

Livestock Health and Pest Authorities

Director Code of Conduct

June 2009



Contents

1. About this document	3
2. Relevant legislation	4
3. Guiding principles	6
Integrity and Ethics	6
Leadership	6
Accountability and Transparency	6
Innovation and Adaptability	6
Respect	6
Unity and Commitment to Outcome Focussed Behaviour	7
4. Conflict of interest and undue influence	7
5. Discrimination, harassment and bullying	9
6. Public comment on the work of the authority	10
7. Access to and protection of confidential information	11
8. Use of official facilities and equipment	12
9. Personal dealings with the authority	13
10. Interaction with staff and fellow directors	13
11. Ongoing director commitment and obligations	14
Schedule 1 – Process for addressing breaches of the Code of Conduct	17
Schedule 2 – Additional guiding principles for consideration by authority directors	20

1. About this document

Directors of the Livestock Health and Pest Authorities (authorities) work together to safeguard agriculture in New South Wales by:

- setting and monitoring the strategic direction of the authority;
- building relationships with ratepayers and other key stakeholder groups;
- reviewing and challenging the performance of management;
- ensuring the financial sustainability of the authority; and
- maintaining sound policies for risk management and regulatory compliance.

Whilst this Code cannot anticipate every situation that can pose a legal, ethical or moral question on directors, directors are still expected to exercise sound judgment when evaluating an issue of business conduct. This Code of Conduct therefore provides a common behavioural, ethical and legal framework for the State Management Council, the fourteen Livestock Health and Pest Authorities and their respective directors to achieve this. Together with the statement of mission, vision and values, this Code is a key part of the culture of the organisation.

All directors are expected to:

- read this document;
- seek clarification on any matter of uncertainty;
- undertake induction training provided by the authority on this Code and overall authority governance; and
- keep updated on relevant legislation and any amendments made to this Code.

How the authority monitors and ensures compliance with its code

Each authority is committed to implementing this Code of Conduct. The code is binding on all directors and has been approved by the State Management Council pursuant to the *Rural Lands Protection Act 1998*. It is up to each individual director to demonstrate a leadership role within the organisation and to comply with the Code. Each director will be accountable for such compliance and, as such, must:

- understand the standards of conduct expected;
- address any uncertainty in regard to decisions or actions made on behalf of the authority;
- act in a way that enhances internal and external confidence in the integrity and capability of the authority.

The State Management Council will monitor and review this policy regularly to assess its effectiveness in encouraging the adoption of appropriate behaviours by directors. Training and education regarding this Code will be conducted and will include practical advice on the importance of the Code of Conduct and general good governance practices. Where a director is concerned there has been a violation of this Code, it can be reported in good faith to the Chair of the authority. The disciplinary measures available to be imposed for violations of this Code are included within the main body of this document and the process for reporting, responding to and investigating such breaches are also incorporated.

2. Relevant legislation

The business of the authority is conducted in accordance with the spirit as well as the letter of all laws and regulations applicable to the authority, and therefore the authority will only conduct business by lawful and ethical means. The Livestock Health and Pest Authorities are constituted under the *Rural Lands Protection Act 1998* (the Act) and therefore will comply with the requirements outlined within the Act. Directors must ensure a sound knowledge of, and comply with, the legal framework covering the authority's operations by making themselves aware of their rights and obligations contained within the relevant sections of the Act, including, but not limited to:

***Rural Lands Protection Act 1998 – section 57B
Conduct of Policy Council and State Council members and directors of boards of authorities***

- (1) Every Policy Council and State Council member, and every director of a board of an authority, must:
 - (a) act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act, and
 - (b) act for a proper purpose in carrying out his or her functions under this or any other Act, and
 - (c) not use his or her office or position for personal advantage, and
 - (d) not use his or her office or position to the detriment of the member's Council or the director's authority (respectively)
- (2) Although this section places certain duties on Policy Council and State Council members, and directors of boards and authorities, nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

The section above outlines the fiduciary duties that directors must display in fulfilling the functions of office and exercising the powers attached to the authority. To provide clarity for directors on the expected conduct per section 57B:

- (1a) Directors must ensure they take all reasonable steps to be satisfied as to the soundness of decisions taken by the authority. In doing so, directors must also demonstrate honest and ethical behavior.
- (1b) Directors must conduct themselves, and make decisions on behalf of the authority, in a manner that will enable the objectives of the authority to be met.
- (1c) Directors must not, by virtue of their position as a director, make decisions or act in a way that will lead to personal gain.
- (1d) Directors must not, by virtue of their position as a director, make decisions or act in a way that will cause financial or reputational harm to the authority.

Rural Lands Protection Act 1998 – section 57C
Codes of Conduct

- (1) The State Council may issue a code of conduct to be observed by all directors of boards of authorities.
- (2) Without limiting what may be included in the code, the code may relate to any conduct (whether by way of act or omission) of a director in carrying out his or her functions that is likely to bring the authority into disrepute.
- (3) In particular, the code may contain provisions for or with respect to the following conduct:
 - (a) conduct that contravenes all or specified provisions of this Act or the regulations in all or specified circumstances
 - (b) improper or unethical conduct
 - (c) abuse of power and other misconduct
 - (d) action causing, comprising or involving any of the following:
 - (i) intimidation, harassment or verbal abuse
 - (ii) discrimination, disadvantage or adverse treatment in relation to employment
 - (iii) prejudice in the provision of a service to the community
 - (e) conduct of a director causing, comprising or involving any of the following:
 - (i) directing or influencing, or attempting to direct or influence, a member of the staff of the authority in the exercise of the functions of the staff member
 - (ii) An act of disorder committed by the director at a meeting of the Board of an authority or a committee of the board
- (4) A director of a board of an authority must not contravene the code
- (5) Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, and nothing in this section affects rights or liabilities arising apart from this section.

