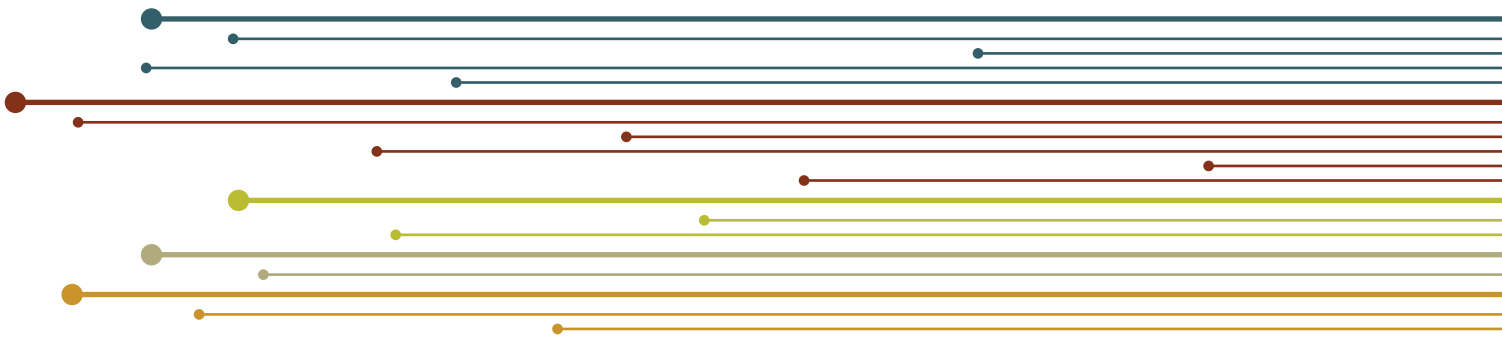


Code of Conduct

Environmental Protection Authority

November 2016



Environmental Protection Authority 2016, *Code of Conduct*, EPA, Western Australia.
This document is available in alternative formats upon request.

National Relay Service
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(To assist persons with hearing and voice impairment)

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Chairman's Message



The Environmental Protection Authority (EPA) is entrusted with providing independent environmental advice to the State Government, and its advice and recommendations impact on a wide range of stakeholders.

It is crucial that the EPA carries out its business with integrity, keeping in mind the very high ethical standards expected of public bodies.

This Code of Conduct sets out the responsibilities and obligations of members of the EPA, and is intended to provide practical guidance to members in dealing with the ethical issues that confront the board from time to time.

This Code of Conduct demonstrates each of the EPA members' personal commitment to accountable and ethical decision-making, and promotes good governance practice by the EPA.

This Code of Conduct applies to the members during board meetings, at official EPA activities, when representing the EPA in any capacity, and in any situation that involves a matter that is before, or is likely to be before, the EPA for assessment.

Each of the members is expected to read and familiarise themselves with this Code of Conduct, and refer to it when any question arises regarding appropriate conduct.

A handwritten signature in black ink, appearing to be 'TH', written in a stylized, cursive script.

Dr Tom Hatton
Chairman

Personal Behaviour

I will:

- put the public interest first, ahead of my own personal and pecuniary interests, and act with loyalty, good faith, ethically and with integrity;
- understand the EPA's role and public duties by actively learning and staying informed about the role and purpose of the EPA and the statutory, regulatory and policy requirements that apply when carrying out our public duties;
- make decisions fairly and impartially, based on relevant information, legislation, policies, procedures and ethical codes; and
- be accountable and transparent.

Communication and Official Information

I will:

- maintain confidentiality over and not divulge information acquired in the course of the EPA's business, other than as required by law or where proper authorisation is given. If I am unsure, I will seek direction from the Chairman;
- not make improper use of information obtained in the course of my board duties, or use for direct or indirect personal or commercial gain, or to do harm to other people or the EPA;
- respect confidential information and observe any restrictions agreed by the board (subject to *Freedom of Information Act 1992* requirements); and
- only make public comment on behalf of the EPA to the media or outside organisations when authorised to do so.

Fraudulent and Corrupt Behaviour

I will report suspected breaches of this Code of Conduct to the Chairman or presiding member.

Use of Public Resources

I will:

- use the resources of the State, funds, employees and equipment effectively and economically, only for EPA purposes;
- comply with applicable legislation, government requirements and EPA policies when using public resources; and
- not use public resources for personal financial gain or party political work, or for personal gain, financial or otherwise.

Conflicts of Interest and Gifts and Benefits

Conflicts of Interest

Types of Conflicts

A member may have a **private interest** in a matter before the EPA, where they:

- stand to make a financial gain or loss from an EPA decision (**direct pecuniary interest**), for example a member holds shares in a company that has a proposal being assessed by the EPA;
- hold membership of another organisation likely to benefit from, or be disadvantaged by, an EPA decision (**non-pecuniary interest**), for example, a member is also an elected member of their local council, and the EPA is assessing a proposal in this council's local government area;
- have a spouse, children, close relatives or associates who stand to make a financial gain or loss from an EPA decision (**indirect pecuniary interest**), for example, a member's sister is a director of a company that has a proposal being assessed by the EPA; and/or
- have a spouse, children, close relatives or associates who are members of an organisation affected by an EPA decision (**indirect non-pecuniary interest**) (for example, a member's child is on the managing committee of an environmental group opposing a particular proposal which is before the EPA for assessment).

An **actual conflict of interest** may arise when a member is asked to make a decision that directly affects or impacts their personal or private interests.

Importantly, some conflicts may only be **perceived** – a member's decision could be questioned based on a personal or private interest that may not actually have impacted any decision.

A **potential conflict of interest** arises where a member has private interests that could conflict with their official duties in the future, or where a member has competing interests because they hold more than one official role or public duty.

A **pre-judgment interest bias** can arise where the prior activities or statements of a member are such that a fair-minded member of the public, informed as to the statutory context and decision-making structure, would consider that the member would not bring an independent and impartial mind to the matter before the EPA. It is therefore necessary for members to consider both current and previous activities they have engaged with, or positions they have adopted, outside of their membership of the EPA. For example, previous statements made or previous activities undertaken, which would give rise to a reasonable apprehension of pre-judgment bias.

Conflicting duties may arise where a member is a member of two boards, public bodies or organisations dealing with the same matter, which have conflicting objectives in relation to the matter. See the Integrity Coordination Group's *Conflicts of Interest Scenario 3 Wearing Two Hats – Dual Roles as a Public Officer* for an example of this type of conflict and guidance on how to manage the conflict.

Commitments

I will:

- keep my private commercial or political interests separate from my official board role;
- follow the requirements of section 12 of the *Environmental Protection Act 1986* (EP Act)

and the procedures set out below in relation to self-disclosure of interests that may conflict, or be perceived to conflict, with my public duty. This may involve removing myself from discussion and decision making on the matter;

- call upon another member to disclose an interest in a matter before the EPA to the members present at the meeting where I believe another member has an interest; and
- ensure the EPA meeting minutes record any issues of conflicts and the steps taken to manage the conflict, so that they are transparent and capable of review.

Procedure for dealing with conflicts

Section 12 of the EP Act sets out the way in which members' pecuniary interests in matters before meetings of the EPA board must be disclosed and managed.

EPA members must follow the same procedure for disclosing a pecuniary interest under section 12 of the EP Act, and a non-pecuniary interest.

The member should disclose the potential interest in a matter that is before a meeting of the EPA to the other members prior to any discussion occurring in relation to the matter.

Where a member discloses a **pecuniary interest**, or is determined by the presiding member to have a pecuniary interest, in a matter, they may not take part in discussion or voting in relation to that matter.

Where a member believes they may potentially have a **non-pecuniary interest** in a matter, they should disclose this potential interest to the other members the EPA. The remaining members will determine whether or not a non-pecuniary interest exists or might reasonably be perceived to exist. Where a determination is made that a non-pecuniary interest exists or might reasonably be perceived to exist, the member may not take part in discussion or voting in relation to that matter.

The disclosure of any interest by a member, the nature of the interest disclosed and any determinations are to be documented in a Disclosure of Private Interest Form, recorded in the minutes of the meeting and recorded in the register of disclosure of private interests. The assessment and management of the conflict of interest is to be recorded in the minutes of the meeting.

Gifts, Benefits and Hospitality

I will:

- carefully consider any offers of gifts, benefits or hospitality and ensure any decision to accept is done openly, placed on record, and is consistent with this Code of Conduct;
- not accept gifts benefits or hospitality:
 - likely to place me under an actual or perceived financial or moral obligation to other organisations or individuals;
 - if they could reasonably be seen by the public, knowing the full facts, as intended or likely to cause me to act in a particular way or deviate from my public duty;
- disclose any gifts accepted to the Chief Financial Officer of the OEPA. All accepted gifts, regardless of value, are to be entered onto the gift register by contacting the Chief Financial Officer of the OEPA;
- seek advice from the EPA Chairman if in doubt about the appropriate action to take in relation to gifts, benefits and hospitality;
- respectfully decline any invitation to a special event/s organised by a proponent (e.g., balls, Christmas functions, launches, etc) where a proponent has business before the EPA, or is likely to have business before the EPA in the future;

- use judgement about participating in special events/meetings/etc organised by professional groups (e.g., peak body organisations, non-government organisations, special interest groups); and
- avoid using proponent sponsored travel and accommodation where commercial or public options are available.

Further guidance can be found in the Integrity Coordinating Group's *Gifts Benefits and Hospitality – a Guide to Good Practice*.

Interactions outside of EPA meetings

I will:

- document any communication that takes place outside of official EPA meetings with proponents or personal contacts that have business before the EPA, including the date, time, nature of the discussion and other persons present and disclose those communications at the meeting of the EPA for the information of the members and relevant officers; and
- forward any direct unsolicited communications to the Chairman;
- comply with the Public Sector Commissioner's Circular 2009-13 Contact with Lobbyists Code and the Register of Lobbyists by:
 - ensuring that any contact with lobbyists is with only approved lobbyists on the Register of Lobbyists;
 - seeking direction from the Chairman if uncertain about whether a lobbyist is on the Register;
 - should contact with a lobbyist occur, completing a Record of Contact with Lobbyist form (Attachment 2), and submitting this to the Chairman; and
 - disclosing to the members present at the meeting any communication that takes place with a lobbyist and providing the presiding member with a signed Record of Contact with Lobbyist form, if not already provided to the Chairman.

Breach of the code of conduct

I will

- report suspected breaches of this Code of Conduct at first instance to the Chairman, or the Deputy Chairman in the event that the Chairman is unavailable or the suspected breach involves the Chairman; and
- follow the process set out in the *Corruption, Crime and Misconduct Act 2003* for reporting suspected minor or serious misconduct.

Attachments

1. Disclosure of Private Interest Forms
2. Record of Contact with Lobbyist

Appendix: Applicable Legislation and Other References

In addition to this Code of Conduct, the EPA Board is subject to a number of other legislative and public sector requirements, summarised below.

Legislation

Environmental Protection Act 1986

Auditor General Act 2006

Australian Constitution

- section 44 – Disqualification, officers of the crown standing for federal elections

Corruption Crime and Misconduct Act 2003

- section 4 – Misconduct
- section 25 – Any person may report misconduct
- section 28 – Certain officers obliged to notify serious misconduct
- section 45H – Certain officers obliged to notify minor misconduct.

Criminal Code

- section 81 – Disclosing official secrets
- section 82 – Bribery of a public officer
- section 83 – Corruption
- section 85 – Falsification of records by a public officer
- section 88 – Bargaining for public office

Disability Services Act 1993

Equal Opportunity Act 1984

Financial Management Act 1984

- section 81 – No action is taken or omitted to prevent the provision of information by the Minister to Parliament concerning conduct or operations.

