

# Code of Conduct



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# Contents

<b>About the Code</b>	<b>3</b>
Overview	3
ODPP Signature Behaviours	3
Public sector obligations	4
Other laws and policies	4
Who is covered	4
<b>Applying the Code</b>	<b>5</b>
Personal conduct	5
Professional conduct	5
Managing conflicts of interest	6
Ensuring confidentiality	8
Using public resources/facilities efficiently and appropriately	8
Presentation/dress requirements	9
Alcohol, tobacco and other drugs	10
Public comment	10
Social media use	11
Gifts, benefits and hospitality	11
References	12
Bribery	12
Secondary and future employment	12
Bankruptcy	13
Speaking up: Reporting unethical, corrupt or criminal conduct	13
Accountability/consequences of non-compliance	15
Further Information	16
<b>Appendix A: significant legislation and rules</b>	<b>17</b>

# About the Code

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## Overview

The Office of the Director of Public Prosecution's (ODPP) *Code of Conduct* (the Code) establishes the ethical principles and standards of conduct that are to inform and guide:

- all decisions made and action taken on the ODPP's behalf and
- all behaviour, professional and personal, while performing work for the ODPP.

These principles and standards are integral to the ODPP fulfilling its role in the NSW criminal justice system as a fair, just and independent prosecution service, and to maintaining public confidence in its integrity.

The Code provides examples of the conduct the ODPP requires in particular circumstances but these are not intended to be exhaustive.

## ODPP Signature Behaviours

All work and conduct at the ODPP should be characterised by its [Signature Behaviours](#). These are a key aspect of the ODPP Strategic Plan and a component of staff performance development.

The ODPP Signature Behaviours are:

- **Act with integrity**, by behaving ethically and professionally and adhering to public service values (see Public sector obligations)
- **Communicate** clearly, both verbally and in writing, and actively listen to others and respond in a respectful way
- **Be courageous**, by being open and honest, prepared to express your professional views and willing to accept and commit to change
- **Be accountable**, by taking responsibility for your actions, adhering to legislation and policy and using resources efficiently
- **Be adaptive**, by planning and achieving priority outcomes, responding in a flexible manner and participating in initiatives that encourage positive change across the ODPP
- **Promote a supportive environment**, by showing respect for diverse backgrounds, experiences and perspectives, accepting differing opinions and views and working collaboratively
- **Never stop learning**, by adopting and maintaining a commitment to ongoing learning and development.

## Public sector obligations

All staff employed under the Government Sector Employment Act 2013 (GSE Act) are also legally obliged to comply with the [Ethical framework for the government sector](#), which Part 2 of the Act establishes. [The Code of Ethics and Conduct for NSW government sector employees](#) identifies the mandatory requirements and best practice conduct consistent with the Ethical Framework.

The ODPP extends the obligations imposed by both the public sector Framework and Code to all individuals who perform work for it.

The Framework's core values are **integrity, trust, service** and **accountability**. The ODPP's Signature Behaviours align with these values and the two should be read together as a unified set of ethics and values.

## Other laws and policies

All individuals performing work for the ODPP are also required to comply with relevant federal and state legislation, whole-of-government policies and directives, industrial instruments, and the ODPP's policies, procedures, guidelines and work instructions.

(The ODPP *Legislative Compliance Register* lists the major legislation relevant to the ODPP and the measures that ensure compliance. [Appendix A](#) lists legislation relevant to conduct.)

## Who is covered

This Code applies to anyone performing work for the ODPP (referred to collectively as 'you'). This includes:

- the Director of Public Prosecutions
- the Deputy Directors of Public Prosecutions
- the Senior Crown Prosecutor
- the Solicitor for Public Prosecutions
- Deputy Senior Crown Prosecutors and Crown Prosecutors
- Public Sector Senior Executives
- privately briefed barristers
- solicitors, witness assistance officers, administrative and other staff employed under the GSE Act (including anyone on secondment)
- contractors
- volunteers and participants on work experience and work training schemes.

