

CODE OF CONDUCT

PREFACE

Staff in any organisation need to behave in a way which will promote public confidence and trust in the organisation. Public sector staff in particular are expected to do their work with efficiency, fairness, impartiality and integrity.

This Code of Conduct has been developed using the Model Code of Conduct for NSW Public Sector Agencies issued by the Premier's Department. This model sets out the minimum standard applicable to all public servants. Additional topics, which reflect the specific needs of this office, have been included in this code acknowledging our unique role and our responsibility to maintain public confidence and trust in the institution of the Ombudsman.

PURPOSE

It is the aim of this code to establish a common understanding of the standards of behaviour expected of all staff working in this office. However, the document cannot cover every possible situation which may arise. If you are uncertain of what to do in a particular situation, consult your policy manual, or ask your supervisor, your team manager or a statutory officer for guidance.

RESPONSIBILITY

This code applies to the Ombudsman and all staff of the office, whether by way of appointment, secondment, contract, temporary arrangement or on a fee-for-service basis. Any individual having employee functions or acting in an employee capacity, including a volunteer, is a member of staff for the purpose of this policy. This code does not apply to any person doing work under a contract with the Ombudsman, where that contract includes applicable provisions of this code of conduct.

LEGISLATIVE FRAMEWORK

Ombudsman Act 1974

Police Act 1990

Community Services (Complaints, Reviews and Monitoring) Act 1993

DEFINITIONS

Not applicable.

NSW Ombudsman policy number:	2	1
Policy originally created:	1991	
Last reviewed / updated:	28 April 2008	
Version number:	8	
Related policies:	Policy development and review; information security; media; use of office cars; use of communication devices; internal reporting; privacy management plan; conflict of interests; gifts and benefits	

This policy supersedes the code of conduct implemented on 27 June 2007.

POLICY STATEMENT

1. Our mission and values

The Ombudsman is accountable to the public of NSW through Parliament and the operations of the office are essentially independent of the government of the day. The office has a prime obligation to the public interest which demands that the work of the office and the conduct of its officers and staff must maintain public confidence and trust.

The basic charter of the office is to receive, investigate and report on complaints about the administrative conduct of public sector agencies, to oversee and monitor the handling of child abuse allegations and alleged misconduct of police officers and, where appropriate, to make findings and recommendations.

The mission of this office is to promote good conduct and fair decision making in the interests of the NSW community.

The goals of this office are:

- help organisations meet their obligations and responsibilities and promote and assist the improvement of their service delivery.
- deal effectively and fairly with complaints and work with organisations to improve their complaint handling systems.
- be a leading watchdog agency.
- be an effective organisation.

The public has a right to quality service from the Ombudsman. That service will be characterised by all staff. In everything we do we will:

- provide the same high quality service that we encourage other organisations to offer.
- be fair, impartial and independent, and act with integrity and consistency.
- be accessible and responsive to all who approach us, and seek solutions and improvements that will benefit the broader NSW community.
- be a catalyst for change and a promoter of individuals' rights.

2. Legislative obligations

You are obliged to always act in accordance with the provisions of the legislation under which the office undertakes its functions, in particular, the *Ombudsman Act 1974*, *Police Act 1990*, *Community Services (Complaints, Reviews and Monitoring) Act 1993*, *Freedom of Information Act 1989*, *Protected Disclosures Act 1994*, *Witness Protection Act 1995*, *Law Enforcement (Controlled Operations) Act 1997*, *Telecommunications (Interception)(New South Wales) Act 1987*.

You are to become and remain fully conversant with those pieces of legislation under which you are delegated functions.

You should also observe and be conversant with the principal provisions of other public sector legislation having general effect upon the office, including the *Public Sector Employment and Management Act 2002*, the *State Records Act 1998*, the *Privacy and Personal Information Protection Act 1998*, the *Anti-Discrimination Act 1977*, the *Occupational Health and Safety Act 2000* and the *Public Finance and Audit Act 1983*. The office has developed, where appropriate, specific policies and procedures to assist both staff and the office to comply with public sector legislation.