Freedom of Information Act 1992

Occupational Safety and Health Act 1984

Parliamentary Commissioner Act 1971

Public Interest Disclosure Act 2003

Public Sector Management Act 1994

- section 7 – Public administration and management principles
- section 9 – Principles of official conduct by public sector bodies; comply with the provisions of any code of conduct applicable to the public sector body; act with integrity when performing official duties, be scrupulous in the use of official information, equipment and facilities.
- section 21(1)(d) and (e) – Public Sector Commissioner to assist public sector bodies to comply with codes of conduct, and to monitor compliance with the principles in section 9.

State Records Act 2000

State Supply Commission Act 1991

Whole of Government Requirements

Premier's Circular 2003/08 State Government access guidelines for information, services and facilities

- Boards to fulfil social and legislative responsibilities by ensuring accessible services for all customers, including people with disabilities.

Premier's Circular 2003/17 Requirements for Western Australian Government publications and library collections

- Outlines requirements to lodge publications with state and national libraries

Premier's Circular 2010/02 State Government boards and committees

- Outlines payment of fees to government officers

Premier's Circular 2014/02 Guidelines for official air travel by Ministers, Parliamentary Secretaries and Government Officers

- Provides guidance for official air travel arrangements, including information regarding frequent flyer programs

Public Sector Commissioner's Circular: 2009-10 Communication Arrangements between Ministers and agencies – section 74 of the Public Sector Management Act 1994

- Outlines Ministers' responsibilities for how communications are made between ministerial staff and government employees

Public Sector Commissioner's Circular: 2009-13 Contact with lobbyists code and the register of lobbyists

- Lobbying of Government representatives is only permitted by those on the lobbyist register

Public Sector Commissioner's Circular: 2009-18 Guidelines for expenditure on official hospitality

- Expenditure on hospitality is to be consistent with responsibilities of public sector officers. All officers are to be scrupulous in their use of public funds.

Public Sector Commissioner's Circular: 2012-05 Code of practice occupational safety and health in the WA public sector

- Promotes strategies to help CEOs, managers and employees improve the work environment and ensure compliance with the *Occupational Safety and Health Act 1984*

Public Sector Commissioner's Circular: 2013-04 EEO management plans and workforce planning in the public sector

- Public sector bodies are required to prepare and implement an Equal Employment Opportunity Management Plan

Public Sector Commissioner's Instruction No 7: Code of Ethics (2012)

- Outlines the minimum standards of conduct and integrity to be complied with by all public sector bodies and employees

Public Sector Commissioner's Instruction No 8: Codes of Conduct and Integrity Training (2012)

- Requires all public sector bodies to have a code of conduct and ensure the "Accountable and ethical decision-making" program is provided to employees and board members.

State Supply Commission policies

- Accountable authorities are required to purchase goods and services in accordance with State Supply Commission policies.

Treasurer's Instructions

- Outline the financial administration requirements for accounting for revenue, expenditure and property, and the standards for reporting.

Western Australian Government purchasing card (corporate card) guidelines (2016)

Other Material

Government of Western Australia, Corruption and Crime Commission and Public Sector Commission, *Notification of Misconduct in Western Australia (2015)*

Integrity Coordinating Group, *Conflicts of Interest: Guidelines for the Western Australian Public Sector (2011)*

Integrity Coordinating Group, *Gifts, Benefits and Hospitality: a guide to good practice (2016)*

Integrity Coordinating Group, *Taking Action on Integrity Issues: a guide for public officers (2015)*

Public Sector Commission, *Board Essentials (2015)*

Public Sector Commission, *Conduct guide for public sector boards and committees (2015)*

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Attachment 1: Disclosure of Private Interest Forms



Environmental Protection Authority

Disclosure of Private Interest Form

(by Member)

Having regard to section 12 of the *Environmental Protection Act 1986* and the Authority Code of Conduct, I,, wish to disclose an interest in relation to the matter referred to in Agenda Item of Authority Meeting No. held on

The nature of my interest is:

A **direct or indirect pecuniary interest**, as provided for in **s.12(1) of the EP Act**, by reason of In accordance with s.12(5) of the EP Act, I shall not take part in consideration or discussion of the matter, nor vote on the matter.

.....
(Member's signature) (date)

A **non-pecuniary interest** (e.g. apprehension of bias), provided for in this **EPA Code of Conduct**, by reason of

I believe my non-pecuniary interest, as declared, could be perceived by a reasonable person to conflict with my ability to perform my official duties in an independent and impartial manner.

I intend to abstain from all discussion, consideration and voting on the matter.

I seek a determination by the presiding Chairman.

.....
(Member's signature) (date)

Chairman/presiding chairman's comments on the declaration of a non-pecuniary interest:

.....

Consequently

will participate in all discussion, consideration and voting on the matter.

will abstain from all discussion, consideration and voting on the matter.



Environmental Protection Authority

Chairman's/Presiding Member's Determination (in the absence of a declaration under s. 12(1))

Having regard to sections 12 and 13 of the *Environmental Protection Act 1986* and the Authority's Code of Conduct, I have determined that has an interest in relation to the matter referred to in Agenda Item of Authority Meeting No. held on.....

The nature of the interest is:

A **direct or indirect pecuniary interest**, as provided for in **s.12(3) of the EP Act**, by reason of
.....
In accordance with s.12(5) of the EP Act, shall not take part in consideration or discussion of the matter, nor vote on the matter.

.....
(Chairman's/Presiding Member's signature)

.....
(date)

A **non-pecuniary interest** (e.g. apprehension of bias), provided for in this **EPA Code of Conduct**, by reason of
.....
.....

which could be perceived by a reasonable person to conflict with the member's ability to perform his or her official duties in an independent and impartial manner.

Consequently will abstain from all discussion, consideration and voting on the matter.

.....
(Chairman's/Presiding Member's signature)

.....
(date)

Attachment 2: Record of contact with lobbyist



Environmental Protection Authority

YOUR DETAILS	CHAIRMAN'S DETAILS
Your name:	Name:
Signature:	Signature:
Date:	Date:
Name of Lobbyist (Include firm's name):	
Is the Lobbyist currently on the Register? Yes No If No, please explain why they are not registered, e.g. fall within exception:	
Method of Contact: Telephone Email Letter Meeting Other – please specify: Note: Please attach email/letter/minutes of meeting	
Name of third party/s being represented by Lobbyist:	
Topic of discussion (Attach additional pages if necessary):	
Any agreed action/other relevant information:	

Version information

Version	Document Title	Prepared by	Reviewed by	Approved by	
				Name	Date
A	Code of Conduct	G French	EPA meeting 731 March 2000	B Bowen	
B	Code of Conduct	G French	EPA meeting 878 February 2006	W Cox	
C	Code of Conduct	H Dagnall	EPA meeting 912 July 2007	A Hinwood	
D	Code of Conduct	G French	EPA meeting 932 May 2008	P Vogel	
E	Code of Conduct	G French	EPA meeting 978 April 2010	P Vogel	
F	Code of Conduct	A Fandry	EPA meeting 1011 4 August 2011	P Vogel	
G	Code of Conduct	A Fandry	EPA meeting 1016 26 October 2011	P Vogel	
H	Code of Conduct	A Fandry/ G Lee	EPA Meeting 1044 8 November 2012	P Vogel	
I	Code of Conduct	A Fandry/ G Lee	EPA Meeting 1058 November 2013	Reviewed by PSC	
J	Code of Conduct	A Fandry/ G Lee	EPA Meeting 1063 17 April 2014	P Vogel	
K	Code of Conduct	G Lee	EPA Meeting 1079 18 June 2015	P Vogel	
L	Code of Conduct	F Hoskins	November 2016	T Hatton	