



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

CODE OF CONDUCT

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1. THE NEED FOR A CODE

The role of the Office of the Director of Public Prosecutions (ODPP) in the criminal justice system requires an ongoing commitment by its officers to the following goals:

Professionalism

Independence

Fairness

The maintenance of public confidence in the prosecution process

Professionalism demands competent and efficient discharge of duties, promotion of justice, fairness and ethical conduct and a commitment to professional self-development.

Independence demands that there be no restriction by inappropriate individual or sectional influences in the way the ODPP operates and makes its decisions. Public functions must be performed competently, consistently, honestly and free from improper influences.

Fairness demands that public functions be performed with manifest integrity and objectivity, without giving special consideration to any interests (including private interests) that might diverge from the public interest. If improper factors are considered (or appear to have been considered) the legitimacy of what is done is compromised, even where the particular outcome is not affected.

The maintenance of public confidence in the prosecution process requires that public officials consider not only the objective propriety of their conduct, but also the appearance of that conduct to the public. An appearance of impropriety by an individual has the potential to harm the reputation of that individual and the reputation of the ODPP.

2. THE CODE'S PRINCIPLES

Ethical behaviour requires more than a mere compliance with rules. This Code seeks to outline the ethical standards and principles that apply to officers, and to sketch the spirit rather than the letter of the requirements to be observed.

The Code is an evolving document that will be modified periodically according to our experience. In order to assist in understanding the standards of conduct expected, the Code includes illustrations of circumstances that might be confronted. The examples should not be regarded as exhaustive or prescriptive.

The following principles will guide the work of ODPP officers.

3. ACCOUNTABILITY

In general terms officers are accountable to the Director and, through the Attorney General, to the Parliament and people of New South Wales. When acting in the course of their employment

officers must comply with all applicable legislative, professional, administrative and industrial requirements. The sources of the main requirements, duties and obligations are listed in Appendix A. Officers should be aware of them insofar as they apply to their professional status and to their particular role and duties within the ODPP.

4. INTEGRITY AND PUBLIC INTEREST

Officers will promote confidence in the integrity of the ODPP's operations and processes. They will act officially in the public interest and not in their private interests. A sense of loyalty to colleagues, stakeholders, family, friends or acquaintances is admirable; however, that sense of loyalty cannot diverge from, or conflict with, public duty. Officers will behave in a way that does not conflict with their duties as public officials.

5. EFFECTIVENESS AND EFFICIENCY

Officers will keep up to date with advances and changes in their areas of expertise and look for ways to improve performance and achieve high standards in a cost effective manner.

6. DECISION MAKING

Decisions must be impartial, reasonable, fair and consistently appropriate to the circumstances, based on a consideration of all the relevant facts, law and policy and supported by documentation that clearly reflects this.

7. RESPONSIVE SERVICE

Officers will deliver services fairly, impartially and courteously to the public and stakeholders. In delivering services they will be sensitive to the diversity in the community. They will seek to provide relevant information to stakeholders promptly and in a way that is clear, complete and accurate.

8. RESPECT FOR PEOPLE

Officers will treat members of the public, stakeholders and colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights, special needs, obligations and legitimate expectations.

9. TO WHOM DOES THE CODE APPLY?

The Code applies to:

- The Director
- Deputy Directors
- Crown Prosecutors
- The Solicitor for Public Prosecutions.

- All staff within the ODPP whether or not they are permanent or temporary employees.
- Persons on secondment, work experience, volunteer employment and work training schemes in the ODPP.

In their work, officers are individually accountable for their acts and omissions. In addition, managers of staff employed under the Government Sector Employment Act 2013 are accountable for the acts and omissions of their subordinate staff. This does not mean that managers will be held responsible for every minor fault of subordinate staff. It means that managers will be called to account for unsatisfactory acts or omissions of their subordinate staff if these are so serious, repeated or widespread that managers should know of them and address them, if they are exercising the level of leadership, management and supervision appropriate to their managerial position.

Throughout this Code, the terms “officer” and “officers” include Crown Prosecutors, Deputy Senior Crown Prosecutors, the Senior Crown Prosecutor, the Solicitor for Public Prosecutions, all members of the Solicitor’s Executive, the Deputy Directors of Public Prosecutions and the Director of Public Prosecutions.

10. HOW ARE ETHICAL ISSUES RESOLVED?

If there is an ethical issue or problem, it should be addressed. Our professional colleagues should be encouraged likewise. For staff employed under the Government Sector Employment Act, the first point of contact should be the appropriate line manager. For Crown Prosecutors, the first point of contact should be the Senior Crown Prosecutor. If the matter cannot be resolved or if it is inappropriate to raise it with such a person, then a more senior person within the ODPP or a member of an appropriate professional ethics committee or a member of the PSA/ODPP Committee or a union official or delegate should be approached.

11. BREACH OF THE CODE

Serious breaches of the Code of Conduct must be reported. The reports may be made orally or in writing to (as appropriate):

- The Director
- Senior Crown Prosecutor
- The Solicitor
- Manager, Corporate Services
- The appropriate Line Manager

Failure to comply with the Code's requirements, ODPP policies¹ or any other legal requirement or lawful directive, may, in the case of staff employed under the Government Sector Employment Act, render an officer subject to a range of administrative and legal sanctions. These sanctions may include a caution, counselling (including retraining), deferral of a pay increment, a record made on a personal file, suspension, or preferment of criminal or disciplinary charges (including external disciplinary action in the case of legal practitioners) with the imposition of a range of penalties, including dismissal.

¹ Refer to Appendix A.

Sanctions against a Director, a Deputy Director or a Crown Prosecutor are subject to the Director of Public Prosecutions Act, the Crown Prosecutors Act and the Legal Profession Act. A breach of the Code may also be reported to the ICAC, Law Society, Bar Association, Legal Services Commissioner or other relevant professional body.

12. GUIDELINES

While there is no set of rules capable of providing answers to all ethical questions in all contexts, the following will assist in identifying and determining responses. The guidelines are not meant to be exhaustive; rather they alert officers to the contexts in which problems may arise.

13. PERSONAL BEHAVIOUR

Officers are obliged:

- not to harass or discriminate against colleagues, stakeholders or members of the public on the grounds of sex, race, social status, age, religion, sexual preference or physical or intellectual impairment;
- to report harassment or discrimination to a manager or other senior officer;
- to be courteous and not use offensive language or behave in an offensive manner;
- to respect the privacy, confidence and values of colleagues, stakeholders and members of the public, unless obliged by this Code or other lawful directive or requirement to disclose or report.

14. PROFESSIONAL BEHAVIOUR

Officers must:

- comply with the Director's Prosecution Policy and Guidelines;
- work diligently and expeditiously, following approved procedures;
- maintain adequate documentation to support decisions made by them. In the case of prosecutors this should include decisions in relation to plea negotiations, elections and Form 1's;
- give dispassionate advice;
- be politically and personally impartial in their professional conduct;
- take all reasonable steps to avoid and report any conflicts of interest: personal, pecuniary or otherwise;

- report any professional misconduct or serious unprofessional conduct by a legal practitioner, whether or not employed by the ODPP;
- notify to the Director, as soon as practicable, the fact and substance of any complaint made against the officer to the Legal Services Commissioner, NSW Bar Association or NSW Law Society, pursuant to part 10 of the Legal Profession Act 1987;
- comply with the professional conduct and practice rules of those professional associations that apply;
- comply with all reasonable instructions and directions issued to them by their line management, or, in the case of Crown Prosecutors (for administrative matters), the Senior Crown Prosecutor.

15. PUBLIC COMMENT/CONFIDENTIALITY

Officers will:

- not publish or disseminate outside the ODPP any internal email, memorandum, instruction, letter or other document, information or thing without the author's or owner's consent, unless this is necessary for the performance of official duties or for the performance of union duties or is otherwise authorised by law (for example, pursuant to a legislative provision or court order);
- within the constraints of available facilities, securely retain all official information, especially information taken outside the ODPP. Information should not be left unattended in public locations, including unattended in motor vehicles or unsecured courtrooms, unless there is no reasonable alternative course available in the circumstances. The degree of security required will depend upon the sensitivity of the material concerned and the consequences of unauthorised disclosure;
- use official information gained in the course of work only for the performance of official duties or for the performance of official union duties;
- comply with the requirements of the Privacy and Personal Information Protection Act 1998 relating to the use and disclosure of personal information, and take reasonable steps to ensure that private contractors engaged by the ODPP are aware of these requirements;
- not access or seek to access official information that they do not require to fulfil their duties;
- not make any official comment on matters relating to the ODPP unless authorised;
- comply with the Director's Media Contact Guidelines.

16. USE OF OFFICIAL RESOURCES, FACILITIES AND EQUIPMENT/FINANCIAL MANAGEMENT

Officers will:

- follow correct procedures as handed down by Treasury and in ODPP instructions;
- observe the highest standards of probity with public moneys, property and facilities;
- be efficient and economical in the use of public resources and not utilise them for private purposes unless official permission is first obtained, including but not limited to ODPP Corporate Credit Cards;
- not permit the misuse of public resources by others;
- be aware of and adhere to the ODPP Information Security Policies and Guidelines;
- be aware of and adhere to the ODPP Policy and Guidelines on the Use of Email;
- not create, knowingly access, download or transmit pornographic, sexually explicit, offensive or other inappropriate material, using email, or the internet (examples of such material include offensive jokes or cartoons (sexist/racist/smutty), offensive comments about other staff members and material which is racist, sexist, harassing, threatening or defamatory). If such material is received, immediately delete it and advise the line manager or the Senior Crown Prosecutor, as appropriate;
- use official facilities and equipment for private purposes only when official permission has been given. Officers must ensure that the equipment is properly cared for and that their ability and that of others to fulfil their duties is not impeded by the use of the equipment. Occasional brief private use of email or the internet is permissible, provided that this does not interfere with the satisfactory performance of the user's duties. Telephones at work may be used for personal calls only if they are local, short, infrequent and do not interfere with work;
- comply with the copyright and licensing conditions of documentation, services and equipment provided to or by the ODPP;
- only use ODPP letterhead on appropriate official ODPP communication;
- be aware of and adhere to the ODPP Policy and Guidelines on the Use of Taxis.

17. OFFICE MOTOR VEHICLES

Do not under any circumstances drive an office vehicle while under the influence of alcohol or of any drug which impairs your ability to drive.

18. SECONDARY EMPLOYMENT

For staff employed under the Government Sector Employment Act, prior written approval of the Director is required before engaging in any paid employment, service or undertaking outside official duties.

For Crown Prosecutors the consent of the Attorney General or the Director must be obtained before engaging in the practice of law (whether within or outside New South Wales) outside the duties of his/her office, or before engaging in paid employment outside the duties of his/her office. In relation to a Director, a Deputy Director and the Solicitor for Public Prosecutions, the consent of the Attorney General must be obtained in similar circumstances.

Officers will not seek, undertake or continue with secondary employment or pursue other financial interests if they may adversely affect official duties or give rise to a conflict of interest or to the appearance of a conflict of interest.

19. POST SEPARATION EMPLOYMENT

Officers must not misuse their position to obtain opportunities for future employment. Officers should not allow themselves or their work to be influenced by plans for, or offers of, employment outside the ODPP. If they do, there is a conflict of interest and their integrity as well as that of the ODPP is at risk. Officers should be careful in dealings with former employees and ensure that they do not give them, or appear to give them, favourable treatment or access to any information (particularly privileged or confidential information). Where officers are no longer employed, attached to or appointed to the ODPP, they must not use or take advantage of confidential information obtained in the course of their duties unless and until it has become publicly available.

20. ACCEPTANCE OF GIFTS OR BENEFITS

An officer will not accept a gift or benefit if it could be seen by the public as intended, or likely, to cause him/her to perform an official duty in a particular way, or to conflict with his/her public duty. Under no circumstances will officers solicit or encourage any gift or benefit from those with whom they have professional contact.

If the gift is clearly of nominal value (cheap pens etc), there is no need to report it. Where the value of the gift is unknown, but is likely to exceed \$50, or where the value clearly exceeds \$50, it should be reported, in writing (email is acceptable) to:

- The Solicitor for Public Prosecutions (for Solicitors Office staff)
- The General Manager Corporate Services (for Corporate Services staff)
- The Senior Crown Prosecutor (for Crown Prosecutors and Crown Chambers staff)
- The Director (for the Director's Chambers and Secretariat staff).

seeking an approval to retain the item. The report should include:

- date, time and place of the offer
- a description of the gift
- to whom the gift or benefit was offered

- who offered the gift or benefit and contact details (if known)
- the response to the offer
- any other relevant details of the offer
- the name of the reporting officer and date (signed if a memorandum).

A written response will be provided, via email or memorandum, whether an approval to retain or otherwise has been given. A copy of the response should be retained by the member of the executive referred to above and the officer concerned.

Any such gifts should only be accepted where refusal may offend and there is no possibility that the officer might be, or might appear to be, compromised in the process. This concession only applies to infrequent situations and not to regular acceptance of such gifts or benefits. No gifts or benefits exceeding \$50 may be accepted without the prior approval of the appropriate senior executive officer.

As a general rule, no gifts regarded as tokens of ‘gratitude’ should be accepted by prosecutors from victims or witnesses until the matter in which they are involved is concluded, when the procedures outlined above are to be followed.

Acceptance of bribes and the offering of bribes are offences. The solicitation of money, gifts or benefits in connection with official duties is an offence. If an officer believes that he/she has been offered a bribe or that a colleague has been offered or accepted a bribe, that must be reported in accordance with the procedures for notification of corrupt conduct

21. CONFLICTS OF INTEREST

In order to ensure that the ODPP’s work is impartial, and is seen to be so, officers’ personal interests, associations and activities (financial, political or otherwise) must not conflict with the proper exercise of their duties.

In many cases only the officer will be aware of the potential for conflict. The primary responsibility is to disclose the potential or actual conflict to a manager or other senior officer, so that an informed decision can be made as to whether the officer should continue with the matter.

Officers should assess conflicts of interest in terms of perception as well as result. With conflicts of interest, it is generally the processes or relationships that are important, rather than the actual decision or result. If there has been a potential or actual conflict then the decision or action becomes compromised, even if the decision or action has not been altered by the compromising circumstances.

Conflicts of interest may arise for example where (but this list is not to be regarded as exhaustive):

- an officer has a personal relationship with a person who is involved in a matter that he/she is conducting (e.g. the victim, a witness, a police officer, the defendant or defendant's legal representative). This has the potential to compromise an officer’s ability to make objective professional judgments; for example as to the extent of prosecution disclosure to the defence;

- secondary employment or financial interests that could compromise an officer's integrity or that of the ODPP;
- party political, social or community membership or activities may conflict with an officer's public duty (e.g. prosecuting someone known to be a member or participant of the same or a rival political party, social or community organisation);
- personal beliefs or those of others are put ahead of prosecutorial and ODPP obligations;
- an officer or friend or relative has a financial interest in a matter (including goods and services) that the ODPP is dealing with.

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

If in any doubt as to whether there is a conflict, or the appearance of a conflict, an officer should make a confidential disclosure and seek advice.

Additional information is available in a Fact Sheet titled Public Sector Agencies Fact Sheet No 3 Conflict of Interests dated June 2003. The direct link follows:

http://www.ombo.nsw.gov.au/publications/Publist_pdfs/fact%20sheets/PSA_FS3_Conflict.pdf

22. REFERENCES

The conditions governing the provision of 'General' and 'Court Character' references are set out in the 'ODPP Policy on the Provision of References' published on DPPNet under 'Policies and Guidelines'.

23. NOTIFICATION OF BANKRUPTCY, CORRUPT OR UNETHICAL CONDUCT AND PROTECTED DISCLOSURES

If an officer becomes bankrupt, or makes a composition, arrangement or assignment for the benefit of creditors, the officer must promptly notify the Director, and provide the Director, within a reasonable time, with such further information with respect to the cause of the bankruptcy, or the making of the composition, arrangement or assignment, as the Director requires.

All officers have a responsibility to report conduct that is suspected to be corrupt. Corrupt conduct is defined in sections 7 and 9 of the Independent Commission Against Corruption (ICAC) Act 1988. The definition is intentionally very broad but the key principle is misuse of public office, or breach of public duty. Corrupt conduct occurs when:

- a public official carries out public duties dishonestly or unfairly
- anyone does something that could result in a public official carrying out public duties dishonestly or unfairly

- anyone does something that has a detrimental effect on official functions, and which involves any of a wide range of matters, including fraud, bribery, official misconduct and violence.
- a public official misuses his/her position to gain favours or preferential treatment or misuses information or material obtained in the course of duty.

Conduct is not corrupt in terms of the ICAC Act unless it involves (or could involve) a criminal offence, a disciplinary offence or reasonable grounds to dismiss a public official.

The Director has a duty under the Act to report to the ICAC any matter which, on reasonable grounds, concerns, or may concern, corrupt conduct. The ODPP also has an established procedure with the Police Service pursuant to which allegations of suspicious or corrupt conduct by police officers are reported directly to the appropriate agency.

In appropriate circumstances the ODPP will report unethical behaviour by professionals to the relevant professional association (e.g. the Law Society, Bar Association or Legal Services Commissioner).

The Protected Disclosures Act encourages and facilitates the disclosure of corruption, maladministration and waste in the public sector. Procedures for the making of protected disclosures about these matters can be found in the Protected Disclosures Procedures.

24. CRIMINAL CONDUCT

In this section of the Code "criminal conduct" means conduct which is suspected of constituting, in whole or in part, the commission of a criminal offence of more than a trivial or merely technical nature.

Suspected or alleged criminal conduct by an officer in the workplace is to be reported as soon as possible to the officer's manager or supervisor and, if appropriate grounds are considered to exist, by him or her to the Director (or, in his or her absence, a Deputy Director). If the Director or Deputy Director reasonably suspects that criminal conduct has or may have occurred, then he or she is to report it to police without notification to the officer concerned and is to consult with police on the future conduct of the matter. The Director or Deputy Director may take managerial action, in accordance with any laws, guidelines and procedures in force, provided there is no risk of prejudice to the police investigation or the criminal process.

Any officer directly witnessing criminal conduct by another officer must report it immediately to police if outside the workplace and, if inside the workplace, to his or her manager or supervisor to be dealt with as above.

APPENDIX A

RELEVANT LEGISLATIVE, PROFESSIONAL, ADMINISTRATIVE AND INDUSTRIAL REQUIREMENTS AND OBLIGATIONS

The main requirements, obligations and duties to which we must adhere are found in:

- [Director of Public Prosecutions Act 1986](#)
- [Government Sector Employment Act 2013 No 40](#)
- [Crown Prosecutors Act 1986](#)
- [Legal Profession Act 2004](#)
- [Victims Rights Act 1996](#)
- [Independent Commission Against Corruption Act 1988](#)
- [Protected Disclosures Act 1994](#)
- [Anti-Discrimination Act 1977](#)
- [Occupational Health and Safety Act 2000](#)
- [Public Finance and Audit Act 1983](#)
- [State Records Act 1998](#)
- [Government Information \(Public Access\) Act 2009 No 52](#)
- [Privacy and Personal Information Protection Act 1998](#)
- [\(Cth\) Racial Discrimination Act 1975](#)
- [\(Cth\) Sex Discrimination Act 1984](#)

The main requirements, obligations and duties are given effect to, explained or contained in the following policies, rules, guidelines and manuals:

- [Director's Prosecution Policy and Guidelines](#)
- [Professional Conduct and Practice Rules, Law Society of NSW](#)
- [NSW Bar Rules](#)
- [AASW Code of Ethics and NSW Psychologists Board Code of Ethical Conduct](#)
- [Solicitors Manual](#)
- [Sentencing Manual](#)
- [Child Sexual Assault Manual](#)
- [Witness Assistance Service Manual](#)
- NSW Solicitors Manual (Riley)
- [Personnel Handbook](#)
- [ODPP Policies \(refer to DPPNet\)](#)
- [Protected Disclosures Procedures](#)
- [Corporate Plan](#)
- Charter of Principles for a Culturally Diverse Society
- [Conflicts of Interest Guidelines](#)

APPENDIX B

DOCUMENT CHANGE HISTORY

Version	Date	Author	Description or Clause Change
Version 1	02/04/2004	Jeff Shaw	Clause 21 – Conflicts of Interest now incorporates a hyperlink to the Ombudsman’s Fact Sheets No. 4. Appendix A now incorporates hyperlinks to relevant Acts and Manuals.
Version 2	05/05/2004	Jeff Shaw	Clause 16 – Use of Resources, Facilities and Equipment/Financial Management now reflects the Office’s adoption of the recently published ODPP Information Security Policies and Guidelines.
Version 3	07/12/2006	Jeff Shaw	Clause 20 – Acceptance of Gifts or Benefits.
Version 4	17/04/2007	Jeff Shaw	Clause 22 – References. General References.
Version 5	15/02/2008	Gary Corkill	Clause 24 – Criminal Conduct. Suspected or alleged criminal conduct.
Version 6	14/05/2008	Jeff Shaw	Appendix B – Added Document Change History.
Version 7	2/12/2014	Nigel Richardson	<p>General – all references to the Public Sector Employment and Management Act updated to the Government Sector Employment Act.</p> <p>Clause 16 - Use of Resources, Facilities and Equipment/Financial Management now includes specific reference to ODPP Corporate Credit Cards.</p> <p>Clause 16 - Use of Resources, Facilities and Equipment/Financial Management now includes specific reference to ODPP Policy and Guidelines on the Use of Taxis</p> <p>Clause 16 - Use of Resources, Facilities and Equipment/Financial Management now includes specific reference to use of ODPP letterhead</p> <p>Appendix A – replacement of PSEM Act with GSE Act 2013.</p> <p>Appendix A – replacement of FOI Act with GIPA Act 2009.</p>