3. Compliance with office policies

The Ombudsman's policies provide guidance and set boundaries for what behaviour and which decisions are consistent with the office's vision, mission and goals. You must act in accordance with all office policies, directions and delegations as set out in memoranda and procedure manuals. In particular, you must conduct operational matters and exercise any delegated power in accordance with applicable policies.

4. *General principles of conduct*

(a) Respect for people

Staff are to treat members of the public and their colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations. In this regard, they should perform their duties in a professional and responsible manner.

Staff should also ensure that their decisions and actions are reasonable, fair and appropriate to the circumstances, based on a consideration of all the relevant facts, and supported by full and accurate documentation.

(b) Integrity and public interest

Staff are to promote confidence in the integrity of public administration and always act in the public interest and not in their own private interest.

Staff should protect the reputation of the office. They should not engage in activities, at work or outside work, that would bring the office or the public sector generally into disrepute.

(c) Responsive service

Staff are to provide a relevant and responsive service to our clients and customers, providing all necessary and appropriate assistance and fulfil the office's service performance standards.

Staff should provide information promptly and in an appropriate format that is easy for the recipient to understand. The information should be clear, accurate, current and complete.

(d) Economy and efficiency

Staff should keep up to date with advances and changes in their area of expertise, and look for ways to improve performance and achieve high standards of public administration.

They should use their authority, available resources and information only for the work related purpose intended.

5. *Guide to ethical decision-making*

To assist in fostering a climate of ethical awareness, conduct and decision-making in this office, staff may find it useful to refer to or consider the following five points when making decisions:

- is the decision or conduct lawful?
- is the decision or conduct consistent with government policy and in line with the office's mission, goals and code of conduct?
- what will the outcome be for the staff member, work colleagues, the office, and other parties?
- do these outcomes raise a conflict of interest or lead to private gain at public expense?
- can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

6. *Conflict of interests*

Note: This section should be read in conjunction with the conflict of interests policy and any memorandum issued by the Ombudsman in relation to this issue.

Conflict of interests exist when it is likely that an employee could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their public duty.

To maintain the integrity of the office, personal interests (financial or otherwise), associations and activities must not conflict with your duties. The Ombudsman is entitled to know if there is even a remote possibility of a conflict arising.

You must make full and frank disclosure to the Manager Corporate or your statutory officer of any conflict, either real or potential, which may be seen to impact on the impartial exercise of your duties.

All conflict of interests are to be noted in the Conflicts Register maintained by the Manager Corporate. This register contains all disclosures by staff of matters that are or could potentially result in conflicts of interest arising out of the performance of their duties with this office.

If necessary, you may need to disqualify yourself from having any involvement in particular matters where that conflict arises, subject to the agreement of your statutory officer.

If you are in any doubt whether to disclose a potential conflict of interest, you have an obligation to consult your team manager, your statutory officer or the Manager Corporate. Such consultations will be treated confidentially and may avoid harm or embarrassment to the office and you.

7. Professional conduct

You are expected to discharge your duties with care and thoroughness, in compliance with all lawful instructions and with close attention to:

- honesty and integrity
- accuracy and completeness
- consideration of all relevant facts
- particular merits of the case
- impartiality and procedural fairness
- equity and natural justice
- accountability
- consistency, all things being equal
- office policy
- discretion and tact
- avoidance of conflicts of interest.

You must maintain adequate documentation to support any decisions made.

You must not unduly delay taking action or making decisions.

Any verbal communications on sensitive or important matters are to be recorded accurately and immediately and if necessary or appropriate be brought to the attention of your supervisor or team manager.

8. Consultation

You have a duty to consult your colleagues or supervisor when you have any doubt about the way in which you should exercise your delegated powers or fulfil your duties.

You have a duty to seek approval for any action that you do not have delegated authority to take. You must also seek approval if any specific direction or policy of the Ombudsman, a statutory officer or a team manager requires consultation or approval before the action can be taken.

9. Reporting

You have a duty to report any operational problem or difficulty you identify to your supervisor, or where appropriate, to your team manager or a statutory officer. In particular, you must report any unauthorised disclosure or release of confidential information.