# Applying the Code

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## Personal conduct

Respect, courtesy and honesty should underscore how everyone performing work for the ODPP treats colleagues, external stakeholders and members of the public and should expect to be treated themselves.

This means:

- supporting and encouraging an environment that values all individuals and respects and upholds their rights
- not bullying, harassing or demeaning any individual, or discriminating against anyone on the grounds of gender, race, social status, age, religion, sexual preference or physical or intellectual capacity
- reporting harassment or discrimination you become aware of, or are subjected to, to a manager or supervisor
- not using offensive language at work or behaving in an offensive manner
- ensuring any physical contact you initiate is appropriate for a law firm
- respecting individuals' privacy, confidence and values, unless obliged by this Code or another lawful directive or requirement to disclose or report.

## Professional conduct

Your professional behaviour should uphold the reputation of the ODPP and promote confidence in the integrity of its operations and processes. As outlined in the Signature Behaviours, this means:

- acting with honesty, consistency and impartiality
- putting the public interest above your personal interest (see Managing conflicts of interest)
- taking responsibility for your actions
- considering people equally without prejudice or favour
- being prompt, courteous and professional in all communication with colleagues and stakeholders, in person or by phone, letter, email or other means
- raising concerns when you have them
- reporting misconduct
- respecting public money and resources.

You are expected to comply with any lawful and reasonable direction from someone with authority to give the direction; and to act within the limits of your delegation.

At all times, you are to adhere to relevant ODPP Guidelines and Delegations and to professional standards, including:

- the Director's Prosecution Policy and Guidelines
- the Director's [Instrument of Delegations](#)
- the Director's [Administrative Delegations](#)
- the professional conduct and practice rules and requirements of the Bar Association and Law Society
- other relevant professional standards, including the Accounting Professional and Ethical Standards.

You should also keep up-to-date with changes in your area of expertise; participate in training and development; and look for ways to improve performance and achieve high standards in a cost effective manner.

### **Managing conflicts of interest**

[The Code of Ethics and Conduct for NSW government sector employees](#) stipulates how employees of public sector agencies are to manage conflicts of interest. As stated, the ODPP requires everyone performing work for it to comply with that Code. Two of its key requirements are that you:

- disclose actual, potential or reasonably perceived conflicts of interest to your manager (or supervisor) as soon as you become aware of them. This allows for an informed decision to be made as to what (if any) steps need to be taken to protect both you and the organisation. All disclosures are to be in writing
- resolve any conflicts of interest in the public interest.

Typically, you alone will be aware if you have, could have, or could be seen to have a conflict of interest. If you have any doubts, discuss them with your manager or supervisor.

In assessing whether a conflict of interest could be perceived, you should do so from the perspective of colleagues, stakeholders and members of the public. A perceived conflict of interest will make a decision or action taken appear compromised, even if there was no actual or potential conflict.

## Conflicts to be alert to

If you have previously worked as a defence lawyer, you are to be vigilant in immediately declaring any actual or perceived conflict of interest in any prosecution being conducted by the ODPP arising from that employment.

Other conflicts that could arise at the ODPP include when:

- you have a personal (which includes familial) relationship with an individual who is involved in a matter you are conducting or working on (for example, with the victim, a witness, a police officer, the defendant or defendant's legal representative, or another individual working for the ODPP). This has the potential to compromise your ability to make objective professional judgments, such as the extent of prosecution disclosure to the defence
- you, or a friend or relative, have
  - an interest in a matter the ODPP is prosecuting
  - a financial interest in the supply of goods or services to the ODPP
- you have a personal relationship with an individual you report to or who reviews your work, or who reports to you or whose work you review
- your secondary employment obligations or arrangements change and are now in conflict with your obligations to the ODPP (see 'Secondary employment')
- your political party, social or community membership or activities conflict with your public duty (for example, you are prosecuting someone known to be a member of or participant in a political party or social or community organisation you are involved in, or a rival party or organisation)
- you are on a recruitment panel and a close friend or relative is an applicant
- your personal beliefs conflict with your prosecutorial and ODPP obligations.

Conflicts may also arise in the contexts covered by professional practice and conduct rules of the Law Society, Bar Association and other relevant professional bodies.

