

INTEGRITY
TRUST
SERVICE
ACCOUNTABILITY

code of conduct



Legal Aid
NEW SOUTH WALES

MARCH 2017

Code of Conduct

Item	Description
Policy description	The purpose of this Code is to identify mandatory requirements and best practice conduct for all Legal Aid NSW employees consistent with Part 2 of the GSE Act (the Ethical Framework for the government sector).
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1. Introduction

Legal Aid New South Wales (Legal Aid NSW) is an independent statutory body established under the Legal Aid Commission Act 1979 to provide legal aid and other legal services to the people of NSW.

Legal Aid NSW helps people to understand and protect their legal rights. Legal Aid NSW achieves this through advice, advocacy, representation and education, focusing on disadvantaged people and communities.

Legal Aid NSW employees are committed to providing an expert service, being inclusive and respectful, and making a difference.

2. Policy overview

2.1 Scope and purpose of this policy

The Code of Conduct is intended to provide a guide for the ethical behaviour, standards, decisions and actions expected of all employees within Legal Aid NSW. It outlines the ethical framework expected of all employees and is designed to identify mandatory requirements and best practice conduct for all government sector employees and heads of government sector agencies which is consistent with *Part 2 of the GSE Act (the Ethical Framework for the government sector)*.

The Code of Conduct incorporates a confidentiality undertaking. This means that by agreeing to abide by the Code of Conduct and signing the Employee Agreement at the end of this document, you are also agreeing to maintain confidentiality as an essential condition of your work at Legal Aid NSW. See Part 7.11 of this document for details about the conduct required when dealing with confidential and/or personal information.

The Code is not intended to be read as a set of rules, where each word is scrutinised for its legal meaning, rather, it is intended to convey in plain words the obligations and the behaviour expected of all employees.

2.2 Applicability and target groups

The Code of Conduct applies to all employees of Legal Aid NSW, including contractors, consultants and temporary employees and Legal Aid volunteers. Managers should ensure that all employees know about this policy and how to apply it. If anything in this policy is unclear, or you are unsure about how to apply the policy, contact the Manager Workplace Relations, People and Organisational Development.

3. Legislative environment

Refer to Appendix 1.

4. Monitoring, evaluation and review

This document is to be reviewed every 3 years. The last review was March 2017. See cover page of this policy for more information about changes to the policy since its release.

This Code of Conduct incorporates the Public Service Commissioner's Direction No.1 of 2015: *The Code of Ethics and Conduct for NSW government sector employees*. The Public Service Commissioner may amend the Code of Ethics from time to time. Such amendments will be reflected in the Legal Aid NSW Code of Conduct at the time they are made.

5. Further related information

This document should be read in conjunction with the Public Service Commission's 'Behaving Ethically Guide'. Other documents for information on ethical behaviour and professional standards include the Respect Guidelines, Gifts and Benefits Policy, Public Interest Disclosure Internal Reporting Policy and Workplace Complaint Guidelines. These documents are available on the Legal Aid NSW intranet: My Legal Aid/My Workplace/Conduct and Performance.

6. The Ethical Framework for the Government Sector

6.1 Introduction

Part 2 of the GSE Act establishes the *Ethical Framework for the government sector*. The objective, core values and principles of the Ethical Framework are to be demonstrated in the conduct of all government sector employees and heads of government sector agencies.

6.2 Objective

- I. Recognise the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day.
- II. Establish an ethical framework for a merit-based, apolitical and professional government sector that implements the decisions of the government of the day.

6.3 Core values

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

<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>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>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>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.

The Public Service Commission has the function of promoting and maintaining the government sector core values.

There is no hierarchy among the core values and each is of equal importance.

Nothing in the Ethical Framework gives rise to, or can be taken into account, in any civil cause of action.

7. Mandatory Conduct

This Part of the Code sets out the mandatory provisions of the Code that apply to all government sector employees and heads of government sector agencies.

All government sector employees have responsibilities to:

- Demonstrate high levels of personal conduct consistent with the Ethical Framework
- Seek assistance when unsure about how to implement the Ethical Framework
- Promote the implementation of the Ethical Framework to their colleagues
- Report possible breaches of the Ethical Framework to relevant officers

All managers and executives have the responsibilities of government sector employees (above), and in addition have responsibilities to:

- Lead and promote implementation of the Ethical Framework in their workplace
- Ensure their workplace culture, practices and systems (including recruitment and promotion)

operate consistently with the Ethical Framework

- Recognise and promote employee and team conduct that exemplifies the Ethical Framework
- Act promptly and with due process to prevent and address any breaches of the Ethical Framework
- In the case of a senior executive (including an acting senior executive), declare in writing private interests that have the potential to influence, or could be perceived to influence, decisions made or advice given by the senior executive
- Ensure that any real or perceived conflicts of interests are avoided or effectively managed.

Department Secretaries and heads of agencies have the responsibilities of executives (above), and in addition have responsibilities to:

- Lead and promote implementation of the Ethical Framework in their agency
- Ensure the general conduct and management of the functions and activities of their Department or agency are in accordance with the core values of the Ethical Framework.
- Oversee the implementation of the Ethical Framework and make improvements where necessary.

7.1 Applying the ethical framework

The Ethical Framework is to be applied at all times in working relations with colleagues, clients and customers, stakeholders and the government of the day.

7.2 Acting in the public interest

You should treat all people with whom you have contact in the course of your work:

- Equally without prejudice or favour
- With honesty, consistency and impartiality.

You should also, in the course of your work:

- Place the public interest over your personal interest
- Uphold the law, institutions of government and democratic principles
- Provide apolitical and non-partisan advice
- Provide transparency to enable public scrutiny
- Be fiscally responsible and focus on efficient, effective and prudent use of resources.

Acting in the public interest requires leadership, courage and innovation to develop practical recommendations and actions that are consistent with the core values and will help the government of the day achieve its objectives. Acting in ways that are expedient or convenient, but which do not promote the integrity, trust, service and accountability of the public sector, are not in the public interest.

7.3 Managing conflicts of interest

Sometimes you may find that your private interests make it difficult for you to perform your duties impartially in the public interest.

This may happen when there is a direct conflict between your current duties and responsibilities and your private interests (an 'actual' conflict of interests); when a person could reasonably perceive that your private interests are likely to improperly influence the performance of your official duties, whether or not this is in fact the case (a 'reasonably perceived' conflict of interests);

or when you have a private interest that could conflict with your official duties in the future (a 'potential' conflict of interests).

Actions you should take include:

- Always disclose actual, potential or reasonably perceived conflicts of interests to your manager as soon as you become aware of the conflict.
- Where a conflict of interests occurs it should always be resolved in favour of the public interest, rather than your own.

To resolve any conflicts of interests that occur, or could occur, a range of options is available depending on the significance of the conflict. These options include, but are not limited to:

- Informing likely affected persons that a disclosure has been made, giving details and the agency's view that there is no actual conflict or the potential for conflict is minimal
- Appointing further persons to a panel/committee/team to minimise the actual or perceived influence or involvement of the person with the actual or reasonably perceived conflict
- Where the persons likely to be concerned about a potential, actual or reasonably perceived conflict are identifiable, seeking their views as to whether they object to the person having any, or any further, involvement in the matter
- Restricting the access of the person to relevant information that is sensitive, confidential or secret
- Directing the person to cease supporting a third party whose actions may conflict with the agency's interests (e.g. a person or organisation taking legal proceedings against the agency)
- Removing the person from duties or from responsibility to make decisions in relation to which the 'conflict' arises and reallocating those duties to another employee (who is not supervised by the person with the 'conflict')
- Persons with a 'conflict' who are members of boards or committees absenting themselves from or not taking part in any debate or voting on the issue.

For further detail on how to manage actual, potential or reasonably perceived conflicts of interests, staff should speak with the Workplace Standards officer within People and Organisational Development.

7.4 Treatment of customers, clients and stakeholders

All government sector employees are to treat their colleagues, customers, clients and stakeholders in their agency and in other agencies, and the government of the day by:

- Considering people equally without prejudice or favour
- Acting professionally with honesty, consistency and impartiality
- Taking responsibility for situations, showing leadership and courage
- Placing the public interest over personal interest
- Appreciating difference and welcoming learning from others
- Building relationships based on mutual respect
- Upholding the law, institutions of government and democratic principles
- Communicating intentions clearly and inviting teamwork and collaboration
- Providing apolitical and non-partisan advice
- Providing services fairly with a focus on customer needs
- Being flexible, innovative and reliable in service delivery
- Engaging with the not-for-profit and business sectors to develop and implement service solutions
- Focusing on quality while maximising service delivery
- Recruiting and promoting employees on merit
- Taking responsibility for decisions and actions
- Providing transparency to enable public scrutiny
- Observing standards for safety
- Being fiscally responsible and focus on efficient, effective and prudent use of resources.

7.5 Interacting with lobbyists

All government sector employees and heads of government sector agencies must comply with Premier's Memorandum M2014-13- NSW Lobbyists Code of Conduct published on the Department of Premier and Cabinet's website, as amended from time to time.

7.6 Appropriate use of public resources

You must use public resources in an efficient, effective and prudent way. Never use public resources – money, property, equipment or consumables – for your personal benefit, or for an unauthorised purpose.

If you are responsible for receiving, spending or accounting for money, ensure you know, understand and comply with the requirements of the *Public Finance and Audit Act 1983*, the *Public Works and Procurement Act 1912* and the *Government Advertising Act 2011*.

Official facilities and equipment should only be used for private purposes when official permission has been given. This may include limited private local telephone calls, private use of facsimile, email and internet facilities that does not disrupt official work. Use of mail services paid for by Legal Aid NSW – such as Australia Post – for private matters not related to employment is not permitted.

Employees should refer to the 'Policy on Use of Internet and Email' for detailed guidance on 'reasonable personal use' of these facilities.

Union delegates and officials are to be given access to official facilities and equipment in accordance with relevant industrial instruments, sector-wide guidelines and organisation-level agreements.

7.7 Declaring private interests (Senior Executives)

A senior executive (including an acting senior executive) must make a written declaration of private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence, decisions made or advice given by the senior executive.

Where a senior executive has no such private interests to declare, s/he must declare a "nil return".

After a senior executive makes an initial declaration, a fresh declaration must be made:

- as soon as practicable, following any relevant change in the senior executive's private interests
- as soon as practicable, following the senior executive's assignment to a new role or responsibility
- at least annually.

A Legal Aid NSW senior executive must provide their declaration to the CEO. The CEO must provide their declaration to the Secretary of the Department of Premier and Cabinet.

A person to whom a declaration is to be provided is responsible for ensuring:

- Senior executives complete the declaration form attached to this Code.
- Handling and storage of declarations complies with the requirements of the *Privacy and Personal Information Protection Act 1998*.

7.8 Alcohol, tobacco and other drugs

While at work, you must not be under the influence of, or in possession of, a drug or substance that is illegal to possess or distribute. Similarly you must not work whilst under the influence of alcohol.

In the context of this Code, 'under the influence' is defined as an obvious state of disturbance to one's physical and/or mental faculties that impairs their performance, or that may pose a risk to themselves or other employees or members of the public.

You must not smoke or permit smoking in any Legal Aid NSW building, or enclosed area. NOTE: *Section 6A of the Smoke-free Environment Act 2000* bans smoking within 4 metres of a pedestrian access point to a public building.

7.9 Professional Codes of Ethics

All employees will comply with the codes of ethics and standards of conduct applicable to any professional group to which they may belong.

All solicitors employed by Legal Aid NSW are obliged to abide by the professional ethics and standards of conduct which apply to all solicitors in their dealings with clients, the courts, and other members of the legal profession.

All solicitors are required to notify their manager about any complaints made about them to the Office of the Legal Services Commissioner (“OLSC”) or any process initiated by the Legal Services Commissioner about their conduct.

Where there is conflict, professional ethics and standards override the Code of Conduct. In the case of solicitors, it is recommended that employees seek advice from the In-house Counsel Unit if issues arise, or if a complaint is made against them to the OLSC. Employees may also contact the Ethics Unit of the Law Society of NSW for further information and assistance in relation to ethical issues.

7.10 Comment on the work of Legal Aid NSW

Employees, as individual members of the community, have the right to make public comment and enter into public debate on political and social issues. 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.

Employees of Legal Aid NSW may generally make public comment in an unofficial capacity, however, there are some circumstances where unofficial public 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
- public comment about the policies and programs of the government or Legal Aid NSW that would compromise the employees capacity to fulfil their duties professionally or impartially.

Employees must not make any official public comment on matters relating to Legal Aid NSW or its work unless they are authorised to do so by the Chief Executive Officer.

Comments made on matters pertaining to union business by members of unions in their capacity as a local delegate within the organisation or by union office holders employed by Legal Aid NSW are permissible under this Code.

You should also see the Legal Aid NSW Social Media Policy which sets out the guiding principles for staff engaging in communications via social media channels.

7.11 Protecting confidential and personal information

The principal function of Legal Aid NSW is to provide legal services in accordance with the *Legal Aid Commission Act 1979* (NSW) (the Act). Under ss 25 and 26 of the Act any information obtained in connection with the provision and/or administration of legal aid is confidential. Under s 26 of the Act it is an offence to disclose any information obtained in connection with the administration of legal aid.

In certain circumstances, staff may disclose information where they have been authorised to do so. The Delegation Instrument sets out the officers who are authorised to disclose information on behalf of Legal Aid NSW.

All employees who have access to any confidential or sensitive personal, commercial or political information must take special precautions to ensure that it is not disclosed or used without clear authority.

Official information must only be used for the work-related purpose intended and not for personal benefit. Unauthorised disclosures may cause harm to individuals or give an individual or an organisation an improper advantage. The integrity and credibility of Legal Aid may be damaged if it appears unable to keep its information secure.

Employees must make sure that confidential information, in any form (e.g. client files, computer files) cannot be accessed by unauthorised people and that sensitive information is only discussed with people, either within or outside the agency, who are authorised to have access to it.

Any formal request to produce information or documents (e.g. by subpoena or under the *Government Information (Public Access) Act 2009*) should be referred to the relevant Director and to the Legal Policy Unit.

7.12 Secondary employment

Employees must have the approval of the Chief Executive Officer before they engage in any form of paid employment outside their official duties.

The CEO will usually approve secondary employment that is not in conflict with the mission of Legal Aid NSW.

7.13 Respect, bullying and harassment

All employees, when acting in the course of employment, must treat everyone with respect and without prejudice or favour.

Bullying, harassment, racism, discrimination and violence are unacceptable and will not be tolerated. The Legal Aid NSW Respect Guidelines provide detailed guidance on acceptable standards of respectful behaviour.

7.14 Lawful and reasonable directions

All employees must comply with any lawful and reasonable direction given by a Legal Aid NSW employee who has the authority to give the direction.

8. Behaviour Contrary to the Code

8.1 The effect of behaviour that is contrary to the Code

Behaviour contrary to this Code and to the *Ethical framework for the government sector* can bring individual employees into disrepute, undermine productive working relationships in the workplace, hinder customer service delivery, and damage public trust in Legal Aid NSW or the broader government sector.

If you are unsure of what is appropriate conduct under any particular circumstances, discuss the matter with your manager or, if that is not appropriate, with your next level of management or with your People and Organisational Development (POD) Business Partner.

8.2 If you see behaviour that is contrary to this Code

If you see someone act in ways that are contrary to this Code, you should in the first instance discuss that person's behaviour with your immediate manager or, if that is not appropriate, with your next level of management or with your POD Business Partner.

If you believe certain conduct is not just unethical, but may also be corrupt, a serious and substantial waste of government resources, maladministration or a breach of government information and privacy rights, then you should report your concerns to an authorised Legal Aid NSW Public Interest Disclosures Officer. Such reports can be made to the CEO, Deputy CEO (the Disclosures Manager), the Senior Consultant Workplace Standards within POD or to any of the POD Business Partners. Alternatively, employees may report such matters to the relevant investigating authority (such as the Ombudsman, Independent Commission Against Corruption or the Auditor-General).

Under the *Public Interest Disclosures Act 1994*, it is both a criminal offence and misconduct to take reprisals against an employee who makes a public interest disclosure. For information on Public Interest Disclosures refer to the Legal Aid NSW Public Interest Disclosures Internal Reporting Policy.

8.3 Actions when allegations are made

If it is alleged that you have acted in a way that is contrary to this Code, you will have an opportunity to provide your version of events. How this will happen will be proportionate to the seriousness of the matter. In those cases where the allegation is minor or of a low level, your manager will usually discuss this matter directly with you. If the allegations are more serious, a formal process may be required. If you are investigating an allegation of a behaviour that is contrary to this Code, you must ensure your decision-making is fair and reasonable by acting consistently with four principles:

- Procedural fairness for both the complainant and employee
- Investigations should be handled expeditiously. This will minimise the potential for breaches of confidentiality and lack of procedural fairness
- Confidentiality for all parties, where practicable and appropriate, until such time as the investigation process is completed
- Meticulous recordkeeping, including recording of reasons for all significant decisions.

For employees of Public Service agencies, the GSE Act and GSE Rules set out how allegations of misconduct are to be dealt with. Part 8 of the GSE Rules sets out the procedural requirements for dealing with allegations of misconduct, which include requirements that you be advised of the detail of the allegation; the process to be undertaken to investigate and resolve the matter; and that you be provided an opportunity to respond to the allegations.

For employees in the Public Service, the GSE Act sets out the actions that a Public Service agency head may take where there is a finding of misconduct against an employee. These actions are as follows:

- Terminate the employment of the employee (without giving the employee an opportunity to resign)
- Terminate the employment of the employee (after giving the employee an opportunity to resign)
- Impose a fine on the employee (which may be deducted from the remuneration payable to the employee)
- Reduce the remuneration payable to the employee
- Reduce the classification or grade of the employee
- Assign the employee to a different role
- Caution or reprimand the employee.

Appendix 1: Legislation

A principle of the Ethical Framework for the government sector is to uphold the law. The law includes, but is not limited to:

- *Government Sector Employment Act 2013* sections 25 and 30 (regarding the general conduct and management of organisations in accordance with the core values) and section 63 (regarding workforce diversity and the integration of workforce diversity into agency workforce planning)
- *Public Finance and Audit Act 1983* sections 11 and 45C (regarding the system of internal control over the financial and related operations of agencies)
- *Anti-Discrimination Act 1977* (regarding equal employment opportunity and equal access to services)
- *Government Information (Public Access) Act 2009* (regarding public access arrangements to agency information)
- *Public Interest Disclosures Act 1994* (regarding receiving, assessing and dealing with public interest disclosures)
- *Independent Commission Against Corruption Act 1988* (regarding reporting of any matter suspected on reasonable grounds to involve corrupt conduct and to comply with any requirement or direction of the ICAC in relation to a referral of matters by the ICAC)
- *Privacy and Personal Information Protection Act 1998* (regarding the protection of personal information, and the protection of the privacy of individuals generally)
- *Public Works and Procurement Act 1912* (regarding the procurement of goods and services by government agencies)
- *Health Records and Information Privacy Act 2002* (regarding the fair and responsible handling of health information)
- *Work Health and Safety Act 2011* (regarding the health and safety of employees and the maintenance of healthy and safe workplaces)
- *Government Advertising Act 2011* (regarding requirements to issue advertising compliance certificates)
- *Ombudsman Act 1974* (regarding obligations to cooperate with investigations by the Ombudsman and obligations relating to reportable conduct concerning child protection matters)
- *State Records Act 1998* (regarding the creation, management and protection of agency records and public access to those records)
- *Children and Young Persons (Care and Protection) Act 1998* (regarding obligations relating to the care and protection of, and provision of services to, children and young persons, including obligations relating to exchange of information and co-ordination of services between agencies)
- *Child Protection (Working with Children) Act 2012* (regarding obligations to obtain checks and clearances for employees engaged in child-related work)
- *Legal Aid Commission Act 1979*
- *Legal Profession Uniform Law*
- *Anti-Discrimination Act 1987*
- *Commonwealth Discrimination Action 1992*
- *Crimes Act 1900*

Employee Declaration

I, the undersigned, have read and understand this Code of Conduct and agree to abide by its provisions including the need to declare and manage conflicts of interest. I also acknowledge and understand that maintaining confidentiality is an essential condition of my work at Legal Aid NSW.

Name	
Role Title	
Department / Agency	
Division / Branch	
Location	
Employee No	
Signature	
Date	

/ Copy to POD

Declaration of Private Interests – For Senior Executives only

Person Making Declaration

Name	
Role Title	
Department / Agency	
Division / Branch	
Location	
Employee No:	

Declaration

I declare that:

1. *I have read and understand the requirement under the Code of Ethics and Conduct for the NSW government sector employees (the Code) to declare any private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence, decisions made or advice given by me.*
2. *I will take prompt action to manage any actual and/or reasonably perceived conflicts of interests, as required by the Code.*

Option A: Annex A lists my private interests for the purpose of this declaration. In preparing this list, I have had regard to:

- my private financial, business, personal or other interests or relationships
- the functions and responsibilities of my Department/agency
- my role and responsibilities in the Department/agency OR (tick only 1 option, either A or B)

Option B: I have no such private interests to declare.

Name	
Signature	
Date	

Annex A:

DECLARATION OF PRIVATE INTERESTS LIST OF INTERESTS

Instructions

Please list any private financial, business, personal or other interests or relationships which have the potential to influence, or could be perceived to influence, decisions made or advice given by you. The types of interests and relationships that may need to be disclosed include real estate investments or holdings; shareholdings; trusts or nominee companies; company directorships or partnerships; other significant sources of income; significant liabilities; gifts; and private business, employment, voluntary, social, family or personal relationships.

List interests here:
