



Board of Legal Aid NSW

Code of Conduct

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1. Introduction

The Code of Conduct (**the Code**) is intended to convey in plain words the obligations and behaviour expected of Legal Aid NSW Board members (**Board members**). The Code applies to the Board and to any sub-committees.

Nothing in the Code is intended to modify or detract from rights and obligations Board members have by operation of statute or under the general law.

2. Review of the Code of Conduct

The *NSW Government Boards and Committees Guidelines* require the Board to have and maintain a Code of Conduct outlining its values and the minimum standard of behaviour expected of its members.

The Board will review the Code at least every 2 years. The Code may be amended at any time, for example, if required following a change in government policy, or upon request, or for any other purpose deemed appropriate. Any changes to the Code are to be approved by the Board.

The Code will be published in accordance with the NSW Government's Information Management Framework and the *Government Information (Public Access) Act 2009*.

3. Personal and Professional Behaviour of Board Members

3.1 Principles of Conduct

Board members must discharge their statutory obligations with honesty, integrity and professionalism. In doing so, they should adhere to standards of professional behaviour that promote and maintain community and government confidence and trust in Legal Aid NSW.

All Board members have a duty to:

- Act honestly and exercise powers for their proper purpose
- Avoid conflicts of interest
- Act in good faith and exercise due diligence, care and skill in the discharge of duties
- Act in the best interests of Legal Aid NSW
- Comply with the Ethical Framework for the public sector set out in Part 2 of the *Government Sector Employment Act 2013 (the GSE Act)*
- Comply with this Code, and
- Understand their public duty and legal responsibilities.

Board members should support the Board to perform its functions by allowing necessary time to prepare for meetings, attending all meetings (as far as possible and not missing more than three consecutive meetings without permission from the Board), and participating in decision making processes. More details on the roles and responsibilities of Board members can be found in the Charter.

3.2 Principles of Accountable Decision Making

The following questions may be used to provide guidance to Board members for accountable and ethical decision making:

- Is the decision or conduct lawful and consistent with the objectives, Code of Conduct, policies and procedures of Legal Aid NSW?
- What is the likely outcome for fellow Board members, Legal Aid NSW staff, clients and other stakeholders?
- Can the decision or conduct be justified in terms of the public interests and would it withstand public scrutiny?
- Do these outcomes raise a conflict of interest or lead to a private gain at public expense?

3.3 Ethical Framework

Board members are required to abide by the core values of the Ethical Framework for the Government Sector, set out in s. 7 of the GSE Act. There is no hierarchy among the core values and each is of equal importance.

Further guidance may be obtained from the Public Service Commission's *The Code of Ethics and Conduct for NSW government sector employees* (Public Service Commissioner Direction No. 2 of 2022) and *Behaving Ethically: A guide for NSW government sector employees* (Public Service Commission Circular No. 13 of 2014).

Government Sector Employment Act 2013 – Part 2, section 7:

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

Integrity

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

Trust

- Appreciate difference and welcome learning from others.
- Build relationships based on mutual respect.
- Uphold the law, institutions of government and democratic principles.
- Communicate intentions clearly and invite teamwork and collaboration.
- Provide apolitical and non-partisan advice.

Service

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

Accountability

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

3.4 Equal Access and Opportunity

Board members must treat people equally, whether they are members of the public, colleagues, clients or staff of Legal Aid NSW.

Board members must not discriminate against people because of their sex, race or ethnicity, disability, age, marital status or sexual preference, because they are pregnant or breastfeeding, or because they are a carer or a transgender person. These obligations are set out in the *Anti-Discrimination Act 1977* (NSW).

3.5 Bullying

Board members must treat people fairly and with courtesy and respect. Bullying is not tolerated in NSW government sector workplaces. Bullying in the workplace is defined as ‘repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.’

3.6 Work health and safety and other obligations

Board members must take reasonable care for their own health and safety and do nothing that adversely affects the safety of others.

Board members have a duty to exercise due diligence to ensure that Legal Aid NSW complies with its duties and obligations,¹ including under the *Work Health and Safety Act 2011* (NSW).

¹ For example, the *Government Information (Public Access) Act 2009* (NSW), *Government Sector Employment Act 2013* (NSW), *Independent Commission Against Corruption Act 1988* (NSW), *Legal Aid Commission Act 1979* (NSW), *Ombudsman Act 1974* (NSW), *Privacy and Personal Information Protection Act 1998* (NSW), *Government Sector Finance Act 2018* (NSW). These statutory obligations are addressed in detail elsewhere in this Code.

4. Recognising and Managing Conflicts of Interest

4.1 Recognising a conflict of interest

A conflict of interest exists when it is likely that a Board member could be influenced by a personal or business interest. A conflict of interest can be real, potential or perceived and may arise for example from:

- Other offices or employment
- Professional and business interests and associations
- Investment interests or the investment interests of friends or relatives
- Family relationships
- Participation in party political activities
- Personal beliefs or attitudes that affect impartiality, or
- A Board member benefitting personally from a Board decision.

The fact that a Board member holds his or her position on the Board as a nominee or representative of a specified organisation or interest group, does not, of itself, constitute a basis upon which the member's interests might be said to be in conflict with his or her duties as a member of the Board.

4.2 Disclosing a conflict of interest

Board members must provide full and accurate details of interests (including positions and pecuniary interests) in partnerships, corporations or other organisations or businesses relevant to the Board. A Board member's interests include those of an associate or close relative. Board members must also disclose any interest that might reasonably be thought to be material to a Board decision.

Disclosure should be made at the beginning of a Board member's term (using the Pecuniary Interest Declaration Form) and during the term as necessary and as soon as practicable. All disclosures should include full and accurate details of the interest.

The Board is to hold and maintain a register of all disclosed interests and report such disclosures to the Attorney General.

4.3 Managing a conflict of interest

Where a conflict of interest has been identified, the Board is required to manage the conflict of interest by considering the issues and recording the reasons for their decision.

Strategies for managing a conflict of interest may include:

- Agreeing that a Board member will not take part in any discussion relating to the interest, not receive relevant Board papers and/or be absent from the meeting room when any discussion or vote is taking place
- Requiring a Board member to divest the interest creating the conflict or resign from another position, or
- Requiring a Board member to resign from the Board.

A Board member is deemed to have vacated their office if he or she mishandles a pecuniary conflict of interest by:

- Failing to disclose the pecuniary interest as soon as practicable after the relevant facts have come to his or her knowledge, or
- Taking part in the consideration, discussion or voting on any question with respect to the pecuniary interest.

The Attorney General may remove a Board member from office in circumstances where the member has mishandled a conflict of interest.

Legal Aid Commission Act 1979 - Schedule 2, clause 7:

A member of the Board shall be deemed to have vacated his or her office:

...

(g) if, at any meeting of the Board at which he or she is present and at which any matter in which he or she has a direct or indirect pecuniary interest (otherwise than as a member of, and in common with the other members of, a corporation which consists of more than 25 persons and of which he or she is not a director) is being or about to be considered by the Board:

- i. he or she fails, as soon as practicable after the relevant facts have come to his or her knowledge, to disclose to the meeting his or her interest in the matter, or
- ii. he or she takes part in the consideration or discussion of, or votes on any question with respect to, the matter ...

5. Handling of Official Information

Generally, Board members must not disclose or use official information or documents acquired in the course of their office, unless it is required by law or the Board member has authority to do so.

The type of information provided to Board members may include, but is not limited to, information subject to legal professional privilege, commercial in confidence material, personal information and confidential client information.

Generally, information is imparted to Board members on the understanding that it is to be treated confidentially, meaning that an obligation of confidence will arise.

Board members are also subject to a range of legislative requirements for the handling of official information (see below).

5.1 Legal Aid Commission Act 1979

The Board is required to keep full and accurate minutes of meetings and submit a copy of the minutes to the Attorney General within 14 days of the meeting.

The Board is also required to publish decisions that it determines are of sufficient importance to the public. The manner of publication is to be determined by the Board.

The Board and its members are required to comply with sections 25 and 26 of the *Legal Aid Commission Act 1979* (NSW) (**LAC Act**). Under s. 25, any information obtained in connection with the administration of legal aid is confidential. Under s. 26, it is an offence to disclose any information obtained in connection with the administration of legal aid unless authorised to do so. Such information can only be disclosed in the circumstances listed in s. 25(4) of the Act, or if properly authorised.

Board members must complete a Confidentiality Undertaking Form at the beginning of their term.

5.2 Government Information (Public Access) Act 2009

The *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) mandates the proactive release of open access information and provides a mechanism for members of the public to access government information more broadly unless there is an overriding public interest against disclosure.

There are legal penalties for breaching the GIPA Act, including for destroying, concealing or altering any information for the purpose of preventing its lawful disclosure.

The Board will proactively release decisions, unless there is an overriding public interest against disclosure. These obligations are set out in the NSW Government's Information Management Framework and the GIPA Act.

The Board members acknowledge that under the GIPA Act, members of the public and media can apply for access to government information. As a result, material considered and decisions made by the Board that are not proactively released can be disclosed if the decision maker under the GIPA Act considers that there is an overriding public interest in favour of disclosure.

5.3 Privacy and Personal Information Protection Act 1998

The *Privacy and Personal Information Protection Act 1998* (NSW)(**PPIP Act**) sets out principles for the collection, storage and usage of personal information about individuals. Personal information should not be used for any purpose that was not originally disclosed to the person, unless the person has consented to that use.

There are legal penalties for breaching the PPIP Act, including for intentionally disclosing personal information outside the performance of official duties.

6. Disclosure of Board Information

As a general rule, Board members should not disclose to third parties information which is given to Board members in the exercise of their duties.

However, to enable Board members to perform their duties effectively, it is appropriate that Board members who are the nominees of organisations and Board members appointed to represent specific interest groups should be able, within reason, to seek the views of those organisations or interest groups on matters that are likely to affect the interests of members of that organisation or interest group.

This may include disclosure of information to enable the organisation or interest group to inform the Board member of the views of that organisation or interest group. In disclosing any information, Board members are to have regard to the following:

- Limiting (as far as practical) disclosure to those persons in the organisation/group whose area of responsibility includes the matter under consideration
- The status of any relevant discussions between Legal Aid NSW and the organisation/group
- Limiting any disclosure to the information necessary to obtain the views of the organisation/group and not including sensitive information that is not necessary for that purpose
- Considering the impact of legislative and other requirements for the treatment of information (eg privacy, Cabinet in confidence, commercial in confidence and legally privileged material), and
- Only disclosing for a proper purpose and so as not to cause detriment to Legal Aid NSW.

However, where Legal Aid NSW has classified information provided to the Board as “confidential information”, a Board member may only disclose that information with the prior approval of either the Chairperson or the CEO.

7. Public Comment

Unless specifically authorised by the Board to do so, Board members other than the Chairperson or the CEO should not make any official public comment relating to Legal Aid NSW or its work.

Any media enquiries or requests for public comment should be directed to the Senior Communications Advisor, Legal Aid NSW.

Public comment may include, for example, comments made at public speaking events, to the media, on social media, in books or journals and in letters or submissions to public officials and members of parliament about matters of public policy.

Board members are not prevented from expressing a personal view or the views of another organisation on a policy matter which is under consideration by the Board or on which the Board has formed a contrary view. Board members may generally make public comment in an unofficial capacity, but should exercise caution if there is a real likelihood that the member's personal view or the view of that other organisation may conflict with the view of the Board. There may be some circumstances where unofficial comment may be inappropriate, for example:

- Situations when the public comment, although made in a private capacity, may appear to be an official comment on behalf of Legal Aid NSW, or
- Public comment about the policies and programs of Legal Aid NSW that would compromise the Board members' capacity to fulfil their duties professionally and/or impartially.

If in doubt, Board members should discuss the situation with the Chairperson and/or CEO.

8. Use of Public Resources and Expenditure of Public Funds

Public resources include financial, material and human resources (eg money, property, equipment or consumables).

Board members must use public resources in a way that is efficient, effective and prudent. Board members must not use public resources for personal benefit or for an unauthorised purpose.

Legal Aid NSW will provide whatever resources are necessary to ensure that the Board is able to perform its functions. All such resources should be used only in relation to those functions and in accordance with any policies for their use. A Board member should seek the prior permission of the CEO to use public resources for a private purpose.

Board members must ensure the efficient and responsible expenditure of public monies in accordance with NSW Government policies and guidelines. Board members must comply with NSW Government financial, asset management and procurement requirements.

9. Gifts and Benefits

Board members must not seek, offer or receive money or gifts in order to obtain a benefit or favour. Board members must not accept gifts or benefits that could place them under an actual or perceived financial or moral obligation to another organisation or individual.

Gifts or hospitality of nominal value may be accepted in limited circumstances, provided the member's position will not be compromised.

The Board will establish a Register of Gifts to ensure transparency regarding gifts or hospitality of nominal value.

10. Reporting Suspected Corrupt Conduct

Board members must not make improper use of the knowledge, power or resources of their position for personal gain or the advantage of others.

A report must be made to the CEO as soon as the Board or any individual Board member has a reasonable suspicion that serious wrongdoing or corrupt conduct may have occurred or may be occurring.

The *Public Interest Disclosures Act 1994* (NSW) provides certain protections to public officials who voluntarily report allegations of serious wrongdoing. This includes corrupt conduct, serious maladministration, serious and substantial waste of public money, and failure to exercise functions properly in accordance with the legislative requirements for handling government information.

'Corrupt conduct' is the dishonest or partial exercise of public official functions. It may also involve the conduct of non-public officials which adversely affects the honest and impartial exercise of a public official's functions. Corrupt conduct must be serious enough to involve a criminal offence, a disciplinary offence or be grounds for dismissal.

The CEO and Chairperson are required to report corrupt conduct or suspected corruption to the Independent Commission Against Corruption (**ICAC**). Matters must be reported to the ICAC regardless of any duty of secrecy or other restrictions on disclosure. It is important that reports to the ICAC be made without advising the person(s) to whom the report relates and without publicity. These obligations are set out in the *Independent Commission Against Corruption Act 1988* (NSW).

All Board members may also report directly to the following investigative bodies:

- Serious maladministration to the NSW Ombudsman
- Serious and substantial waste of public money to the NSW Auditor General
- Corrupt conduct to ICAC
- Concerns about the government information system to the Information and Privacy Commission NSW.

10.1 Lobbying

Board members are aware of Premier's Memorandum M2019-02 *NSW Lobbyists Code of Conduct*, which regulates contact between registered lobbyists and Government representatives and restricts the circumstances in which a lobbyist can be appointed to a NSW Government board or committee.