## Recording conflicts of interest

All conflicts of interest and action taken are to be recorded in the *Conflict Register* held in either the Director's Chambers or the Solicitor's Executive, for annual reporting to the Audit and Risk Committee.

Managers in the Solicitor's Office who receive written disclosures will refer them to the relevant Deputy Solicitor, to make a recommendation to the Solicitor for Public Prosecutions. Disclosures in Crown Chambers are to be made to the Senior Crown Prosecutor and in Corporate Services to the relevant Executive – and, in both areas, recorded in the Register held in the Director's Chambers.

## Ensuring confidentiality

As the prosecutor in criminal matters, most of the information the ODPP creates or receives is confidential, and its existing culture, practices and systems reflect this. Maintaining these standards requires respecting and protecting the privacy, integrity and security of ODPP and stakeholder information in all its forms, not misusing information accessed through work, and complying with ODPP information handling requirements.

Examples include:

- only sharing or releasing information/communication (electronic or otherwise) outside of the ODPP with the author or owner's consent, unless doing so is necessary to perform official duties or official union duties, or otherwise authorised by law
- securely handling all official information, especially when outside of the office. Information should not be left unattended in public locations, including cars or unsecured courtrooms, unless there is no reasonable alternative
- when viewing official information outside of the office, ensuring it cannot also be seen by others
- using discretion at all times when discussing work matters with colleagues in public places (for example, in elevators or cafes)
- using official information gained in the course of your work for work purposes only, or for official union duties
- accessing or seeking to access only the official information you need to fulfil your duties
- complying with the requirements of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*
- complying with the [ODPP Information Security Policy](#)
- ensuring you do not give former employees access to any information, particularly privileged or confidential information
- not downloading, emailing, copying or taking in any other way, any ODPP material to use in future employment, even if you authored it
- when you are no longer performing work for the ODPP, not using, divulging or taking advantage of confidential information obtained in the course of your duties unless and until it becomes publicly available.

## Using public resources/facilities efficiently and appropriately

The ODPP is a publicly funded agency and its resources, including your work time, are to be used and managed efficiently and for proper purposes. This means:



- following correct procedures as published by Treasury and in ODPP instructions
- observing the highest standards of probity with money, property and facilities, including for work related travel
- where required to record your hours, doing so honestly, diligently and promptly
- using official facilities and equipment for private purposes only with permission, and with proper care
- not misusing office facilities or public resources, or permitting others to do so
- complying with the copyright and licensing conditions of documents, services and equipment provided to the ODPP
- making only limited and appropriate private use of the ODPP's email and internet services, in compliance with the [ODPP Information Security Policy](#)
- adhering to the [ODPP Travel Policy](#).

### **Presentation/dress requirements**

At all times, you are to present in a way that is appropriate for your role within a law firm attended by members of the public, the police, and private practitioners.

This excludes wearing:

- casual clothing, such as singlet tops, t-shirts, or shorts; and casual footwear such as hiking boots, thongs or casual sandals
- revealing clothing, including clothing that is very tight, short, strapless/with spaghetti straps, or exposes your back or midriff
- clothing that displays logos/words/images that are inappropriate, likely to offend or that promote causes.

You should be respectful of those you engage with by meeting common standards of neatness, cleanliness and personal hygiene. If you use perfume or cologne, do so with restraint.

Jeans and runners are acceptable on some occasions only – for example, when observing 'casual Fridays' – or when your manager otherwise agrees to them being worn. Professionalism is to remain at the forefront; casual attire should still be smart.

While the ODPP encourages participation in sport and physical activities, exercise attire should not be worn while performing work or for unnecessary periods in the office.

Your clothing and footwear must also meet workplace WHS standards and not put you at risk of injury or pose a liability risk for the ODPP.

If you engage face-to-face with anyone external to the organisation – whether within the office or outside of it – additional requirements apply.

Your presentation should both positively represent the ODPP and be appropriate for your role and the relevant circumstances.

