

# directors' code of conduct and guidance notes





**directors'**  
**code of conduct**  
**and guidance notes**

The Victorian Government has vested the State Services Authority with functions designed to foster the development of an efficient, integrated and responsive public sector that is highly ethical, accountable and professional in the way it delivers services to the Victorian community.

The key functions of the Authority are to:

- identify opportunities to improve the delivery and integration of government services and report on service delivery outcomes and standards;
- promote high standards of integrity and conduct in the public sector;
- strengthen the professionalism and adaptability of the public sector; and
- promote high standards of governance, accountability and performance for public entities.

The Authority seeks to achieve its charter by working closely and collaboratively with public sector organisations.

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# Victorian Public Entity Directors' Code of Conduct 2006

**Code of Conduct issued by the Public Sector  
Standards Commissioner**

made under the

***Public Administration Act 2004, s63 (Code)***

**This provision provides that the Public Sector Standards Commissioner may prepare and issue codes based on the public sector values. Further, the purpose of a code is to promote adherence to the public sector values. The Public Sector Standards Commissioner may determine to whom a code applies. A contravention of a code is capable of constituting misconduct.**

## **1 Name of Code**

This Code is the *Victorian Public Entity Directors' Code of Conduct 2006*.

## **2 Purpose**

This Code is issued to promote adherence to the public sector values by directors of Victorian public entities.

### **3 Commencement**

This Code commences on 11 October 2006.

### **4 Application**

This Code applies to directors of public entities, as defined in section 4 of the *Public Administration Act 2004*.

### **5 Declaration**

I approve the attached Code.

A handwritten signature in black ink, appearing to read 'G. Vines', with a stylized flourish at the end.

### **GREG VINES**

Public Sector Standards Commissioner  
11 October 2006

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# about this code

## where do board duties come from?

Directors on the Board of a public entity are public officials under s. 4 of the *Public Administration Act 2004* (PAA). In performing their role, members are bound by the legislated requirements of:

- the Victorian public sector values; and
- the Directors' Code of Conduct, which is aligned to the public sector values. The Code is described below.

Directors are also subject to other sources of legal obligation. The establishing legislation for the public entity may articulate requirements over and above those in the public sector values and the Directors' Code of Conduct.

## who issued the code of conduct?

The Public Sector Standards Commissioner issued the Code of Conduct. It is binding on all members of public entity Boards ('Directors', as defined in the PAA).

## **why was the code issued?**

The purpose of a Code of Conduct issued by the Public Sector Standards Commissioner is to promote adherence to the public sector values by public officials.

## **what does it mean for me?**

The Code expresses the public sector values in terms that are most relevant to the special role and duties of Directors. At the same time, it is based on the same set of values (the public sector values) that apply to all public officials, including employees.

The Code is supported by guidance notes to help Directors work through how the behaviours can translate into practice.

## **how can I be sure I'm complying with the code?**

A Code of Conduct cannot anticipate every possible situation. Where policies and procedures are unclear or prove insufficient in particular circumstances, it is always advisable to go back to 'first principles'. This means considering the core ideas contained in both the Code and the public sector values on which it is based.

## **where do I go for further information?**

The State Services Authority website provides further detailed information for Directors. Directors needing to consider particular issues in relation to obligations under the Directors' Code of Conduct should refer to [www.ssa.vic.gov.au](http://www.ssa.vic.gov.au) for relevant information.



# directors' code of conduct

As a director and member of a Board of a Victorian public entity you must:

- Act with **honesty and integrity**. Be open and transparent in your dealings; use power responsibly; do not place yourself in a position of conflict of interest; strive to earn and sustain public trust of a high level.
- Act in **good faith in the best interests of the public entity**. Demonstrate accountability for your actions; accept responsibility for your decisions; do not engage in activities that may bring you or the public entity into disrepute.
- Act **fairly and impartially**. Avoid bias, discrimination, caprice or self-interest; demonstrate respect for others by acting in a professional and courteous manner.
- **Use information appropriately**. Ensure information gained as a director is only applied to proper purposes and is kept confidential.
- **Use your position appropriately**. Do not use your position as a director to seek an undue advantage for yourself, family members or associates, or to cause detriment to the public entity; ensure that you decline gifts or favours that may cast doubt on your ability to apply independent judgement as a Board member of the public entity.

- Act in a **financially responsible** manner. Understand financial reports, audit reports and other financial material that comes before the Board; actively inquire into this material.
- Exercise **due care, diligence and skill**. Ascertain all relevant information; make reasonable enquiries; understand the financial, strategic and other implications of decisions.
- **Comply with the establishing legislation**, or its equivalent, for your public entity. Act within the powers and for the functions set out in your public entity's establishing legislation and/or ministerial charter.
- Demonstrate **leadership and stewardship**. Promote and support the application of the Victorian public sector values; act in accordance with the Directors' Code.

# guidance notes

The following guidance notes do not form part of the formal Directors' Code of Conduct but are provided to assist in interpretation of the Code. For further information and guidance, Directors may look to the State Services Authority website.

In reading the Code and these guidance notes, Directors should bear in mind that their duties under the Code overlap. This is because, in practice, the behaviours and processes that are relevant to one duty (e.g. 'act with honesty and integrity') are also relevant to others (e.g. 'using your position appropriately').

## ***duty to act with honesty and integrity***

**Honesty** is concerned with being open and transparent

- Express genuine views clearly and without ambiguity
- Respect laws, policies and generally accepted standards of behaviour
- Explain reasons for views, including disclosing what information or considerations were relied on
- Be truthful
- Speak up when a decision or advice is being considered that may be detrimental to the interests of the public entity

Board members should act and advise with honesty and integrity in all aspects of their official duties. If a member believes an aspect of government policy or administration may have unforeseen consequences or requires review, he or she should bring it to the attention of the Board.

Examples of behaviours that may breach the Code:

- Failing to express a view or ask a pertinent question because of feeling unsure about expressing that view.
- Using the public entity's assets to provide benefits for other Board members. For instance, financing a social outing for members from the public entity's resources without Board agreement.
- Not providing crucial information to other Board members and allowing them to proceed on a course of action that will be detrimental to the public entity. Abstaining from voting may be a breach of honesty in this case.

**Integrity** is concerned with motive, and being consistent with espoused values

- Avoid actual and perceived conflicts of interest
- Declare any outside interests
  - annually (Declaration of Private Interests)
  - when they arise (e.g., new appointments; new commercial interests)
  - prior to consideration of particular matters
- Withdraw from Board deliberations where an actual or apparent (perceived) conflict of interest arises
- Withdraw, or record a minority view, where a matter of conscience arises
- Do not be rushed into making decisions without time for proper consideration
- Ensure that the minutes of the meeting record actions to declare conflicts

The duty to act with integrity overlaps with a member's other duties to act honestly and in good faith in the best interests of the public entity.

A member should be:

- honest, open and transparent in all dealings and act in the public interest; and
- committed to high standards of professionalism, service to the community and ethics.

Board members need to participate actively in the work of the Board.

A member who does not act with integrity might not be covered by the Government's indemnity policy.

## ***duty to act in good faith in the best interests of the public entity***

**Good faith** is concerned with being cooperative and reasonable

**In the best interests of the public entity** is about proper purpose and reputation

- Commit to be an active member of the Board before accepting a role on that Board
- Be professional and positive in all dealings with fellow Board members
- Exercise powers responsibly and in the best interests of the public entity
- Be aware that gifts and favours of any kind, whether for Board members or for members of their families, may influence – or be perceived to influence – decision making
- Be mindful that your conduct in all aspects of your life can reflect on your standing as a Board member and the reputation of the public entity

Board members should be sufficiently independent to provide balanced advice to the Board. They are more likely to make effective decisions if they pay close attention to making sure that each decision is made based on the best information available at the time and in the best interests of the public entity.

An independent Board member is not connected personally, financially, commercially or professionally with the public entity's management or with any other business or relationship that could interfere with their independent judgement.

## *duty to act fairly and impartially*

**Fairness and impartiality** is concerned with being objective and acting with balance and justice

- Advise and behave in a manner that is free of favouritism, self-interest and preference
- Consider all relevant facts objectively when implementing government policy and programs to ensure equitable outcomes
- Act in accordance with anti-discrimination legislation
- Respect human dignity and foster a culture that is free of intimidation and bullying

Judgement of Board members should be formed on the basis of evidence without discrimination against any person or body. That is, members should act in accordance with anti-discrimination legislation which protects people from discrimination on the grounds of their sex; gender identity; sexual orientation; lawful sexual activity; marital, parental or carer status; pregnancy; breastfeeding; age; physical features; impairment; race; political or religious belief or activity; and industrial activity.

The Board should ensure there is a process for resolution of grievances from Board members themselves and from persons not on the Board such as employees, consumers, clients, contractors, and community groups that ensures fairness and gives confidence to members, that, where a problem is identified, it will be dealt with in an appropriate manner.

## ***duty to use information appropriately***

**Using information appropriately** is concerned with respecting confidentiality and using discretion, prudence and good judgement

- Only use information gained as a Board member for purposes intended by the Board and for purposes that are in the interests of the public entity as judged by the Board
- Be conscious that Board members hold privileged information and that strict rules of confidentiality apply to that information
- Be well informed about Victorian privacy and protected disclosure legislation
- Never communicate official information for other than official purposes without the Board's permission. This includes leaking information to the media, clients of the public entity or to stakeholders

Board members must use information appropriately by ensuring it is only applied to proper purposes, maintaining confidentiality and not seeking to gain undue benefit for any party.

Boards should ensure that all members are aware of requirements of the *Information Privacy Act 2000* and (if relevant) the *Health Records Act 2001*.

Board members must not take improper advantage of any information, including commercially sensitive information, gained in the course of their Board duties. They may disclose official information that is normally given to members of the public seeking that information or if they are called to give evidence in court, or when given proper authority. Comments should be confined to facts and members should not express personal opinion on official policy or practice.

Examples of behaviours that may breach the Code:

- A Board member is on a selection panel for a new cleaning contract. The Board member uses information gained about firms participating in this tender process to apply to his own business.
- A Board member has access to personal information provided by candidates as part of a selection process. The Board member uses contact information from that list to invite these people to join the local golf club.

Where a Board member believes that 'improper conduct' involving public officers is occurring within the public entity, he or she should use the procedures and mechanisms provided for in the *Protected Disclosures Act 2012*.

## ***duty to use your position appropriately***

**Using your position appropriately** is concerned with not abusing the influence or access to information that your role provides

- Do not misuse or abuse those powers for personal gain or some other motive
- Do not take decisions with any intention of malice
- Do not join a Board as a favour to a friend or colleague, or where you consider that the impartiality of your decisions may be compromised or would reasonably be perceived to be compromised
- Never seek to gain undue benefit for any party from information gained as a Board member

A Board member who improperly uses their position to gain an advantage for themselves or someone else or to cause detriment to the entity will be liable for their actions under both civil and criminal law.

Example:

- The Board of a public entity is developing a tender for grounds maintenance services. A Board member gets drawn into a conversation about the work by a friend of his. His friend lets him know that his son-in-law will be starting a gardening business in two months and tells his friend how good it would be if the tender were to be advertised after the business has started.

The Board member feels sorry for the young man who has a young family and has just been retrenched. He therefore argues strenuously against advertising the tender immediately but does not declare his conversation with his friend. The Board member knows the tender will be advertised and that the selection process will be thorough. He considers that holding off advertising to widen the field may be good for the public entity and would only provide a minor advantage to his friend's son-in-law or none at all if he does not win the tender.

The Board member should not have spoken with his friend about the proposed tender. Having done so, he should have declared his conversation to the Board and abstained from any discussion or decision on the tender.

## ***duty to act in a financially responsible manner***

**Financial responsibility** is concerned with being accountable, vigilant, prudent and acting legally

- Understand the public entity's financial accounts and financial position
- Ensure that the public entity's financial management system is adequate and designed to minimise processes which can lead to errors
- Ensure that there are clear, consistent financial reports from the Chief Finance and Accounting Officer (CFAO) and take an active interest in the work of the audit committee
- Request financial reports to the Board that are clear and concise, using graphs and techniques to assist members to understand reports where appropriate
- Ask management for trend analysis and benchmarking data to assist the Board to constantly reassess the financial health of the public entity
- Do not support a Board resolution that has financial implications that you consider imprudent
- Record your disagreement, or abstain from voting, if you do not believe financial implications are sufficiently clear
- Raise questions if uncertain about any aspects of financial reports

Board members must become familiar with the business of the public entity and understand its financial accountability arrangements. They must exercise care in relation to public funds and assets.

A Board member must be able to understand financial reports and the financial justifications for decisions taken by the Board. A Board member who needs training should ask to attend an appropriate course, or training should be offered as part of the induction process.

Board members should actively inquire about the financial material put before the Board if that material is unclear or raises matters that may be of concern from a financial perspective.

A Board member may ask for reports from the Chief Finance and Accounting Officer (CFAO) from time to time. The Board should have a protocol in place to direct such requests through the CEO, as a matter of good governance. The public entity's audit and risk management committee will also report on a regular basis.

The Department of Treasury and Finance web site has the Victorian Government's Financial Management Compliance Framework (FMCF). Information on the FMCF, as well as other useful information, can be found at [www.dtf.vic.gov.au](http://www.dtf.vic.gov.au). The main aim is to support Victorian

public entities in meeting their compliance obligations in relation to the FMCF. This should be of considerable assistance to Board members in complying with financial requirements.

## ***duty to exercise due care, diligence and skill***

**Due care, diligence and skill** is concerned with being prudent, having commitment, and acting responsibly and professionally

- Get to know the business of the public entity and the way the Board operates
- Read Board papers and be prepared to ask questions about matters before the Board
- Attend Board meetings and be focused on the work under consideration
- Consider issues completely, taking account of all relevant evidence
- Understand the strengths, weaknesses, opportunities and threats facing the public entity. Ask management for detailed briefings and/or familiarisation tours of the detail of the public entity's business and operations before strategic planning takes place
- Do not simply rubber stamp recommendations put by a committee or individual
- Ensure full compliance with the legal, ethical and policy obligations of the public entity
- Ensure you can guide and monitor management of the public entity. To do this
  - monitor the affairs and practices of the public entity

- review the public entity’s financial statements and reports regularly
- demand that Board papers are prepared thoroughly and sent well in advance of board meetings
- where appropriate, demand evidence-based documentation and seek further information if necessary to ensure that the Board’s decisions are based on the best available information
- Take an interest in the qualifications and experience of candidates for senior executive jobs in the public entity such as the Chief Executive Officer and the Chief Finance and Accounting Officer

Board members must exercise powers and discharge duties with the degree of care and diligence of an ‘ordinary prudent’ person.

This duty is related to the prudential management of public funds and the prudential management of risk on behalf of Government.

The Board usually delegates detailed consideration of issues to officers of the public entity, individual members of the Board or to committees. The individual or committee that is delegated to consider a matter cannot lawfully delegate that power or function to any other individual or body.

The Board will be held to account for the actions of its delegates and committees.

The public entity, including the Board and its members, may be vulnerable to criticism or legal action if a public entity gets into difficulties. This may happen if:

- there have been very few Board meetings;
- members have failed to come to grips with the business of the public entity;
- members have not taken steps to ensure proper financial statements and records are kept;
- the Board has not ensured that there is a proper audit and control system to detect and prevent fraud by officers and employees; and
- the Board has exercised its powers inconsistently with government policy.

A Board member who has any special skills, for example a legal or accounting qualification, is expected to use them in working on the Board.

## ***duty to comply with establishing legislation***

**Complying with establishing legislation** is concerned with having the power and authority to act and with having respect for boundaries

- Carry out duties in good faith and for a proper purpose as described in public entity's
  - establishing Act
  - constitution or terms of reference document
- Ensure you have ready access to up-to-date copies of the establishing documents during Board meetings
- Ensure Board papers refer to relevant sections in the establishing legislation, and any relevant government policies and inform members of the powers under which they are acting
- Understand whether a decision is within the public entity's power and ask questions if you do not understand
- Be conscious that necessary delegations are in place, and that matters reserved for the Board are clearly identified
- Be aware of the Government's policies and priorities and of any directions from a Minister that affect the public entity while remaining apolitical in applying those policies or directions

Board members should be clear that if the Board wishes to do something not authorised under its establishing legislation, but in the public interest or consistent with the objectives of the public entity, it should be raised with the Minister or Department for consideration. The Minister may be able to issue directions to facilitate the action or a legislative change may be considered.

Example:

- A Board of a public entity is responsible for the operations of a large area of parkland. The Board has a power in the Act of Parliament establishing the park to fence off a defined area so that there is no longer any public access.

The Act states that this may be done for purposes of environmental protection, or to allow construction of buildings to study techniques for the preservation of threatened animal or plant species, or to allow construction of maintenance facilities, such as a recycled water plant.

The Board received a submission from a group of business people well known to Board members. The submission proposed that an area of the park be fenced off for construction of a building to house a laboratory. A PhD student would use the laboratory

to study techniques for preserving a particular endangered plant variety. It was also proposed that the building include a commercial recreation facility.

The Board Chair sought advice as to whether it had the authority to act in this situation. The advice was that the study of an endangered plant species was within the purposes permitted under the establishing legislation but establishing a recreation centre was not a permitted purpose under the Act. The implications are that the Board could proceed with the study but not the recreation centre.

## ***duty to demonstrate leadership and stewardship***

**Leadership and stewardship** are concerned with having foresight, providing an example and achieving sustainability

- Understand the importance that strategic direction plays in ensuring that the public entity fulfils its purpose for government and other stakeholders
- Be conscious of, and value, the assets that belong to the public entity
- Assist in developing and promulgating the organisational culture the Board wishes for the public entity
- Behave in a way that exemplifies the public sector values
- Ensure the Board schedules time to focus on strategic matters and reflection and for proper consideration of programmable work
- Watch for signs that the Board or the public entity is not performing well. These might include
  - getting bad news late
  - a poor accountability culture in the public entity
  - Board decisions not implemented quickly
  - decisions made without Board approval or by officers lacking delegated powers
  - an uncooperative, evasive or aggressive CEO or CFAO
  - inadequate auditing of past mistakes
  - inadequate or ineffective control systems

Stewardship is the careful and responsible management of something entrusted to one's care. The core roles of oversight and leadership played by the Board are critical to good governance and require each member to exercise independent judgement and goodwill.

The Board of a public entity exercises its stewardship on behalf of the State of Victoria.

Board members should see their stewardship duty as being responsible for the public entity's tangible and intangible assets. Intangible assets include the public entity's:

- reputation;
- intellectual capital;
- integrity and commitment to values;
- goodwill resulting from working with other stewards such as the Department, the Minister and Parliament;
- experience and corporate memory derived from product delivery; and
- program outcomes over time.

Board members must always be conscious that their behaviour sets an example for others and can influence the way in which the public entity and the public sector more broadly are viewed. They must also ensure that the actions of the public entity as a whole are consistent with relevant standards.

Risk management is an important aspect of a Board's stewardship obligations.



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## **contact us**

at the State Services Authority

Email: [info@ssa.vic.gov.au](mailto:info@ssa.vic.gov.au)

Phone: (03) 9651 1321

Fax: (03) 9651 0747

[www.ssa.vic.gov.au](http://www.ssa.vic.gov.au)

Postal address:  
3 Treasury Place  
Melbourne 3002