

Department of Climate Change,
Energy, the Environment and Water

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Aboriginal Cultural Heritage Advisory Committee – code of conduct

April 2024





Acknowledgement of Country

The Department of Climate Change, Energy, the Environment and Water acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Introduction and application of the code

As public officials, all members of boards and committees have obligations to act in the public interest. Board and committee members are required to demonstrate standards of professional behaviour that will preserve public trust and deliver the best possible outcomes for the people of New South Wales.

Members of boards and committees must comply with a broad range of whole of government regulations and policies including those stipulated in legislation, regulations, Ministerial Memoranda, Department of Premier and Cabinet circulars, Treasury publications and Public Service Commission policy documents.

This code of conduct for the Aboriginal Cultural Heritage Advisory Committee (ACHAC) provides a summary of these responsibilities and sets out the standards of behaviour expected.

The *Aboriginal Cultural Heritage Advisory Committee – code of conduct* (the code) should be read in conjunction with the *Aboriginal Cultural Heritage Advisory Committee terms of reference*, and *Aboriginal Cultural Heritage Advisory Committee cultural protocols policy*, which provide information on compliance obligations of the committee and its members.

Values

ACHAC has adopted the following core values, which align with the *Government Sector Employment Act 2013*, the Department of Climate Change, Energy, the Environment and Water (the department) values and the Heritage NSW Aboriginal Cultural Heritage Framework:

- mutual respect
- integrity
- responsibility
- collaboration
- inclusivity.

These values are at the heart of how we work and, if applied consistently, they also help us to maintain the trust of the public.

1 Standards of conduct

This code outlines the standards of conduct expected of ACHAC members in exercising their functions. It is the personal responsibility of each member of ACHAC to comply with this code.

The code has been developed to ensure ACHAC members:

- commit to upholding a high degree of professional service and ethical leadership
- act in a way that promotes public confidence in ACHAC's conduct
- have a clear understanding of their public duty and legal responsibilities
- act for proper purposes without exceeding their powers
- exercise due diligence in all their functions.

1.1 General conduct

An ACHAC member must:

- act honestly and exercise a reasonable degree of care and diligence in carrying out their functions
- act for a proper purpose in carrying out their functions
- not use their membership for personal advantage
- not use their membership to the detriment of public confidence in ACHAC
- disclose any interest (whether pecuniary or otherwise) that could conflict with the proper performance of their functions and avoid performing any function that could involve such a conflict of interest.

1.2 Work health and safety

Ensuring people working for the department have a safe place to work is a top priority, as is public safety. ACHAC members are considered 'workers' for the purposes of the *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2017*. The department is committed to eliminating and minimising Work Health and Safety (WHS) risks as far as reasonably practicable. ACHAC members are responsible for:

- being aware of the safety systems and practices that help keep everyone safe and well
- looking for hazards and taking action if a safety risk is identified and it is safe to do so

- reporting all WHS incidents, including near misses, to the Secretariat, Heritage NSW, who will liaise with the department's WHS team.

1.3 Respect and inclusion

Respect and inclusion are fundamental to a harmonious, productive and psychologically safe workplace where people feel safe to speak up about concerns. The department is committed to ensuring a safe environment in which everyone feels they can achieve their potential.

The department has no tolerance for harassment or victimisation.

ACHAC members are responsible for:

- treating people with dignity and respect, and contributing to a positive and productive working environment
- making sure people feel valued and are able to fully participate
- not discriminating against, harassing or victimising anyone on any grounds including:
 - sex, gender identity or sexual orientation
 - marital status
 - pregnancy
 - age
 - race or ethnicity
 - physical or intellectual disability
 - political or religious conviction
- demonstrating inclusive behaviours and using inclusive language
- creating a workplace that is safe and offers protection from sexual, physical and psychological harassment, and neglect
- preventing bullying.

1.4 Conflicts of interest

A conflict of interest exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties.

There are 4 elements to consider when determining whether a conflict of interest exists:

- Does the official have a personal interest?
- Does the official have a public duty?

- Is there a connection between the personal interest and the public duty?
- Could a reasonable person perceive that the personal interest might be favoured?

Conflicts of interest do not, in themselves, usually constitute corrupt conduct. Corrupt conduct can, however, arise when a conflict of interest is concealed, understated, mismanaged or abused.

Examples of when conflicts of interest can arise include where a member has:

- other directorships or employment
- professional and business interests and associations
- investment interests or the investment interests of friends or relatives
- family relationships
- participation in party political activities
- personal beliefs or attitudes that affect impartiality

related to the subject matter of their work with ACHAC.

The above list and the examples below are indicative only. There may be other situations that can lead to a real or perceived conflict of interest.

ACHAC members work to balance individual cultural obligations and accountabilities with the compliance requirements set out by government to ensure the cultural safety of all members and the integrity of ACHAC's function. The ACHAC Cultural Protocols Policy will guide the culturally appropriate identification and management of issues such as Aboriginal cultural identity and connection to Country, Elders and cultural seniority, sensitive information management, Women's and Men's business, kinship and familial relationships, Sorry Business, intergenerational trauma, and lateral violence. Awareness of these potentially competing obligations for members is critical, as are strategies to manage any associated, real or potential individual conflicts.

1.4.1 Examples of conflicts that may arise for ACHAC members

A conflict can arise in a pecuniary way. An example of a pecuniary conflict is where a member is engaged by a proponent as a consultant or advisor, and if ACHAC advice was to support the provision of a permit to allow the carrying out of works to a site, the project may continue and thus benefit the person financially by way of ongoing fees.

A conflict can arise in a non-pecuniary way. For example, a person may personally know or be related to an owner of a property proposed to be declared as an Aboriginal Place. While there may not be any financial benefit from a particular decision on a matter affecting the property, there may be other benefits for the member such as the continuation of the relationship.

Some conflicts of interest are unavoidable. For example, a relative or friend may propose a development in relation to an object or site on which ACHAC is asked to advise. Another example is where a member was previously a consultant for, or employee of, the owner of an Aboriginal Place and the owner now proposes a management plan that sets out a suite of planned activities in relation to that place.

Sometimes, a position taken by a relative or community of a person on ACHAC (whether tied by kinship, family, or broader association) may give rise to an actual, potential, or perceived conflict with the duties of the member. As in this context the primary duty of the member is to act in the best interests of ACHAC (and not as a representative of their community), this can give rise to actual, potential or perceived conflicts and compromise their cultural safety.

The above examples are indicative only.

1.4.2 Duty of members to declare conflicts of interest

A member has a duty to declare any private interest that may impinge on ACHAC considerations and advice. When an issue arises, the member must as soon as practicable disclose full and accurate details of the interest or issue to the Presiding member of ACHAC and the Secretariat.

A member must disclose interests to ACHAC (which include positions and pecuniary interests) in corporations, partnerships or other businesses or organisations that may be relevant to the activities of the committee. A member's interests include those of an associate or close relative.

General disclosures must be made at the beginning of a member's term. Members must make specific disclosures as soon as possible after the relevant facts come to the member's knowledge, and they must be recorded by ACHAC in minutes of the meeting.

Disclosures must give sufficient detail for the conflict of interest to be understood. When a member believes a notified conflict of interest no longer applies, they must give sufficient detail for the change to be understood.

A register of such interests must be maintained by ACHAC and must also be reported to the Minister.

1.4.3 Process for conflict identification

1. All ACHAC members should aim to ensure that any conflicts of interest, whether actual, potential or perceived, between their personal, professional and employer interests and their obligations to ACHAC, are declared and appropriately managed.
2. Prior to any meeting, the Secretariat will circulate the proposed meeting agenda and request members to advise of any conflicts of interest related to the proposed agenda.

3. Each member is to consider the proposed agenda and confirm in writing to the Secretariat and the Presiding member if the member believes he or she has any actual, potential or perceived conflict of interest in respect of a particular matter.
4. This advice to the Secretariat must give full and accurate details of the conflict so an appropriate management decision can be made.
5. If a member advises of an actual conflict, the papers for that particular item will not be made available to the member until the matter is resolved in accordance with the process below.
6. All advice of a conflict of interest will be provided to the Presiding member or committee prior to the meeting.
7. At the meeting, the person must confirm their declaration of any conflict of interest and whether the conflict is pecuniary or non-pecuniary. If members have become aware of a conflict, they should declare it at the beginning of the meeting.
8. The committee will discuss the reported conflict of interest and make a decision on a management action. The decision must be recorded in the meeting minutes.

1.4.4 Management of conflicts

The conflict should be resolved in a way that ensures the integrity of the committee's advisory function is not compromised. The reasons for not excluding a member from a decision where the member has a conflict must be able to be explained in public if questioned.

Management actions could include:

- excluding a member from any discussion on the relevant matter
- excluding a member from a decision or voting on the relevant matter
- withholding meeting papers and requiring the member to leave the meeting while the relevant matter is discussed.

1.5 Gifts, benefits and hospitality

Members must not seek, offer or receive money or gifts in order to obtain a benefit or favour. Members must not accept gifts or benefits that could place them under an actual or perceived financial or moral obligation to another organisation or individual.

All offers of a gift, benefit or hospitality that are offered to members must be declared.

When a gift or benefit is offered, the member must, within 10 working days, disclose full and accurate details of the gift or benefit to the Presiding member for approval, using the declaration form available from the Secretariat.

Gifts, benefits or hospitality that are valued:

- below \$25 may be accepted without the approval of the Presiding member
- between \$25 and \$100 may only be accepted with the approval of the Presiding member
- above \$100 must be declined or, where this is not practicable – accepted, registered and then donated to charity.

A register is to be maintained by the Secretariat. Boards and committees are encouraged to publish their gifts, benefits and hospitality register.

2 Departmental resources

2.1 Appropriate use of resources

Departmental resources should only be used for departmental purposes. Furniture, equipment, staff and other resources may be provided to ACHAC to perform its functions and should be used only in relation to those functions.

2.2 Public expenditure

Members must ensure the efficient and responsible expenditure of public monies in accordance with legislation and government policies and guidelines including the following:

- *Government Sector Finance Act 2018*
- *Public Works and Procurement Act 1912* and the associated Board Directions.

Members must comply with relevant government financial, asset management and procurement requirements.

2.3 Intellectual property and copyright

All intellectual property created by members in the course of their role as members of ACHAC is the intellectual property of the department. Members cannot sell or give away intellectual property created during or in connection with their appointment to a board or committee.

Members should provide Heritage NSW with complete copies of any reports, documents or other materials that demonstrate significant decisions, discussions, reasons or actions, or contain significant information not contained in final versions of documents created during the course of their appointment as an ACHAC member.

Intellectual property includes rights relating to scientific discoveries, industrial designs, trademarks, service marks, commercial names and designations, inventions, and activity in the industrial, scientific, literary or artistic fields.

Sensitive cultural information and knowledge will be recognised as Aboriginal intellectual property and managed in a culturally appropriate way as per the ACHAC Cultural Protocols Policy.

2.4 Confidential and private information

During the course of their duties, members might have access to sensitive, personal or commercially confidential information. This information could relate to members of the community, the NSW Government or government employees. Such information is varied in form including written information, stored information, e-documents and verbal information.

Such information may only be used for the purposes of the work of ACHAC. Members are expected to protect the integrity and security of information and documents for which they are responsible, and to adhere to the principles of the *Privacy and Personal Information Protection Act 1998* and the department's Privacy Management Plan.

Members have an ongoing duty to protect confidential and private information even if they are no longer members of ACHAC.

Examples of misuse of official information or documents include:

- speculating on shares, commodities or property on the basis of confidential information about the affairs of a business or of proposed government actions
- seeking to take advantage of another person, for personal reasons, on the basis of information held in official records
- disclosing sensitive information to members of the public, political parties, clients, lobby groups, other public servants, other government organisations or members of Parliament, without proper authority
- providing or trading confidential information for use by private investigators, banks and credit agencies.

Members must:

- use confidential or official information only in relation to their ACHAC role and consistent with their obligation to act impartially
- be cautious and use sound judgement when discussing sensitive information with others
- only disclose information that is normally available to members of the public
- safely and securely store any ACHAC records, including emails and electronic information
- treat email and electronic records as carefully as hard copy information.

Members must **not**:

- use information for any unofficial purpose outside ACHAC
- use information gained in their capacity as an ACHAC member for personal gain

- improperly collect, use or disclose the personal information of individuals including community and staff members
- use information gained in the course of their ACHAC role to cause harm or detriment to government or any person or organisation
- remove official information from government premises unless needed for ACHAC purposes.

2.5 Release of information

The *Government Information (Public Access) Act 2009* (GIPA Act) applies to public sector agencies including the boards and committees that meet the definition of public sector agency in the GIPA Act.

Business of ACHAC, including business conducted by electronic means such as email, is captured by the GIPA Act. Requests for information from the Information Access and Privacy Unit should be responded to promptly. All documents should be provided, and any sensitivities clearly articulated to the Information Access Officer handling the case.

The confirmed minutes of ACHAC meetings are not made publicly available due to cultural sensitivities.

Resolutions or meeting summaries may be published on the Heritage NSW website, sent to the Minister, or provided externally per individual request on a case-by-case basis.

2.6 Communicating with the media and third parties

Views that are publicly expressed by a member may be perceived or construed by the broader community as views of ACHAC or the department.

Members should ensure that any public comments made in a private capacity are not attributed as official comments. In this respect, members should not use official stationery for private correspondence or for purposes not related to their official duties.

The Presiding member of ACHAC may make public comment on behalf of ACHAC, where appropriate, but must not share any ACHAC records not publicly available with the media or on social media.

Members must not:

- initiate contact with the media on matters or issues that have been subject to discussion by ACHAC
- make public comment on behalf of ACHAC or the department

- make public comment on (including to the media or on social media) any matter or issue that has been subject to discussion by ACHAC
- share any ACHAC records with the media or on social media.

2.7 Lobbying

Decisions of ACHAC must be made in an open and transparent manner, without any undue influence, or the perception of undue influence.

Lobbying occurs when a party or an individual communicates with a committee member for the purpose of representing the interests of themselves or a third party with the express intention to influence a legislative, policy or administrative decision.

Parties may include industry groups, peak bodies, other professional advisors and consultants, government relations officers, or community and not for profit organisations.

When dealing with lobbyists or those who seek to influence decisions or legislative and policy outcomes, members must adhere to the following:

- Ensure you receive a written request to meet at least one week before the proposed meeting and that request expressly includes the purpose of the meeting and the proposed participants.
- Inform the Presiding member that a request to meet with a lobbyist has been received and have the request recorded in the minutes of the next meeting.
- Where a lobbying contact is not pre-arranged, record details of the contact and share them with the Presiding member as soon as possible, and ensure they are noted in the minutes of the next meeting.
- Keep accurate records that include the names and positions of all attendees, the time, date and location of the meeting, and a summary of discussion points and outcomes.
- Keep records in accordance with the Records and Information Management Policy and the *State Records Act 1998*.
- Conduct face to face meetings on government premises, or the business premises of the relevant organisation, and ensure that meetings held virtually are recorded.
- Ensure 2 members of ACHAC are present, or one ACHAC member and one staff member from Heritage NSW.
- Do not exercise any functions of ACHAC or purport to exercise any functions during a lobbying meeting.
- Provide the written record of the meeting to the Presiding member for tabling at the next meeting.

3 Speaking up and reporting matters

The department can only resolve problems and put improvements in place if people speak up and make the department aware of the situation.

The department will support people who speak up by listening and providing feedback on the actions they have taken and the reasons for these actions. Speaking up is more likely to be effective if it takes place early and in a constructive, courteous way.

3.1 Reporting allegations of impropriety and corrupt conduct

It is important that the conduct of ACHAC members always reflects the principles and ethical requirements set out in this code. If allegations about inappropriate conduct are made or aired in the public domain which, if true, would constitute a breach of this code, the member concerned may be removed from ACHAC.

Corrupt conduct is the dishonest or partial exercise of official functions by a public official including the improper use of power or position as a board or committee member for personal gain or the advantage of others.

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory, or based wholly or partly on improper motives. It is more serious than a technical breach of policy or procedures.

Fraud is dishonestly obtaining a benefit, or causing a loss, by deception or other means including the unlawful use of information obtained as a board or committee member, or equipment provided by the department for personal use.

The *Public Interest Disclosures Act 1994* provides protection to ACHAC members who voluntarily report suspected corrupt conduct. Members can make reports to the Presiding member or to the principal officer of the relevant public authority (usually the Secretary, Chief Executive Officer, General Manager) in accordance with the agency's internal reporting guidelines. Members can also report directly to the following investigative bodies:

- Disclosures concerning corrupt conduct should be made to the NSW Independent Commission Against Corruption (ICAC).
- Disclosures concerning maladministration should be made to the NSW Ombudsman.
- Disclosures concerning serious and substantial waste of public money should be made to the NSW Auditor-General.

4 Breach of the code

It is important to remember that ACHAC members are representatives of the NSW Government and are conducting work on behalf of the NSW Government. If a member does not comply with the code, the Presiding member may direct the member to take a specified action to rectify his or her conduct or determine that further work not be allocated to the member until the breach is rectified. If the Presiding member is in breach of the code, members of ACHAC may raise their concerns with the Secretariat for consideration by the Executive Director, Heritage NSW.

If members of ACHAC do not adhere to the code of conduct or are seen to display inappropriate ethical standards of behaviour, the department may take applicable action. Where suspected breaches are related to the conduct of a member or the entire committee, ACHAC must consult with the department.

In the case of a serious breach, the Presiding member may need to refer to the appropriate Minister and consider appropriate action. Any action taken will consider the seriousness of the breach, whether there is a pattern of such conduct, the intent of the member concerned and the effect it is having on the work of ACHAC.