You must report any observed or suspected security weakness in, or threats to, office premises, equipment or systems to the Security Committee (this may be via your supervisor, team manager or a statutory officer). A standard incident reporting form has been developed and is available in ADM/65.

You must report without delay to your team manager or statutory officer any complaint that is made about the exercise of the functions of the Ombudsman or the conduct of yourself or another staff member.

You must inform the Ombudsman of any case where there is reason to suspect corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* whether occurring within or outside the office. The Ombudsman has an obligation under that Act to notify the Independent Commission Against Corruption of any matter that he or she suspects on reasonable grounds concerns or may concern corrupt conduct.

You must report any breaches of this code to the Ombudsman, your team manager or statutory officer.

10. General accountability

You are responsible for any of your own acts and omissions that do not occur in the performance of your public official functions, and will be held responsible for them.

If you have a supervisory role, you will also be held responsible for any such foreseeable acts and omissions of your staff which, by their seriousness, repetition or common occurrence, are matters that you should know of and correct if you are exercising responsible management, leadership and supervision.

If you have a supervisory role, you therefore have a duty to make sure the staff under your control or leadership have a clear understanding of their duties, how they are expected to perform those tasks, and what results are expected.

You must notify the Ombudsman, your team manager or statutory officer of any significant precautionary or remedial action that it is necessary to take in respect of any staff under your leadership or supervision or any function or responsibility of the Ombudsman, which you are unable to take yourself.

11. Acceptance of gifts or benefits

You must not accept any gift or benefit that could be seen by a member of the public as intended or likely to cause you to do your job in a particular way, or deviate from usual procedures.

Generally any such offers should be declined except in cases where the offer is of some token kind and it would be rude or offensive to refuse, or where the offer is also made to associates who share a common task and purpose and which does not impose any obligations that may conflict with your duties eg. modest hospitality offered on visits to institutions, during meetings of working parties, selection committees etc.

You must always decline offers from individuals or organisations that are complainants to the office or that you know to be the subject of an investigation by this office.

You must never solicit any money, gift, benefit, travel or hospitality in association with your duties.

The Ombudsman's Gifts and Benefits policy provides more guidance on this topic including the need to declare gifts and benefits.

12. Discrimination and harassment

All staff have a responsibility to ensure that the workplace is free from all forms of harassment and discrimination. Specifically, it is unlawful under the *Anti-Discrimination Act 1977 (NSW)* and related Commonwealth legislation to discriminate against any person with whom you have business dealings, including a colleague or a member of the public, on the grounds of race, sex, disability, age, homosexuality, marital status, pregnancy or on the grounds that a person is a carer or is a transgender person. Under the Act it is also unlawful to sexually harass a person, or to vilify a person because of their race, because they have HIV/AIDS or because they are a homosexual or transgender person. In addition, staff must not harass or discriminate on the grounds of political or religious conviction.

Supervisors in particular must make sure that the workplace is free from all forms of harassment and discrimination. They should understand and apply the principles of equal employment opportunity and ensure that the staff they supervise are informed of these principles. Supervisors should also take all necessary steps, such as training and other active measures to prevent and deal with harassment and discrimination in their work area.

13. Fairness and equity

Issues or cases being considered by employees should be dealt with consistently, promptly and fairly. This involves dealing with matters in accordance with approved procedures, in a non-discriminatory manner and in conformity with natural justice.

When using any discretionary powers, staff should ensure that they take all relevant facts into consideration, have regard to the particular merits of each case, and not take irrelevant matters or circumstances into consideration.

14. Public comment on the work of the office

Note. This section should be read in conjunction with the media policy and the disclosure of information policy and any memorandum issued by the Ombudsman about this issue.

You must not engage in public comment, whether through public speaking engagements, comments to newspaper, radio or television journalists, letters or articles to newspapers or other publications that:

- comments on the work of the office unless you have prior permission or delegated authority of the Ombudsman, or
- is the expression of private views but by implication is capable of being perceived as official comment from this office.

You can disclose official information that is ordinarily given to members of the public seeking that information.

