should be generally dealt with as indicated on page 7.

Security

You must ensure that the Office generally and your work areas in particular are secure so that confidential material (such as Cabinet Minutes, drafting instructions, draft Bills and data on the computer system) cannot be seen, copied or taken by unauthorised persons.

Use of official resources

You are expected to:

- be efficient and economical in your use and management of the Office's resources
- be careful in your use of public property and services and not permit misuse by others
- obtain official permission before any use is made of the Office's facilities and equipment for private purposes
- ensure you have the necessary delegation before incurring or authorising any expenditure on behalf of the Office.

(See also the Parliamentary Counsel's Office's *Employer Communication Devices Policy*, which is available on the Office's Intranet.)

Outside employment

You must obtain the Parliamentary Counsel's approval if you wish to engage or continue in any form of paid employment outside your official duties. This requirement also applies to new members of staff who, on joining the Office, have outside employment they wish to continue. This approval must be reviewed on an annual basis.

Any approved outside employment must be performed wholly in your own time and have no adverse impact on the performance of your official duties.

In all cases when outside employment is considered, you should give the Office first consideration and avoid situations that may lead to a conflict of interest, or the appearance of a conflict of interest.

References for staff

In keeping with the practice in other Government agencies, and because of concerns about the risk associated with legal liability, references for permanent staff are not to be provided on official letterhead.

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.

Letterhead may be used for:

- references provided for temporary or casual staff
- statements of service for permanent staff (limited to giving administrative details of service).

Official references or statements of service are provided by the Director, Legislative Services and Publications.

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, Legislative Services and Publications before sending a written response.

Reporting corrupt conduct

You have a responsibility to bring to the notice of your supervisor or an appropriate senior manager any unethical behaviour or wrongdoing by another staff member. Provision is also made in the *Independent Commission Against Corruption Act 1988* for any person to make a direct report to the Independent Commission Against Corruption.

(Refer to *Guidelines for the Reporting of Corrupt Conduct* issued to staff in March 1994 with Administration Circular 1994 No 16. A copy of this document is available on the Office's Intranet.)

The principal officer of the Parliamentary Counsel's Office is required by law to report to the Independent Commission Against Corruption any instances of possible corrupt activity.

Protected Disclosures Act 1994

The *Protected Disclosures Act 1994* provides formal protection for public officials who make disclosures that concern corrupt conduct, maladministration or serious and substantial waste of public money. The disclosures must be made in the manner described in the Office's internal reporting procedure, which is described in detail in the Office's *Protected Disclosures—Internal Reporting Policy* which is available in the Office's Intranet. Reprisals against the person making the disclosure are a criminal offence.

Leaving the Office

When leaving employment with the Parliamentary Counsel's Office, you must return all official property in your possession, including access cards for the building, as well as any documents or items which relate to the work of the Office and which are not otherwise publicly available.

On your last day on duty you will be required to sign a statement confirming that all items have been returned and undertaking not to misuse any information gained as a consequence of your employment with the Office.

Don Colagiuri
Parliamentary Counsel
April 2004

First issued October 1992.

Reviewed and revised: February 1993; March 1994; June 1994; August 1994; September 1995; September 1998; September 1999; February 2001; July 2002; April 2004; minor update April 2007