For solicitors, this requires men to wear a suit and tie and women clothing of an equivalent standard, which includes a jacket. Body piercings (other than earrings) should be removed and tattoos covered where possible. Your presentation should convey an understanding that the law is a conservative profession and that criminal proceedings are sombre, with serious consequences for individuals. Keep in mind the Prosecution Guideline on the role and duties of the prosecutor. If you do not always dress to this standard in the office, ensure you have appropriate clothing and shoes available in case you have to unexpectedly appear in court or attend a meeting.

### **Alcohol, tobacco and other drugs**

While at work, you must not be under the influence of alcohol or drugs, or in possession of a drug or substance that is illegal to possess or distribute. 'Under the influence' for the purpose of this Code means an obvious state of disturbance to your physical and/or mental faculties that impairs your performance, or may pose a risk to yourself, your colleagues or members of the public.

If you have any addiction to drugs or alcohol you are encouraged to speak to your manager or supervisor, and to seek assistance. You are also encouraged to speak confidentially with the Employee Assistance Program provider or the Workplace Safety & Wellbeing Coordinator. No smoking is permitted in any ODPP building or enclosed area. (Note: Section 6A of the *Smoke-free Environment Act 2000* bans smoking within four metres of a pedestrian access point to a public building).

### **Public comment**

#### **In a private capacity**

The ODPP respects your right to contribute to public discussions on political, community and social issues in your private capacity. However, you are to make clear when doing so that you are expressing your personal views, not those of the ODPP, and you should refrain from commenting if your audience could reasonably assume you are representing the ODPP.

You should not comment publicly about an issue if doing so means you could be perceived as being unable to perform your ODPP role in an independent and unbiased way.

#### **On behalf of the ODPP**

Unless authorised, individuals are not to make any official comment on matters relating to the ODPP. Any contact with the media must comply with the Director's Prosecution Guideline on Media Contact.

## Social media use

### Work related use

The ODPP does not use social media in relation to its functions as a prosecutor; and uses it in a limited way only when performing its administrative functions, for example, when advertising job vacancies.

Permission from your manager or supervisor is required to post any content on social media that could be taken as having been posted by or on behalf of the ODPP.

### Private use

As noted, the ODPP respects your right to participate in public and political debate in a private capacity. This extends to being active on social media. However, when using social media (which, for the purpose of this Code, includes when texting and emailing) you have a responsibility not to harm in any way:

- the integrity and reputation of the ODPP
- the discharge of any ODPP function
- your professional standing
- the professional or personal lives of your colleagues
- the reputation or the operations of the ODPP's stakeholders, including judicial officers, other individuals, courts and other agencies.

See the ODPP's [Social Media Policy](#) for your full responsibilities when using social media, and guidance on and examples of unacceptable social media use.

## Gifts, benefits and hospitality

You should always refuse offers of gifts, benefits or hospitality made in connection with work performed for the ODPP if acceptance could reasonably be seen as intended or likely to cause you to perform an official duty in a particular way, or to conflict with your public duty.

### Gifts or benefits

All offers of **gifts** or **benefits** are to be reported to your manager. The details of the offer and your response to it will be recorded in the online *Gifts, Benefits and Hospitality Register*.

Gifts or benefits of an estimated value of \$50 or more require approval to keep.

## Hospitality

You do not have to record offers of hospitality you do not accept.

You also do not have to record, or seek approval to accept, offers of:

- modest hospitality that is a common courtesy, such as light refreshments offered during a meeting
- other forms of hospitality offered by public sector agencies that are not extravagant or controversial, such as a welcome function for a new appointee.

All other hospitality offers can only be accepted with the approval of your manager. The offer and your response to it will be recorded in the online Register.

## Offering gifts, benefits or hospitality

It is inconsistent with the ODPP's role as an independent prosecutor and/or a publicly funded agency to offer gifts, benefits or hospitality in all but a limited number of circumstances. These include when a gift offer/exchange is customary, or when it is appropriate to offer light refreshments.

For your full responsibilities when offered or offering gifts, benefits or hospitality, see the [ODPP's Gifts, Benefits and Hospitality Policy](#).

## References

If you provide a reference while engaged by the ODPP, you must do so in your personal capacity, not as a representative of the organisation. This includes general references for someone you have had professional contact with and court character references.

The ODPP's [Policy on the Provision of References](#) sets out your full responsibilities when considering whether to provide, and when providing, a reference.

## Bribery

It is an offence to offer or accept a bribe. If you believe that you have been offered a bribe, or that a colleague has been offered or accepted a bribe, you must follow the reporting requirements for corrupt conduct outlined in this Code (see [Speaking up: Reporting unethical, corrupt or criminal conduct](#)).

## Secondary and future employment

### Secondary employment

Staff employed under the *GSE Act* require written approval by the [delegated officer](#) to:

- perform any other work, service, or undertaking for wages or income, including while on paid or unpaid leave
- volunteer for any work/position that could potentially
  - affect your work performance, for example, as a result of the number of hours you will contribute
  - conflict with the ODPP's role as an independent prosecutor, for example, volunteering at a Community Legal Centre, or accepting membership on particular Boards or Committees.

An [Application for Secondary Employment](#) is available on the intranet.

Crown Prosecutors require the consent of the Attorney General or the Director to practise law in or outside of NSW or engage in paid employment outside the duties of their office. The Director, Deputy Directors and the Solicitor for Public Prosecutions require the consent of the Attorney General in similar circumstances.

The [ODPP Policy and Guidelines for Secondary Employment](#) set out in detail the obligations on all staff and statutory appointees when applying for or performing secondary employment. In line with the policy and guidelines, approval will not be granted for secondary employment that involves private practice as a legal practitioner.

Any paid or unpaid private work must be in your own time and must not give rise to an actual, perceived or potential conflict of interest. If a conflict of interest does arise, you are to report this immediately to your manager or supervisor, as outlined in 'Managing conflicts of interest'.

### **Future employment**

It's important not to allow your work at the ODPP to be influenced by plans you have, or offers you receive, for future work. This includes not misusing your position to obtain opportunities for future employment. If you do, there is a conflict of interest and your integrity as well as that of the ODPP is at risk.

### **Bankruptcy**

If you become bankrupt, or make a composition, arrangement or assignment for the benefit of creditors, you must promptly notify the Director, or the Solicitor for Public Prosecutions. If the Director or Solicitor requires further information, you are to provide it within a reasonable time. Where relevant, the ODPP will refer these notifications to the Law Society.

### **Speaking up: Reporting unethical, corrupt or criminal conduct**

Speaking up when you are aware of, or suspect, conduct in breach of this Code is in itself a component of acting with integrity. It can also require courage, one of the ODPP's Signature Behaviours.

If you suspect or witness conduct that is **unethical, corrupt, serious misconduct** or **criminal** (see below) you are to report it first to your manager or supervisor, or, if it is more appropriate in the circumstances, to your next level of management.

### **Unethical conduct**

Managers or supervisors should escalate any reports of serious breaches of ethical standards to, as appropriate, the Director, Senior Crown Prosecutor, Solicitor for Public Prosecutions, Director, Human Resources or line manager.

When there are grounds for doing so, the ODPP will report suspected or alleged unethical behaviour by professionals to the relevant professional association (for example, the Law Society, Bar Association or Legal Services Commissioner).

### **Corrupt conduct and serious misconduct**

The [Public Interest Disclosures Act 1994 – ODPP Internal Reporting Policy](#) describes in detail how you are to report/disclose actual or suspected conduct that is:

- corrupt (the dishonest or partial exercise of official functions by a public official)
- maladministration (action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory, or based on improper motives)
- a serious and substantial waste of government resources (the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources)

and how reports are to be escalated, if required.

The *Public Interest Disclosure Act 1994* protects public officers from reprisals for reporting/disclosing such conduct.

### **Criminal conduct**

Where there are reasonable grounds for doing so, managers or supervisors should escalate reports of actual or suspected criminal conduct at work to the Director or the Solicitor for Public Prosecutions (or a Deputy, if absent).

If the Director/Solicitor reasonably suspect that criminal conduct has or may have occurred, they are to report it to the police without first notifying the individual concerned, and to consult with police on the future conduct of the matter. At no time should an individual suspected of criminal conduct be given the opportunity to interfere with a potential police investigation – for example, by deleting files from their computer, or by being made aware that they are under suspicion.

Managerial action should only be taken if there is no risk of prejudicing any police investigation or the criminal process.

Common sense exemptions apply to reporting criminal conduct – for example, you should call the police yourself if a colleague is behaving violently at work.

If you are arrested, charged, summonsed, issued with a court attendance notice, cautioned, convicted, issued with a police or court order, or receive a fixed penalty notice in relation to any criminal conduct, you are to report this immediately to your manager or supervisor, who should notify the Director/Solicitor if appropriate. Fixed penalty notices for minor driving/traffic offences are excluded, unless they result in your licence being disqualified.

You should also inform your manager or supervisor if anyone in your immediate family or household is charged with a serious criminal offence.

The extent to which any criminal conduct will adversely affect your employment/contract at the ODPP will depend on the nature of the behaviour, whether it impacts on your suitability for your position, and whether it reflects adversely on the ODPP.

## **Accountability/consequences of non-compliance**

### **Accountability**

Accountability is one of the ODPP's Signature Behaviours, and everyone performing work for it is accountable for their actions, decisions and behaviour.

If an individual breaches the Code and their actions or behaviour were so serious, repeated or widespread that their manager or supervisor should have known of and addressed them, then the manager or supervisor will also be held accountable for those actions or behaviour.

### **Consequences of non-compliance**

Any breach of the Code by staff employed under the *GSE Act* may result in disciplinary action as available under the Act, including termination of employment.

Sanctions against statutory appointees are subject to the *Director of Public Prosecutions Act 1986*, the *Crown Prosecutors Act 1986* and the Legal Profession Uniform Law.

A suspected breach of the Code may also be reported to the Independent Commission Against Corruption (ICAC), Law Society, Bar Association, Legal Services Commissioner or other relevant professional body.

Breaches of the Code by contractors may result in the termination of their contract.

## Further Information

For further information on ethical behaviour and professional standards, see [Positive and Productive Workplaces](#), [Grievance, Workplace Concerns and Dispute Resolution Workplace Complaint Guidelines](#) and [Behaving Ethically: a guide for NSW government sector employees](#)

## Review of the Code

This Code is to be reviewed at least every three years and may require amendments from time to time due to legislative and/or whole-of-government changes. The Public Service Commissioner may also amend the *Code of Ethics and Conduct for NSW government sector employees*.

## Document ownership, control and history

Version	Endorsed by Executive Board	Approved by the Director
1.0	August 2019	August 2019
1.1	N/A	November 2022



# Appendix A: significant legislation and rules

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A principle of this Code and of the Ethical Framework for the government sector is to uphold the law relevant to the ODPP. This includes, but is not limited to the:

- *Age Discrimination Act 2004*
- *Anti-Discrimination Act 1977 (NSW)*
- *Australian Human Rights Commission Act 1986*
- *Child Protection (Working with Children) Act 2012*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Crimes Act 1900*
- *Crown Prosecutors Act 1986*
- *Director of Public Prosecutions Act 1986*
- *Disability Discrimination Act 1992*
- *Government Advertising Act 2011*
- *Government Information (Public Access) Act 2009*
- *Government Sector Employment Act 2013*
- *Government Sector Employment Rules 2013*
- *Government Sector Finance Act 2018*
- *Health Records and Information Privacy Act 2002*
- *Independent Commission Against Corruption Act 1988*
- *Legal Aid Commission Act 1979*
- *Legal Profession Uniform Law (NSW) and Regulations and Barristers and Solicitors Rules*
- *Legal Profession Uniform Law Application Act 2014 and Regulation*
- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998*
- *Public Interest Disclosures Act 1994*
- *Public Works and Procurement Act 1912*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *State Records Act 1998*
- *Victims Rights and Support Act 2013*
- *Work Health and Safety Act 2011.*



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