In discussing any other work of the office outside the office, you must confine yourself to material that has entered the public domain by way of annual reports, special reports to Parliament, reports of the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission, media releases authorised by the Ombudsman or public addresses given by the Ombudsman or other statutory officers.

You must refer all media enquires to the Public Relations Officer unless you are a designated officer to take media calls in relation to some specific issue.

The constraints on public comment and the obligations to observe and protect confidentiality still apply when you leave the employ of the Ombudsman.

15. Protecting confidential information

You must always comply with the obligations of confidentiality in respect of the work of the office prescribed by the legislation under which the office undertakes its investigations, monitoring and reporting, the relevant provisions of the *Privacy and Personal Information Protection Act*, any relevant privacy codes or practice made under that Act and the Office Privacy Management Plan.

You must not access or disclose any of the sensitive information that the office receives or has access to (including the confidential databases of other agencies) except with the consent of the person or agency that provided the information or for the purpose of discharging a statutory function in the proper performance of your duties (section 34 *Ombudsman Act*).

You must not use any information that you obtain in the course of your duties to gain improper advantage for yourself or for any other person, that would cause harm or discredit to the office or any person, or would be inconsistent with your duties.

You must not, otherwise than in connection with the lawful exercise of your official functions, intentionally disclose or use any personal information about another person to which you have or had access in the exercise of your official functions (section 62, *Privacy and Personal Information Protection Act*).

You must ensure that confidential information, in any form (such as computer files), cannot be accessed by unauthorised people and that information obtained by you in the course of performing your official functions is only discussed with people, either within or outside the office, who are authorised to have access to it.

16. Drugs and alcohol

You must not perform your job, remain at work or undertake any office related activity if you are impaired by alcohol or other drugs, including those prescribed by your doctor.

The office does not condone the use of illicit drugs or excessive alcohol. The Ombudsman would expect that staff would not engage in such activities. More specifically:

- (a) there is a prohibition on the use of illicit drugs:
 - in the workplace, whether that be at the office or at a temporary location when required to travel,
 - on the way to or from work, or
 - at Ombudsman related functions.
- (b) there is a prohibition on the use of alcohol:
 - during work hours, other than moderate consumption with meals or at official office functions,
 - during any part of the day prior to attending work,
 - when driving office vehicles.

17. Use of official facilities and resources

Note. This section should be read in conjunction with the use of office cars policy, the use of communication devices policy, and any memorandum issued by the Ombudsman in relation to this issue.

You must use any resources and equipment of the office economically and without waste. When using equipment you must exercise care and follow operating requirements. When using shared equipment, you must ensure that your use does not unnecessarily impede access by others or assume unreasonable priority.

You must not use your work time or office stationery, equipment or postage for private purposes unless authorised. There are some reasonable exceptions to this rule. For example, you may use the phone for private local calls if they are short, infrequent and do not interfere with work, and send and receive private fax messages as long as they are local, infrequent and do not interfere with the work of the office.

When using office resources for an authorised private purpose you must ensure that they are secure and properly cared for, used in your own time, do not interrupt the work of the office or access by colleagues for official purposes, and supply any consumables yourself.

You must not take any office equipment, data or software out of the office without clear authorisation, either as set out in an office policy or that specifically authorises the proposed action.

When you leave the employ of the Ombudsman you must return all equipment and documents that belong to the office.

You must not incur expenditure on behalf of the office unless authorised. If incurring authorised expenditure, you must adhere to all relevant requirements of the *Public Finance and Audit Act 1983*, Treasurer's Directions, office policies and any financial delegations you have.

18. Secondary employment

You must obtain approval from your team manager or statutory officer for any outside employment that you intend to engage in.

You must not engage in any outside employment or remuneration that would conflict or compromise your duties as an officer of the Ombudsman.

You must disclose, in accordance with the conflicts of interest policy, any voluntary work that you do for any agency whose work or activities are within the jurisdiction of the Ombudsman.

19. Political and community participation

Staff must make sure that any participation in party political activities does not conflict with their primary duty as an officer of the Ombudsman to perform their duties in a politically neutral manner.

Within the context of the requirements of this code, staff are free to fully participate as volunteers in community organisations and charities, and in professional associations.

