

Section 9
**Ethical Framework &
External Agency Oversight**

9 Ethical Framework & External Agency Oversight

9.1 NSW Health Framework for Promotion of Ethical Behaviour

The government sector core values are consistent with the standards contained in the NSW Health Code of Conduct.

9.1.1 NSW Health Code of Conduct

A Code of Conduct ensures a clear and common set of standards of ethical and professional conduct that apply to everyone working in NSW Health, the outcomes we are committed to, and the behaviours which are unacceptable and will not be tolerated.

A Code of Conduct assists with building a positive workplace culture based on NSW Health Core Values.

- **Collaboration** – everyone who works in the health system, from the public to the private sector, are part of one team in one health system.
- **Openness** – processes must be transparent; people have a right to know how and why decisions are made, and who is making them.
- **Respect** – everyone engaged in providing health care has a valued role; everyone can make a contribution and should be given the opportunity to be involved, especially to a process of continuous improvement.
- **Empowerment** – patients should be given an opportunity to take greater control of their own health care in collaboration with care providers; decisions should be based on clear information about what works best.

The Code provides a framework to promote ethical day-to-day conduct and decision making. It does not and cannot cover every situation that can arise in the workplace. The Code does not replace the need for common sense in how staff conduct themselves. If staff are in doubt as to what conduct is appropriate in any particular situation, or how the Code should be applied, they should seek advice and direction from their manager or a more senior member of staff.

Managers have a key role in ensuring staff understand the Code and in enforcing the standards it sets, consistently and fairly. However, the most important responsibility of managers, and their most valuable contribution to ensuring that the standards set out by the Code are implemented, is to lead by example.

The Code also provides guidance on how to raise and report breaches of the standards it sets.

An internet link to the NSW Health Code of Conduct (PD2012_018) is included at the end of this section.

9.1.2 Declaration of Ethical Behaviour and Confidentiality Undertaking

To ensure members of boards and committees are aware of the standards expected of a member of a NSW Health board/committee, the Ministry of Health has developed standard 'Declaration of Ethical Behaviour and Confidentiality Undertaking' for board and committee members of public health organisations. Refer to the Resources & References in this section.

NSW Health
Code of Conduct
standards,
implementation
and reporting
requirements
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By signing the declaration board and committee members make a commitment to abide by ethical principles in carrying out their duties as a member, including:

- to act honestly and in good faith and in the overall interest of the public health organisation.
- to use due care and diligence in fulfilling the functions of the officer and exercising powers, duties and functions under the *Health Services Act 1997*.
- to not use the powers of office for any improper purpose or take improper advantage of the position a member holds.
- to not allow personal interests or the interests of an associated person to conflict with the interest of the public health organisation.
- to become acquainted with Government policy and NSW Health policy as they apply to the public health organisation.
- to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the public health organisation.
- to not engage in conduct likely to bring discredit upon the public health organisation.

It is recommended that board members read and accept the undertakings contained in this document at, or prior to attending their first meeting of the board.

9.2 Major NSW External Oversight Agencies

9.2.1 Public Service Commissioner

The establishment of the NSW Public Service Commission (PSC) under the *Government Sector Employment Act 2013* recognises that delivering improved services to the public can only be achieved through having a capable, ethical, service-oriented, accountable public service that is able to serve successive governments in a non-partisan manner.

The principal objectives of the Commissioner are:

- (a) to promote and maintain the highest levels of integrity, impartiality, accountability and leadership across the government sector,
- (b) to improve the capability of the government sector to provide strategic and innovative policy advice, implement the decisions of the Government and meet public expectations,
- (c) to attract and retain a high calibre professional government sector workforce,
- (d) to ensure that government sector recruitment and selection processes comply with the merit principle and adhere to professional standards,
- (e) to foster a public service culture in which customer service, initiative, individual responsibility and the achievement of results are strongly valued,
- (f) to build public confidence in the government sector,
- (g) to support the Government in achieving positive budget outcomes through strengthening the capability of the government sector workforce.

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

Integrity

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

Trust

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

Service

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

Accountability

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

9.2.2 Independent Commission Against Corruption

The Independent Commission Against Corruption (ICAC) is established by the *ICAC Act 1988*. Its aims are to protect the public interest, prevent breaches of public trust and guide the conduct of public officials. The ICAC is a public authority, but is independent of the government of the day, and is accountable to the people of NSW through the Parliament.

The principal objectives of the *ICAC Act* are to promote the integrity and accountability of public administration through the establishment of the ICAC to:

- investigate, expose and prevent corruption involving or affecting public authorities or public officials, and
- educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community.

The NSW community expects public officials (including members appointed to public sector boards) to perform their duties with honesty and in the best interests of the public. The ICAC has the authority to investigate any matter involving public sector corruption in NSW.

Complaints,
investigations and
public interest
disclosures

Corrupt conduct could involve:

- the dishonest or partial exercise of official functions, or
- a breach of public trust, or
- the misuse of information or material acquired in the course of official functions.

All principal officers of NSW public agencies have an obligation under section 11 of the *ICAC Act* to report any matter that the officer suspects on reasonable grounds, concerns or may concern corrupt conduct. A principal officer is the person who heads the agency, its most senior officer or the person who usually presides at its meetings. This is most commonly the chief executive or Secretary, NSW Health of a state government agency, or the general manager of a local council. For health organisations, the principal officer is the chief executive.

Chief executives are required to report allegations of corrupt conduct to the ICAC in accordance with NSW Health policy. Where matters are reported by local health districts, the ICAC can adopt a monitoring role to confirm that appropriate investigations are conducted, findings made, and recommendations implemented. For more serious matters, the ICAC may decide to take a more active role.

The ICAC also accepts public interest disclosures from public sector staff and officials about corrupt conduct and publishes a range of publications of probity, tendering and other issues which provide useful guidance to agencies (see Public Interest Disclosures below).

9.2.3 **NSW Ombudsman**

The NSW Ombudsman deals with complaints about NSW public sector agencies including councils, public health organisations, government departments, correctional centres and universities. The complaints may include:

- complaints about maladministration (for example conduct by an agency or its employee that is contrary to the law, unreasonable, unjust, oppressive, discriminatory or made without giving proper reasons);
- public interest disclosures from public sector staff and officials about maladministration;
- reportable allegations against employees of designated agencies and other public authorities, and complaints about how such allegations were handled by the agency concerned;
- complaints from members of the community about unfair treatment by a NSW government agency or employee, or certain non-government service providers and their employees; and
- complaints about the provision, failure to provide, withdrawal, variation or administration of a community service.

The NSW Ombudsman's Office is a public authority, but is independent of the government of the day, and is accountable to the people of New South Wales through the New South Wales Parliament.



Public interest disclosures

The *Public Interest Disclosures Act 1994 (PID Act)* protects public officials when they disclose information of serious wrongdoing, including corrupt conduct, maladministration, serious and substantial waste or failure to deal appropriately with Government information.

Public interest disclosures can be made internally to the public health organisation or externally to the appropriate agency including the Independent Commission Against Corruption, the Attorney General, NSW Ombudsman, Police Integrity Commission or the Information Commissioner. The *PID Act* provides protection to staff from reprisals.

The *PID Act* provides the Ombudsman's Office with an oversight role concerning the management of public interest disclosures by public authorities.

9.2.4 **NSW Audit Office**

The New South Wales Auditor-General is responsible for audits and related services under the *Public Finance and Audit Act 1983*, the *Corporations Act 2001* and other New South Wales Acts. The Auditor-General also provides certain assurance services in respect of Commonwealth grants and payments to the State under Commonwealth legislation.

The NSW Audit Office is a public authority, but is independent of the government of the day, and is accountable to the people of New South Wales through the Parliament. The Audit Office's core services are:

Financial audits

Financial audits provide an independent opinion on NSW government agencies' financial reports. They identify whether public sector agencies (including statutory health corporations) comply with accounting standards and relevant laws, regulations and government directions. A report on each financial audit is provided to the Minister responsible for the agency, to the agency and the Treasurer and to the Parliament through the Auditor-General's Reports to Parliament.

Compliance audits

Compliance reviews seek to confirm that specific legislation, directions and regulations have been adhered to by government agencies.

Performance audits

Performance audits determine whether an agency is carrying out its activities efficiently, economically and in compliance with the law. These audits may review all or part of an agency's operations. Some audits consider particular issues across a number of agencies. Results of these audits are reported to the chief executive officer of the agency concerned, the responsible Minister, the Treasurer and Parliament.

9.2.5 **The Information and Privacy Commission NSW**

The Information and Privacy Commission NSW (IPC) is an independent statutory authority that administers New South Wales' legislation dealing with privacy and access to government information.

The IPC was established on 1 January 2011 to support the Information Commissioner and the Privacy Commissioner in fulfilling their legislative responsibilities and functions and to ensure individuals and agencies can access consistent information, guidance and coordinated training about information access and privacy matters.

The IPC administers the following NSW legislation:

- *Government Information (Public Access) Act 2009* (GIPA Act)
- *Government Information (Information Commissioner) Act 2009* (GIIC Act)
- *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- *Health Records and Information Privacy Act 2002* (HRIP Act)

The IPC reviews the performance and decisions of agencies and investigates and conciliates complaints relating to government agencies, health service providers (both public and private) and some large organisations that deal with health information.

The IPC also provides feedback about the legislation and relevant developments in the law and technology.

The Information and Privacy Commissioners report to the Parliamentary Joint Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, which oversees their functions.

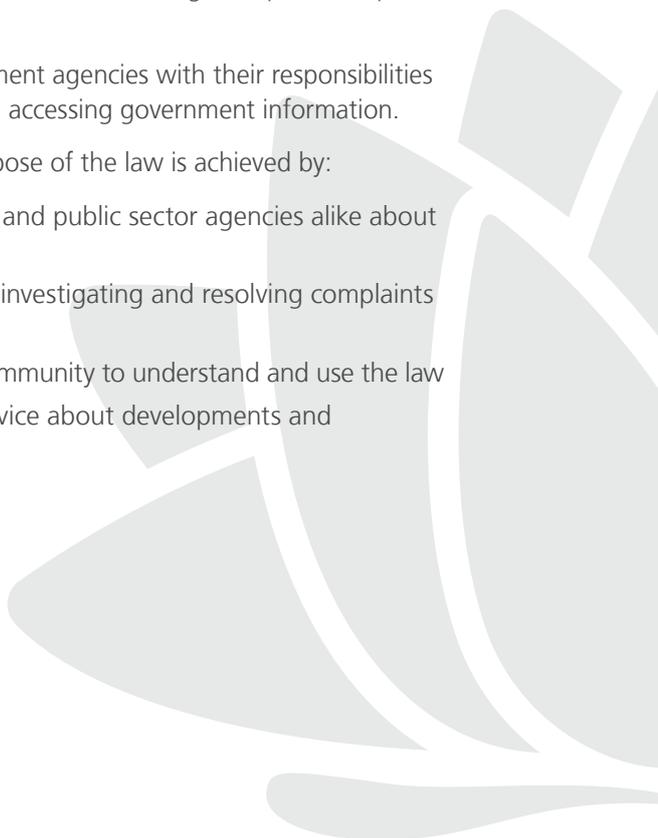
Office of the Information Commissioner

The *Government Information (Public Access) Act 2009* (GIPA Act) was established to provide an open and transparent process for giving the public access to information from New South Wales public sector agencies and to encourage the proactive public release of government information.

The IPC provides support by helping government agencies with their responsibilities under the GIPA Act and helping the public in accessing government information.

The goal of the IPC is to ensure that the purpose of the law is achieved by:

- promoting and educating the community and public sector agencies alike about rights and roles in accessing information
- reviewing public sector agency decisions, investigating and resolving complaints and monitoring agency performance
- assisting public sector agencies and the community to understand and use the law
- providing feedback about the law and advice about developments and technology relevant to the law.



Office of the Privacy Commissioner

The role of the Office of the Privacy Commissioner includes promoting the adoption of and compliance with the two privacy laws in NSW:

- The *Privacy and Personal Information Protection Act 1998* (the PPIP Act)
- The *Health Records and Information Privacy Act 2002* (the HRIP Act)

The role of the Office of the Privacy Commissioner includes:

- promoting the adoption of and compliance with the privacy principles set out in each of the privacy laws
- assisting agencies manage personal and health information
- assisting in the resolution of privacy complaints
- implementing privacy management plans
- initiating privacy codes of practice
- recommending legislative, administrative or other action in the interests of privacy
- conducting inquiries and investigations into privacy related matters.



Ethical Requirements – Resources & References

NSW Health Policy Directive, *Code of Conduct* (PD2012_018):
http://www.health.nsw.gov.au/policies/pd/2012/PD2012_018.html

NSW Health Policy Directive, *Conflicts of Interest and Gifts and Benefits* (PD2010_010):
http://www.health.nsw.gov.au/policies/pd/2010/PD2010_010.html

For a listing of policy directives and guidelines relating to Conduct and Ethics:
http://www.health.nsw.gov.au/policies/groups/pers_conduct.html

NSW Health Policy Directive *Physical Assaults* (PD2012_043)
http://www.health.nsw.gov.au/policies/pd/2012/PD2012_043.html

NSW Health Policy Directive *Public Interest Disclosures* (PD2011_061)
http://www.health.nsw.gov.au/policies/pd/2011/PD2011_061.html

Declaration of Ethical Behaviour and Confidentiality Undertaking for board and committee members: http://www.health.nsw.gov.au/resources/lhdboards/ethical_conduct_nsw_healt_doc.asp

Information presented in this compendium about the role and functions of key external review agencies has been sourced from the relevant websites for each organisation as follows:

Further information about the Public Service Commission is available at www.psc.nsw.gov.au

Further information about the Ombudsman and the types of issue the Ombudsman may investigate is available at www.ombo.nsw.gov.au.

Further information about the ICAC and what constitutes corrupt conduct is available at www.icac.nsw.gov.au

Further information about the Audit Office of NSW is available at www.audit.nsw.gov.au

Further information about the Information and Privacy Commission and the GIPA Act is available at www.ipc.nsw.gov.au

Local Documentation

Code of Conduct – easily accessible to all staff

Signed Declarations of Ethical Behaviour and Confidentiality Undertaking, by all board members

Conflict of Interest Register and signed Conflict of Interest declaration forms

Register of ethical issues, arising within the clinical setting, and which need to be managed in accordance with NSW Health policy

Documented procedure for receipt of protected disclosures, including nominated officers

Register of issues which are reported to, or notified by, the external oversight agencies: the ICAC, NSW Ombudsman, NSW Audit Office, Privacy Commissioner