

Code of conduct

Council members

November 2019
Version 4



**Queensland Sentencing
Advisory Council**
Inform. Engage. Advise.

Version control

The following table outlines the high-level changes that have been made to each version of this document.

Version	Details	Author
1.0	First draft	Anne Edwards
2.0	Feedback from Council	Anne Edwards August 2017
3.0	Review by Director following amendments to the Council's Operating Guidelines at the Council meeting on 12 February 2019	Anne Edwards
4.0	Review by Director to ensure alignment with Human Rights Act 2019 (October 2019)	Anne Edwards

Background

The [Public Sector Ethics Act 1994](#) (Qld) (PSEA) sets out four ethics principles that are declared to be fundamental to good administration:

1. Integrity and impartiality.
2. Promoting the public good.
3. Commitment to the system of government.
4. Accountability and transparency.

The PSEA further identifies a number of associated ethics values for each ethics principle.

The PSEA requires public sector entities, such as the Queensland Sentencing Advisory Council, to have a code of conduct that applies to the entity and to the public officials of the entity in performing their official functions.

The purpose of this code of conduct is to provide standards of conduct for the members of the Council consistent with the ethics principles and the associated ethics values contained in the PSEA. It reflects the special role of the Council and its members as statutory office holders in an independent public entity.

Application

This code of conduct applies to all members of the Council appointed under the [Penalties and Sentences Act 1992](#) (Qld) (PSA). It applies at all times when a member is performing official duties, including when a member is representing the Council at conferences or training events, or at work-related social events.

This code does not apply to an officer of the Council's Secretariat. As an employee of the Department of Justice and Attorney-General (DJAG), such an officer is subject to the whole-of-government code of conduct that applies to an employee of the Queensland public service.

Other available guidance

The behaviour required by this code of conduct exemplify the duties and values contained in the [Public Service Act 2008](#) and the PSEA. In addition to the standard of behaviour set by this code

of conduct, there may be specific guidance that is contained in other legislation, or a policy or procedure set down by the Council or by some other relevant authority (e.g. the Council's Operating Guidelines is an additional source of guidance).

Members who are unsure of the appropriate action to take in a particular situation should seek advice from the Council Chair, who may in turn seek advice from the Assistant Director-General, Strategic Policy and Legal Services, or the Director-General of DJAG. The Queensland Integrity Commissioner¹ is also a resource available to members of the Council if the Assistant Director-General or the Director-General are unable to provide suitable guidance. Members should also be guided by and comply with the provisions of the PSA which establishes the Council.

Certain professions have professional codes of conduct that establish specific behaviour relevant to that profession. This code of conduct specifies the behaviour expected of Council members and should be read in conjunction with any professional conduct standards that may apply to a member. Relevant Council members need to be aware of their obligations under any professional code of conduct or other applicable laws or standards, as well as the provisions of this code.

Professional codes set out a range of matters relating to the profession including dealing with breaches of the professional code. A breach of a professional code may affect the capacity of a relevant Council member to continue to act in that profession and may also affect the ability of that member to undertake duties as a Council member.

However, a breach of this code and any sanctions arising can only be determined in accordance with procedures established for this code.

Breach of code of conduct

Council members must familiarise themselves with this code of conduct. A failure to behave in the ways described in the code may be considered misconduct and in the most serious cases may lead to suspension or removal from office under section 203B of the PSA. Additionally, a Council member who improperly uses their position to gain an advantage for themselves or someone else or to cause detriment to the Council will be liable for their actions under both civil and criminal law.

Council members will meet their obligation to report suspected wrongdoing, including conduct not consistent with this code.

Any conduct of a person that raises a suspicion of corrupt conduct will be reported to the Ethical Standards Unit in DJAG, and to the Crime and Corruption Commission.

¹ The Queensland Integrity Commissioner has been established to provide advice to designated persons, and to maintain the Queensland Register of Lobbyists. While the Integrity Commissioner does not provide legal advice, he or she is able to provide advice on ethics or integrity issues, including conflicts of interest.

1 The Council

The Council and its members have both individual and collective responsibilities. This section of the code outlines the behaviour expected of the Council and of Council members.

1.1 Leadership and stewardship

The Council safeguards and oversees management of all Council operations. Effective stewardship includes managing the Council's reputation, intellectual capital and relationship with stakeholders such as DJAG and the Attorney-General and Minister for Justice on matters of public administration and governance. The Council should provide sufficient information for DJAG to advise the Attorney-General and Minister for Justice about the Council's activities.

When it meets, the Council focuses mainly on strategic matters to ensure that it continues to fulfil its purpose for government and other stakeholders.

The Council ensures that it has appropriate arrangements in place to meet its legal, ethical and policy obligations.

1.2 Council authority and delegation

The Council ensures that matters reserved for Council decisions are clearly identified and consistent with the functions outlined in section 199 of the PSA. It also ensures necessary delegations are in place.

The Council makes decisions within its power and in the performance of its functions as outlined in the PSA.

The Council is accountable for the actions of its delegates and any sub-committees, project boards or similar groups. Council members of a sub-committee who are delegated to consider a matter cannot lawfully delegate that power or function to any other individual or body unless the Council expressly authorises such delegation.

1.3 Best interests of the Council

The Council acts consistently with its functions and objectives and with any strategic or business plan or other document relevant to its work program.

1.4 Risk management and financial responsibility

The Council plays an important role in overseeing the management of risks it faces. As part of the role, the Council informs DJAG and the Attorney-General of known major risks to the effective operation of the Council and of the controls in place to address those risks. It also ensures there are adequate controls in place to prevent fraudulent behaviour.

The Council assures itself that its financial management system is adequate and designed to minimise processes that can lead to errors. It also ensures that the financial statements or accounts are audited at regular intervals.

2 Council members

2.1 Duties of the Chair

The Chair of the Council presides at Council meetings in accordance with sections 203E to 203H of the PSA and with reference to the role description as outlined in the Council's operating guidelines (28 August 2017). The Chair oversees members having ready access to up-to-date copies of relevant legislation, policies and procedures that are tailored to the Council's operating environment and support the application of the code of conduct.

2.2 Leadership and stewardship

Council members promote the public sector values contained in the PSEA to employees through their exemplary behaviour. They encourage a strong culture of accountability where issues are raised early, Council decisions are implemented quickly, people operate within their delegated authority and work cooperatively and respectfully with one another, with the Council Secretariat and with others involved in the Council's work.

2.3 Complying with establishing legislation and Council policies

Council members comply with the provisions of the PSA that relate to the Council (sections 198 to 203J) and with the Council's operating guidelines. They also comply with any government policies and priorities or any ministerial directions that affect the Council.

Council members are required to comply with DJAG's policies and procedures that are relevant to their role and the operations of Council, including those relating to:

- assessing the Council's performance
- dealing with conflicts of interest, including the offer of gifts or benefits
- Council approved travel and any Council-approved expenditure or use of monies.

2.4 Care, diligence and skill

Council members exercise their powers with a reasonable degree of care, diligence and skill. They understand the Council's business and the role of the Council and its members. They act responsibly, drawing on any knowledge they possess when considering matters before the Council.

Council members regularly attend Council meetings, are actively involved in matters before the Council and consider the financial, strategic and other implications of Council decisions.

Council members seek and consider all relevant information and ignore irrelevant information. They base their decisions on the best information available at the time, seek further information if necessary, and accept responsibility for their actions.

Council members ask questions about matters before the Council. They may ask the Council Secretariat for detailed briefings on Council business to inform strategic planning and risk minimisation.

2.5 Best interests of the Council

Council members act in good faith in the best interests of the Council. They are active members of the Council and professional in all dealings with fellow members and the members of the Council's Secretariat.

Council members do not allow their personal or professional interests or relationships to influence their judgment. This impartiality means they are objective when participating in Council discussions and decisions. Council members behave in a way that reflects well on their standing

as a member and on the Council's reputation. Council members will ensure they notify the Chair of the Council of any matter they believe may impact on the best interests of the Council. The Chair will decide whether the matter needs to be reported to the full membership of the Council, and/or to the Secretariat Director, and will ensure the matter is appropriately managed to protect the Council's reputation.

2.6 Proper use of position

Council members use their position to promote the best interests of the Council. They do not use their position to seek an advantage for themselves or another person or to cause detriment to the Council.

Council members do not seek gifts or favours for themselves, members of their family or other close personal or business associates, and declare any gifts or benefits that are received, in accordance with the DJAG policy. In addition, they decline gifts or favours that may cast doubt on their ability to apply independent judgment.

2.7 Proper use of information

Council members use the information they gain in the course of their Council duties only for its intended purpose. They do not use the information, including privileged or sensitive information, to obtain an advantage for themselves or another person or to cause detriment to the Council.

Council members are well informed about right to information, privacy and protected disclosure legislation. They respect confidentiality and use their discretion, prudence and good judgement when deciding how to treat information.

Council members shall store official information securely and shall only disclose official information or documents when required to do so by law, in the legitimate course of duty, when called to give evidence in court or when proper authority has been given.

Council members may make a public interest disclosure, under the [Public Interest Disclosure Act 2010](#) (PID Act) to the Crime and Corruption Commission if they believe corrupt conduct or other conduct prescribed in section 13 of the PID Act is occurring within the Council. They do not disclose information about a public interest disclosure either internally or externally.

Confidential and/or privileged information is not used to further the personal interests of Council members.

2.8 Participation in external organisations, including standing for election

Council members do not join a public entity where they consider that the impartiality of their role as a Council member may be compromised or would reasonably be perceived to be compromised.

Appointment as a member of the Council does not remove a member's right to be active privately in a political party, professional or community organisation or trade union.

However, a member should be aware that participating in activities in the public arena, where he or she may be identified as a member of the Council, can give rise to a perception of a conflict of interests (see section 2.12 below). Where this situation arises, a member will declare and manage his or her activities in accordance with section 2.12 of this code of conduct.

If a member is elected as a workplace representative or official of a professional or community organisation or trade union and is speaking publicly in that capacity, he or she will make it clear that his or her comments are made only on behalf of that organisation.

Council members will notify the Council if they become a candidate for an election in any state, local or federal election, and will comply with the requirements of Public Service Commission

Circular number 3/14: Public sector employees contesting elections. They do not use the Council resources in connection with their candidature.

In all instances, a member will comply with the appropriate laws of privacy, confidentiality and information management.

2.9 Fairness and impartiality

Council members act fairly, honestly and impartially, and are open and transparent in their dealings. When participating in Council deliberations and decisions or when resolving disputes between members, they behave in a manner that is free of favouritism and self-interest. They will express their views genuinely, clearly and without ambiguity. They will disclose the information or considerations they relied on in coming to their view. Council members will speak up when a decision or advice is being considered that may be detrimental to the public interest and vote to record their view.

Council members consider all relevant facts objectively when implementing government policy and programs to ensure equitable outcomes.

Members will:

- take reasonable steps to ensure that any recommendation for law reform made by the Council is objective, independent, apolitical and impartial
- take reasonable steps to ensure that his or her decision making is ethical
- engage with others, including members of the Council Secretariat, in a manner that is consultative, respectful and fair
- meet his or obligations to report suspected wrongdoing, including conduct that is not consistent with this code
- ensure that any engagement a Council member has with lobbyists, in relation to their role on the Council, is properly recorded.

Members act in accordance with the human rights outlined in the [Human Rights Act 2019](#) and equal opportunity legislation which protects people from discrimination.

2.10 Demonstrate a high standard of workplace behaviour and personal conduct

Council members have a responsibility to always conduct and present themselves in a professional manner and demonstrate respect for all persons, whether fellow members, Secretariat staff, or others including members of the public.

Council members will:

- treat such people with courtesy and respect, be appropriate in their relationships with them, and recognise that others have a right to hold views which may differ from their own
- ensure their conduct reflects the Council's commitment to a workplace that is inclusive and free from harassment
- ensure their fitness for duty, and the safety, health and welfare of themselves and others in the workplace including clients, and
- ensure their private conduct maintains the integrity of the Council and its ability to perform its duties.

2.11 Financial responsibility

Council members act in a financially responsible manner. They exercise care in relation to public funds and assets. Council members will:

- be economical, and avoid waste and extravagance in the use of public resources for proper purposes
- use any public resource in accordance with relevant policies
- manage and care for public resources in accordance with relevant policies.

Council members will demonstrate due diligence through active oversight of the Council's financial accounts and financial position. They will regularly review financial statements and management reports.

Council members will ask questions about the financial material put before them, if that material is unclear or raises matters that may be of concern. They understand the financial justification for financial decisions taken by the Director of the Council's Secretariat. They will take action with DJAG if they do not believe the financial implications of their decisions are sufficiently clear or if a Council resolution has financial implications that they consider imprudent.

2.12 Conflicts of interest and duty

What is a conflict of interest?

A conflict of interest is a situation in which an individual has competing interests or loyalties. A conflict of interest can exist in many different situations. The easiest way to explain the concept of a conflict of interest is by using some examples. An actual or a perceived conflict may exist:

- with a public official whose personal interests conflict with his or her professional position
- with a person who has a position of authority in one organisation that conflicts with his or her interests in another organisation
- with a person who has conflicting responsibilities.²

In the public sector, a conflict of interest may exist when a public officer can benefit from knowledge of events that is gained while in their public sector capacity.

In the QSAC context, having knowledge about what the Council may or may not recommend in relation to a Terms of Reference project, for example, may be perceived as providing a personal benefit to a Council member who has related interests in another context or another role. This could be viewed as a form of 'insider trading'.

Having a conflict of interest is not unusual and is not wrongdoing in itself. Council members will always disclose a personal interest that could, now or in the future, be seen as influencing the performance of their duties.

Where a personal interest of a Council member may give rise to an actual, potential or perceived conflict of interests with their official duties as a Council member, the member shall disclose the personal interest to the Chair, or if the member is the Chair, to the Director of the Secretariat, so that an appropriate management strategy may be developed.

Council members will actively participate in developing and implementing strategies for resolving any conflict of interest and will take reasonable steps to ensure that any conflict is resolved in the public interest.

What can be done to manage an actual or perceived conflict of interest?

The first step in managing a conflict of interest is to disclose it so there is transparency about the issue. Once disclosed, it will be necessary to decide whether something needs to be done to eliminate or mitigate the conflict of interest. In making this decision, the Council will need to assess the seriousness of the conflict of interest, and the range of possible mitigation options that might be applied to reduce the conflict.

² Adapted from text contained at: <https://www.thebalancesmb.com/what-is-a-conflict-of-interest-give-me-some-examples-398192>

While seriousness is a question of degree, the Council may decide that the overlap of the two interests is so slight that it does not really constitute a conflict of interest, in which case the Council may legitimately decide to take no action. At the other end of the spectrum, some conflicts of interest cannot be managed and may require a member to relinquish a private interest, remove themselves from a decision or an entire project, or resign from the Council altogether.³

A common area of conflict for Council members relates to the views held by their organisation on particular sentencing matters and the view held by the individual as a Council member. This may be particularly difficult for members whose organisation makes a formal submission to a Council project. Any Council member whose organisation makes a formal submission to a Council project should outline the extent to which the submission has been authored or endorsed by them personally. Depending on what is contained in the submission, the member may be asked to remove themselves from consideration of relevant issues addressed in the submission.

Council members will follow Council policy on managing conflicts of interest and duty as outlined in the Council's operating guidelines. Wherever possible, they will avoid any actual, potential or perceived conflicts. They declare any financial or other outside interests by using the QSAC Conflict of Interest – Disclosure Form, which will be used by the Chair to decide how a conflict will be managed. Any matter that has been identified will be listed in the Council's Conflict of Interest Register, which will be maintained by the Secretariat.

At the start of each Council meeting, members have an opportunity to identify any new conflict or potential of interest matter, either a general matter, or a matter that relates to a particular agenda item.

Council members who have a material conflict of interest or conflict of duty in a matter, as determined by the Council, shall leave the room while the matter is being considered. They do not discuss or take part in any decisions on the matter.

Depending on the nature of the conflict, the Council may recommend that members restrict their involvement in a matter, step down from a position they hold on a temporary or permanent basis or relinquish their personal interest. If the Council determines that a conflict is material, it makes sure that affected members do not participate in the matter at all. The Council may seek advice from a disinterested third party such as a DJAG ethics consultant, a probity adviser, lawyer or governance expert when assessing a conflict of interest and deciding the best mitigation action to take.

Members of the Council may also access the Queensland Integrity Commissioner to raise relevant questions if necessary. Requests for advice to the Integrity Commissioner must be in writing and should contain sufficient information to allow the Integrity Commissioner to evaluate the issues concerned. Requests should be sent to the Integrity Commissioner by post (PO Box 15290, City East, Queensland, 4002) or email (integrity.commissioner@qld.gov.au). The Integrity Commissioner does not provide legal advice. The Council records the personal interest disclosures of members in the minutes of its meetings and notifies the Attorney-General in writing of any breach of process.

2.13 Contributing to public discussion in an appropriate manner

The Chair of the Council may make such public comment about the work of the Council as he or she deems appropriate and consistent with the role of the Council under the PSA.

A member should refrain from making any public comment about the deliberations of the Council **without first consulting** the Chair or Deputy Chair.

Inquiries about the work of the Council, whether by the media or otherwise, should be directed to the Chair, and the Council's operating guidelines outline the governance associated with responding to these inquiries.

³ Adapted from text found at: <https://www.oag.govt.nz/2007/conflicts-public-entities/part4.htm>

If, in commenting on the work of the Council, it is necessary to discuss government policy, the Chair or relevant member should use his or her best endeavors to ensure government policy is fairly represented.

Council members should take particular care when considering if it is appropriate to comment on government policy in the period leading up to a State election (referred to as the 'caretaker period'). The caretaker period operates from the dissolution of the Legislative Assembly until the election result is clear or, in the event of a change of Government, until the new Government is formed. Some care should also be exercised in the period between the announcement of the election and the dissolution of Parliament.

Like any citizen, a member of the Council has the right to freedom of expression and to contribute to public discussions on community and social issues in his or her personal capacity. In doing so, Council members will:

- take reasonable steps to ensure that any comment that he or she makes will be understood as representing his or her personal views, and not those of the Council
- maintain the confidentiality of information that he or she has access to because of his or her role, that is not publicly available
- be aware that personal comments about a public issue may compromise a member's capacity to perform the duties of his or her role in an independent and unbiased manner.