20. Reporting corrupt conduct, maladministration and serious and substantial waste of public resources

Staff are urged to report suspected corrupt conduct, maladministration and serious and substantial waste of public resources. The *Protected Disclosures Act 1994* provides certain protection against reprisals for employees who report such matters either to the principal officer (ie the Ombudsman) or to one of the other investigative bodies - the Independent Commission Against Corruption, Police Integrity Commission, the Inspector General of the Police Integrity Commission or the Auditor General.

Disclosures may also be made to the other statutory officers under the office's internal reporting policy for the purposes of the *Protected Disclosures Act*.

Team managers must ensure that all staff have information about the office's internal reporting policy. The person dealing with the protected disclosure should notify the staff member who made the disclosure, of the action taken or proposed to be taken in relation to the disclosure, and the outcome of such action.

21. Post separation employment

Staff should not use their position to obtain opportunities for future employment. They should not allow themselves or their work to be influenced by plans for, or offers of, employment outside the office.

Former staff members should not use, or take advantage of, confidential information obtained in the course of their official duties for any purposes.

All staff should be careful in their dealings with former staff members and make sure that they do not give them, or appear to give them, favourable treatment or access to confidential information.

22. Dress and appearance

Your dress and appearance need to be appropriate to the formality of your official duties. Casual clothes are not to be worn on official visits or when interviewing complainants or persons within our jurisdiction unless the wearing of such clothes is appropriate for the particular circumstances (eg if the likely audience is young people). If involved in a section 19 hearing, officers are expected to dress to a standard that would be expected of legal representatives in a court.

23. Security

Note: This section should be read in conjunction with the information security policy.

You must take all necessary and appropriate steps to maintain the security of the office, any keys or proximity cards that you have been issued and your password. You are also responsible for the security of any file in your care. This includes complaint files as well as administrative files.

To help ensure that proper security is maintained for the office:

- you must only use the office for work related purposes, or authorised purposes (for example study),
- you must only access the office outside ordinary working hours if your supervisor or a statutory officer has authorised your being in the office during that time,
- you must exercise discretion in relation to bringing guests into the office,
- you must ensure that all guests of staff are accompanied and supervised at all times by a member of staff, and

- you must ensure that all other people allowed into this office who are not members of staff are accompanied and supervised at all times by a member of staff
- you must not disclose your computer access password to any other person.

The use of IT equipment, regardless of ownership, outside the office for the purpose of official business is subject to the following:

- personal computers should not be used at home for business activities if virus controls are not in place
- when travelling, equipment, software, computer disks, files and the like should not be left unattended in public places and portable computers should be carried as hand luggage
- when travelling, portable computers should be provided with an appropriate form of access protection, eg passwords or encryption.

You must make yourself familiar with any security procedures followed in the office including emergency and fire procedures.

24. Sanctions

You should be aware of the various sanctions that may be applied for the breach of any provision in the legislation governing the work of the Ombudsman or your employment under the provisions of the *Public Sector Employment and Management Act 2002*.

Sanctions may be applied if you are involved in:

- unacceptable behaviour, either in the course of your duties or in your private life that would bring discredit on the office of the Ombudsman or the public service
- unsatisfactory performance of your duties
- breaches of this code
- breaches of your terms of employment
- breaches of any provisions of the Acts mentioned in this code.

Any sanctions applied will depend on the seriousness and nature of the breaches and may include counselling by a supervisor, team manager or statutory officer, a record of behaviour being documented and placed in your personnel file, the deferment of salary increments, not being recommended for renewal of contract, formal disciplinary or criminal action.

OMBUDSMAN APPROVAL



Bruce Barbour
OMBUDSMAN

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**NSW OMBUDSMAN
CODE OF CONDUCT**

UNDERTAKING

I have read and understand the NSW Ombudsman's Code of Conduct and agree to abide by its terms.

I acknowledge that the Code of Conduct may be amended from time to time. I agree to read any amendment of the policy provided to me from time to time. I also agree to raise with my supervisor any concerns regarding any amendment, including if I do not understand the amendment. I agree to abide by the terms of any amendment.

Name:

Signed:.....

Date: