



**Occupational Therapists
Board of Queensland**

Code of Conduct

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Code of Conduct Framework

Legislative Basis – Ethics Principles

The *Public Sector Ethics Act 1994* ('the Act') establishes five ethics principles, which are fundamental to good public administration. These are as follows:

- Respect for the law and system of government
- Respect for persons
- Integrity
- Diligence
- Economy and efficiency

The Act sets out ethics obligations based on these principles. The Board Code of Conduct ('the Code') sets out the standards of conduct, which are based on these principles and obligations.

Application of the Code

The Code is effective from December 2007 and replaces the Board's previous Code of Conduct. All Board members are public officials and, as such, the Code applies during any time in which the individual is acting in their role as a Board member. A breach of the Code may constitute official misconduct in accordance with the *Crime and Misconduct Act 2001*.

The Board has been granted significant powers under its enabling legislation to regulate the professions. As such, it is important to ensure that Board members exercise their powers and functions with an appropriate degree of accountability to the public, and through the Minister, to Parliament. This Code, together with the Board's accountabilities, will guide Board member behaviour. The accountabilities of the Board are detailed in the following sections.

Accountability to the Board

The main function of the Board is to act in the public interest by ensuring the highest possible standards in registered health professionals and by so doing protect the safety of the public. The accountability of Board members was articulated by a former Chief Justice of New South Wales, the Honourable Mr Justice Street, in the 1967 case of *Bennetts – v – Board of Fire Commissioners of New South Wales*. In this decision, Justice Street made a number of comments which inform the duties of Board members. These are as follows:

- A member will be derelict in their duty if they use their membership as a means to promote the particular interests of any group which nominated them.
- The object of providing for interested groups to nominate members was three fold: (a) one can be confident that an interested group will select a person whose personal attributes equip them for membership; (b) it promotes the confidence of that group in the Board; and (c) it ensures that the Board as a single entity has availability in its deliberations the views of the nominating groups.
- The presence of the second and third elements necessitates the highest standards of integrity in a member, both in thoughts and actions.

- The consideration which must govern each member in Board affairs is the advancement of the public purpose for which Parliament has established it.
- A member must never lose sight of this governing consideration for in accepting membership a person accepts the burdens and obligations of serving the community through the Board.
- This demands constant vigilance by the member to ensure they do not compromise or surrender the integrity and independence they must bring to Board affairs.
- While there will always be differences in opinions and approaches of members, the predominating element which each individual must constantly bear in mind is the promotion of the public interest and the interest of the Board.

Independent Decision Making

Quasi-judicial authorities such as the Board have a duty to decide fairly, which means conscientious application of their decision making processes to the problem of fact or law to be decided, and to reach a decision by the use of appropriate legal criteria, *and those alone*. The Board also has a duty to come to an independent decision of its own and not to be influenced by the dictates of some outside person or body. The Board may establish general policies as a guide. However, the Board should be cognisant of the fact that it should reach its decisions based on the merits of each individual case.

The Honourable Mr Justice Bray, a former Chief Justice of South Australia, observed in 1969 that natural justice requires adequate notice to parties likely to be affected by the contemplated decision(s). This includes an opportunity to present all relevant evidence and arguments with an opportunity to comment on the evidence.

It requires an absence of bias, partiality or interest on the part of the Board and its committees and the reaching of a decision in good faith after consideration of the evidence and other material in the case and the application of the legal and other criteria involved.

Accountability to the Public

The inclusion on the Board of a representative of users of the profession's services and a legal practitioner is one means of assisting in upholding public accountability.

The establishment of the Health Quality and Complaints Commission and its relationship with the Board is a mechanism for further enhancing the accountability of the Board for the exercise of its complaints and disciplinary functions.

The Board comes within the scope of administrative law aimed at further enhancing accountability. The *Judicial Review Act 1991* entitles persons adversely affected by decisions of a Board to require statements of reasons relating to such decision and, if no right of appeal lies from that decision, to apply to the Supreme Court for a review of that decision. The major impact of the *Judicial Review Act 1991* is that it emphasises the Board's obligation to observe the rules of natural justice in decision making processes. The rules of natural justice are essentially about procedural fairness and provide that persons affected by a decision are entitled to know the case against them and to be given the opportunity to respond to any accusations.

The *Freedom of Information Act 1992* provides another level of accountability by entitling the public to have access to the Board's documents, including Statement of Affairs and Board policies in accordance with s.18 and s.19 of that Act.

The various appeal mechanisms available from decisions of the Board provide a further level of Board accountability. The Board also approves policies from time to time and these are available to the public on request as further measure of the accountability of the Board to the public.

Accountability to the Minister

The Board is required to provide annual reports and financial statements to the Minister under the *Financial Administration and Audit Act 1977*. The annual report contains statistics and other details concerning the Board's activities and, together with the Board's financial statements, is tabled in Parliament. The Board also has a duty of care to manage public funds appropriately and in accordance with relevant Acts and regulations.

The *Financial Management Standard 1997* promulgated under the *Financial Administration and Audit Act 1977* also requires statutory bodies such as the Board, unless specifically exempted, to provide strategic plans which identify key objectives, strategies and the means to evaluate performance against those objectives over a specified period of time.

The publication of documents such as annual reports and strategic plans also enhances the public accountability of the Board.

Principle 1: Respect for the Law and System of Government

Obligation

Board members should uphold the laws of the State and the Commonwealth, and carry out their official duties and policies faithfully and impartially. This does not detract from a Board member's duty to act independently of Government as is required by s.12 of the *Occupational Therapists Registration Act 2001* ('the Registration Act').

Role of the Public Official

The role of a public official involves a position of trust. It is essential that, as public officials, Board members understand the trust involved in a public official's role and understand the ethical standards expected of them.

In performing official duties, Board members are expected to act in the public interest and to act in accordance with the law and the policy objectives of the elected Government, under the direction of the responsible Minister of the Crown.

Public officials such as Board members who make decisions and exercise powers under legislation are ethically obliged to ensure that their powers and influence are used lawfully and fairly.

Responsiveness and Impartiality

A Board member's main responsibilities are to: (a) make decisions and develop policies for implementing the Board's functions as an independent statutory authority; and (b) give a professional commitment to the Government of the day, not to the political party or parties to which members of the Government belong.

Generally, communication with Members of Parliament on matters which are relevant to a member's official duties or matters affecting the Board should be referred to the Minister's Office through the Chairperson unless the member has received prior authorisation due to these communications being part of their official role on the Board.

All members have the right to communicate directly with a Member of Parliament on any issue affecting them as a private citizen.

Comments to the Media

All comments to the media in an official capacity are to be referred to the Chairperson and Executive Officer for clearance to ensure that a consistent message is presented. In this regard, it is the Board's preferred position that all media comments be made by the Chairperson or the Executive Officer.

Appearing Before Parliamentary Committees

If you are requested to give evidence to a Parliamentary Committee, you are required to advise the Chairperson and Executive Officer immediately. When appearing at the hearing, you must follow the Guidelines for Witnesses before Parliamentary Committees. These Guidelines are available on the internet at www.parliament.qld.gov.au/committees/

Board members may also be required to appear before such Committees in a private capacity. If this occurs, a member should advise the Chairperson and Executive Officer. If required to appear in these circumstances, a member cannot use information obtained through their role as a Board member without the approval of the Chairperson. In addition, members should be careful to ensure that their evidence is not interpreted as an official statement and that their evidence does not acquire status due to their position on the Board.

Criminal Offences, Charges and Convictions

As a Board member, you must notify the Chairperson and Executive Officer if you have been convicted of any criminal offence whether or not the rehabilitation period has expired as provided for in the *Criminal Law (Rehabilitation of Offenders) Act 1986*. If during the period of your membership on the Board, you are charged with an indictable offence (criminal offences which are ordinarily dealt with by a judge and jury in the District or Supreme Courts) you must immediately notify the Chairperson and the Executive Officer.

Principle 2: Respect for Persons

Obligation

Board members should treat members of the public, other public officials and public service employees honestly and fairly, and with proper regard for their rights and obligations. Board members should act responsibly in performing official duties.

Managing the Interests of Clients

All Board members have a key obligation to clients, other Government agencies and community organisations which work within the same accountability framework. While generally Board members must respect the client's preference and meet their needs to the best of their ability, this has to be done within the law, the Board's enabling legislation and Board policy.

Treatment of Other Board Members and Office Employees

Members should treat all other Board members and employees of the Office of Health Practitioner Registration Boards ('the Office') with respect and dignity and ensure that they do not distract others from carrying out their duties through intimidation or harassment of any kind. It is important that members do not allow their personal beliefs or relationships to adversely affect their interactions with other members or the work performance of other members and Office employees.

Procedural Fairness (Natural Justice)

Procedural fairness or natural justice is a principle that decision making should be fair and reasonable having regard to the circumstances of the particular case. In general, procedural fairness requires that a person be told of, and be given the opportunity to respond to, allegations or claims before a decision is made that may adversely affect that person. Procedural fairness may be a specific legislative requirement or be implied from the circumstances. If a member is uncertain whether procedural fairness applies in a particular situation, they should raise this for Board consideration. It should also be noted that Board members are not required to provide for procedural fairness where such rights are extinguished by the legislation [for example, s.59 *Health Practitioners (Professional Standards) Act 1999*].

Discrimination, Harassment and Workplace Bullying

Members must be careful to ensure that they do not unlawfully discriminate against others or engage in behaviour that may be unwelcome and cause distress to those others.

The *Anti-Discrimination Act 1991* makes discrimination unlawful if it is on the basis of one or more attributes such as gender, marital status, age, race, impairment, etc. and where no relevant exemption applies. Sexual harassment is also unlawful under the Act. The Office policies on Equal Employment Opportunity and Workplace Harassment provide useful guidance on these issues and are available to members on request.

Workplace Health and Safety

Board members should take all reasonable steps to ensure the safety, health and welfare of themselves, clients and others in the workplace. Any workplace health and safety risks and incidents of which a member becomes aware should be reported to the Executive Officer as soon as possible. The Executive Officer will institute corrective action as required to address the risk/ incident. The Office policy on Workplace Health and Safety provides useful guidance on these issues and is available to members on request.

Principle 3: Integrity

Obligation

Public office involves a public trust. As such, Board members should seek to maintain and enhance public confidence in the integrity of public administration and advance the common good of the community. Board members should: (a) not improperly use their official powers or position, or allow them to be improperly used; (b) ensure that any conflict of interest that may arise is dealt with strictly in accordance with s.35 of the Registration Act; and (c) disclose any fraud, corruption and maladministration of which the member becomes aware.

Taking Improper Advantage

A member must not use their official position to influence any person to enter into a personal, financial or other arrangement with them or with anyone else on the Board or employed by the Office.

Examples of this kind of behaviour include: (a) pressuring a new member into lending money or buying goods; (b) seeking a discount on a product from a person or company which deals with the Office or the Board in an official capacity; or (c) pressuring other members or Office employees into entering into joint business activity.

A member must not influence or try to influence their colleagues by offering gifts to them, or by entering into financial or other arrangements with them. Examples of this kind of behaviour include: (a) giving a gift or lending money to another member on the understanding that they will make a favourable decision about a matter before the Board; or (b) involving another member in a financial arrangement beyond their means so that pressure can be exerted on them to make a favourable decision about a matter before the Board.

There is nothing wrong with a loan or the giving of gifts as ordinary behaviour between friends, provided that it is not connected with official duties and there is no question of influence on those official duties.

Managing Conflicts of Interest

Section 35 of the Registration Act places a specific onus on members to disclose their conflicts of interest. In carrying out their duties, a member should not allow themselves to be improperly influenced by financial or personal conflicts of interest. As such, if they have an interest that conflicts or may conflict with the discharge of

their duties, the member must disclose the nature of the interest and conflict to the Board as soon as practicable after the relevant facts come to their knowledge. A member must not take any action or further action in relation to a matter that is, or may be affected by the conflict unless authorised by the Board.

With both financial and personal interests, a member needs to: (a) be alert to any actual or potential conflicts of interest; (b) disclose to the Board any situations where their private interest may conflict or appear to conflict with their official duties; and (c) not take any action in relation to the matter unless authorised until the conflict is resolved to the satisfaction of the Board.

Financial interests which may be relevant include directorships, shareholdings, real estate or trusts which have the potential to conflict with official duties. Examples include: (a) a member holds shares in a private company and their duties as a member require decisions about a contract with that company; or (b) a member earns income in a private capacity for services which could grow based on Board policy decisions.

Other interests which may be relevant include those involving personal relationships (such as sporting, social or cultural activities), as well as family, sexual or other relationships. Examples of where personal or other interests may conflict with official duties include: (a) determining a complaint which will affect the business of a registrant who is in direct competition with the member; or (b) involvement on a disciplinary committee when a relationship exists with the complainant, the registrant or a witness giving evidence.

Engaging in Contract or Consultancy Work With the Board

Members should note that it is an offence under the Criminal Code for them to, directly or indirectly, have a private interest in a contract or agreement with respect to any matter concerning the Board. Accordingly, Board members will not be considered for any consultancy or business contract (other than a contract of employment) involving the Office or the Board.

Gifts and Benefits

One form of a conflict of interest that has the capacity to cause disquiet about the integrity of public decision making concerns the receiving and giving of gifts by public officials. The overriding principle in accepting gifts including hospitality and entertainment is that there must be a direct link to an official purpose. The act of accepting a gift must be capable of defence in relation to public expectations.

In this regard, a member: (a) may accept unsolicited gifts or benefits of an inconsequential or trivial nature, such as pens and diaries, where there is no apparent or real conflict of interest or compromise to integrity; (b) may accept invitations to local sporting or cultural events but must be careful to ensure that their presence does not imply a close or preferred relationship with the person or organisation offering the invitation; (c) must not accept gratuities from other Board members; (d) must not accept any gift, benefit or hospitality during any period of contract negotiation from potential or actual bidders or where it may give the appearance of undue influence; and (e) must not accept monetary gifts under any circumstances.

A reportable gift is a gift that has an estimated market value in excess of \$250, or, where a Board member receives more than one gift from the same giver during any financial year and the combined market value of those gifts exceeds \$250. All such gifts are reportable. All reportable gifts must be registered in the Office's Gift Register.

Hospitality provided or received by members must be in keeping with the demands of the work being undertaken. The Board's Entertainment and Hospitality Expenses Policy and Guidelines outline details of entertainment permissible.

Managing Official Information

The Office, on behalf of the Board, maintains a variety of information including records which should preserve a complete and accurate record of Board transactions and personal information. A Board member, to the extent of such access to such records, is responsible to safeguard their integrity to ensure that the reliability and evidentiary value is protected.

Maintaining the Integrity of Information

Information must not be altered, except in circumstances where such actions are authorised. The deliberate manipulation of records to reflect incorrect information would be in breach of this ethical obligation. As such, it is the responsibility of a member to ensure as far as practicable: (a) that information obtained by the Board or the Office is only used for the purpose for which it was collected; and (b) personal information is protected by such security safeguards as are reasonable in the circumstances against loss, unauthorised access, modification or disclosure and other forms of misuse.

Maintaining the Integrity of Information Systems

Board members must comply with any information security policy or practice as documented for the Office when using information systems provided by the Office. Users of these systems are given accounts and passwords that allow access into the systems to fulfil their duties. Any user of the IT system is responsible for the confidentiality of their password and for ensuring no one else uses their account.

Members in using the Office information systems must comply with any information security policy required and must not use the systems for behaviour that is illegal.

Public Access to Board Information

There are many circumstances when it is a sensible and normal part of a Board member's responsibilities to provide Board information and documents to the public and the profession. However, where confidential, personal or sensitive information is gained by a member acting in their role, then that information must not be publicly disclosed.

Unauthorised disclosure of official information may constitute an offence under the Registration Act, the Criminal Code, the *Crime and Misconduct Act 2001* and/or the *Public Sector Ethics Act 1994*.

Members of the public have rights to access Board information under the *Freedom of Information Act 1992* unless the information is specifically exempted by the Act. Rights to public information are also provided for in the *Public Records Act 2002*.

If a member has any queries in relation to whether information can or should be released to the public, these should be directed to the Executive Officer.

Making Public Comments in an Official Capacity

Reasoned public discussion on the factual and technical background to policies and administration can lead to better community understanding of the objectives and processes of Government. Members may contribute to public discussion of Government policy or administration in an official capacity, where providing information on Government policy has been authorised by the Board. When making public comment, a member must take care to appropriately represent the facts.

Like all members of the community Board members have a right to enter into discussions about social and community issues in a private capacity. There are some circumstances where it is not appropriate for members to make public comment in a private capacity – such as where making comment could amount to taking improper advantage of official information or give rise to a conflict of interest.

Public comment will be improper in the following situations:

- Where a member makes public comment in a private capacity but has not made it clear to the audience that the comment is not made on behalf of the Board.
- Where the public comment could give rise to a reasonable doubt about your willingness to act as a Board member in an unbiased way.
- Where the comment indicates that the member is unwilling to properly perform their duties and meet their accountabilities as a Board member.
- Where the comments could cause serious disruption to the Board's activities.

Depending on the extent and timing of any media coverage or the sensitivity of the subject matter, a letter to a newspaper, an article for a professional journal, comments to a media organisation, a public demonstration or a speech to an interest group may be regarded as public comment.

Party Political, Professional and Trade Union Activities

As private citizens, members have the right to belong to a political, professional or trade union body. However, members should ensure that any such activities undertaken do not cause the Board or individual to come under question due to perceived conflicts of interest.

In addition, in accordance with s.12 of the Registration Act, members must act independently, impartially and in the public interest.

Political Campaigning

If a member chooses to be involved in campaigning activities for candidates for political office – such as handing out how to vote cards on election day or higher profile activities – there may be a conflict of interest between issues which are raised as part of the campaign and the member's official duties.

If a member is involved in campaigning activities, they should be careful to make it clear they are not undertaking these activities in an official capacity. Use of Board or Office facilities or equipment for any political activity is not permitted.

Standing for Political Office

If a member wishes to stand for a Federal, State or local government office, the following principles apply:

- If the member is standing for Federal Parliament they should seek legal advice about their candidature. Generally, members would be required, subject to the legal advice received, to resign before nominating with the Australian Electoral Commission.
- If a member wishes to contest a seat in the Queensland Parliament or in a local government election, it would be appropriate for the member to take leave of absence from the Board prior to the date when nominations close. If the member was unsuccessful at the election they would cease their leave of absence and continue with their membership on the Board.

Using Political and Other Influence to Secure Advantage

As a public official, members must not improperly use the influence of any person to obtain appointment, promotion, advancement, transfer or any other advantage, either personally or on behalf of another. In addition, a member must not inappropriately influence the proper outcome of any procedure established under legislation.

Unethical Conduct

As a public official, members are obliged by the *Public Sector Ethics Act 1994* to disclose instances of fraud, corruption and maladministration of which they may become aware. In such instances, the protection available under the *Whistleblowers Protection Act 1994* would apply to public interest disclosures.

Misconduct

Misconduct means: (a) disgraceful or improper conduct in an official capacity; or (b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the Board.

This may, for example, involve breaching the trust placed in the member or the misuse or unauthorised release of information or material acquired through Board membership. If a member is guilty of misconduct they may be liable to action under the Criminal Code and, if a registrant member, they may be liable to action under the *Health Practitioners (Professional Standards) Act 1999*.

Reporting Misconduct

Members are required as part of their duties, to disclose their knowledge of fraud, corrupt conduct and improper behaviour by a public official. If a member becomes aware of, is involved in, or is approached to become involved in any behaviour which could constitute official misconduct, they should refer the matter promptly to the Chairperson and the Executive Officer.

Whistleblowing Activity

The *Whistleblowers Protection Act 1994* is designed to promote the public interest by protecting persons who disclose, amongst other things: (a) unlawful, negligent or improper conduct of public officials; (b) danger to public health, safety or the environment; or (c) maladministration and negligent or improper management affecting public funds.

The Executive Officer is the first point of contact for Board members when they are: (a) seeking information in relation to whistleblower protection; (b) wishing to make a public interest disclosure; or (c) encountering difficulties because of a belief that a person has made, or intends to make a public interest disclosure.

Alternatively, complaints may be made directly to the Crime and Misconduct Commission.

Principle 4: Diligence

Obligation

As public officials, members should exercise proper diligence, care and attention when performing their official duties and should seek to achieve high standards of public administration.

Learning and Development

Ongoing development and improvement of the skills and knowledge of Board members is essential to the continued success of the Board. Members have a responsibility to continue to develop their skills and knowledge, and keep up to date with advances and changes in the legislation and in the area of their expertise.

Alcohol, Drugs and Gambling

Members should not allow the consumption of alcohol or drugs of any kind to adversely affect their performance as Board members, their conduct or to endanger the health and safety of others. Gambling or the use of illegal drugs in the Office is not permitted.

Principle 5: Economy and Efficiency

Obligation

As public officials, members should ensure that public resources are not wasted, abused, or used improperly or extravagantly.

Public Resources

Public resources include all fees paid under the Registration Act, Office premises, Office vehicles and other physical resources such as personal computers, laptops, software and consumer resources such as stationery.

Managing Public Resources

The resources of the Board and the Office are to be used solely for official purposes. Under the *Financial Administration and Audit Act 1977* and the *Financial Management Standard*, the Board must manage its resources efficiently, effectively and economically to ensure the appropriate use of, accountability for, and safeguarding of public resources. Members therefore are required to ensure that resources of all kinds are used efficiently, effectively and economically for the purposes for which they were provided, being for the implementation of the Board's functions under the Registration Act and the *Health Practitioners (Professional Standards) Act 1999*.