This section of the Act sets out the provisions by which this Code is derived and establishes the legislative guidelines that require directors to comply with the Code.

Directors must also be conscious of broader issues in relation to the public interest. Wider legislative issues can include, but are not limited to, questions of occupational health and safety, industrial relations, anti-discrimination, whistleblower protection and the environment. Directives given by the board and the State Management Council are to be consistent with any relevant legislation as well as the obligations derived from their members' fiduciary duties and wider legislative boundaries.

3. Guiding principles

The authority is committed to delivering value to those it serves and, as such, the Code of Conduct for directors is based on a number of key principles to ensure this. These principles describe the behaviours the authority expects directors to demonstrate in the actions and decisions they make in pursuing the desired outcomes for the authority:

Integrity and Ethics

It is a requirement that all directors act with integrity. Directors must not place themselves under any financial or other obligation to any individual or organisation, nor must they engage in activities, at work or outside work, that would bring the authority generally into disrepute or might reasonably be thought to influence them in the performance of their duties.

The authority expects directors to be fair, impartial and consistent in performing their duties and they must not be influenced by personal beliefs or relationships. They will demonstrate integrity and commitment and will conduct business with the utmost honesty and within a strictly ethical framework of fairness to all.

Leadership

Directors have a duty to promote and support the activities of the authority in order to maintain and strengthen stakeholder trust and confidence in the authority. By their actions they will lead the organisation with a commitment to a consultative and respectful approach as well as promoting teamwork through constructive debate and dialogue.

Accountability and Transparency

Directors will faithfully and impartially implement legislation as well as the policy intentions of the authority and the State Management Council. In all decision making processes, they will consider issues on merit in a transparent manner that complies with the requirements of the enabling legislation and the authority's governance framework.

Innovation and Adaptability

Directors will encourage and embrace a culture of adaptability, flexibility and diversity in order to foster the future growth and sustainability of the authority. Directors will continually seek new and improved methods of managing the authority's resources to ensure the authority is able to adapt to changing circumstances and practices. At all times, directors are asked to challenge what is, believe what can be, then deliver solutions.

Respect

Directors must treat others with respect at all times. This means not using derogatory terms towards others, observing the rights of other people, treating people with courtesy and recognising the different roles of others. This means that directors must be proactive in fostering good working relationships with other directors, staff, members and staff of the State Management Council and the public generally, with a view too gaining respect for themselves and the entire organisation, as well as respect from the wider community.

Unity and Commitment to Outcome Focussed Behaviour

In order to meet its stated objectives, the directors of the authority will demonstrate the ability to discuss all issues, agree on a position and then maintain the agreed position in a unified manner. Such discussions will focus on the authority's identified outcomes.

4. Conflict of interest and undue influence

In contributing to decisions and actions taken by the authority, directors will act honestly, in good faith and in the best interests of the authority. Directors will not allow personal interests or the interests of any associated person to conflict with the organisational interest. Conflicts of interest exist when it is likely that a director is influenced, or is perceived to be influenced, by a personal interest in carrying out their duty.

As outlined in section 2, directors are under a long-established common law duty to avoid conflicts of interest. Conflicts of interest that lead to partial decision making can be interpreted to constitute corrupt conduct. This is an area in which the perception of others plays a major part—directors must not only satisfy themselves that they are acting honestly, they must also be seen to be acting honestly.

Provided potential conflicts of interest are managed and do not affect the decision making process, i.e., the director can put aside his or her personal interests and act in the best interests of the authority, this will not be an issue. However, allowing a conflict of interest to influence the decision-making process can constitute corrupt conduct.

Effectively managing conflict of interest will involve a number of strategies, and the action needed will vary depending on the nature of the conflict or potential conflict involved.

Strategies to be taken by a director include:

- disclosing the details and making the other directors aware of the nature of the conflict of interest. This strategy can be sufficient if the effects of the conflict of interest on a particular matter are minimal;
- declaring the existence of the conflict of interest or potential conflict, and continuing involvement in deliberations with the consent of the other directors; and
- declaring the existence of the conflict of interest and no longer participating in deliberation or the ultimate decision.

Within a board meeting, there are a number of actions a director must take in dealing with a conflict of interest:

- disclose the conflict of interest;
- at the discretion of the board, leave the meeting; or
- ensure that the minutes of the meeting record the director having left and returned to the meeting.

Under no circumstances must a director vote on a matter in which he or she has a conflict of interest. Examples of conflicts of interest that can arise include:

- a financial interest in a matter being decided by the board, such as an ownership interest in a company that is tendering to supply goods or service to the authority;
- managerial involvement in or employment with another organisation whose objectives conflict with those of the authority, or can be affected by decisions of the authority's board of directors;
- a personal relationship with someone who is the subject of a matter before the authority's board, such as a purchasing decision;
- a director tendering for a permit to use a travelling stock reserve; and
- political activities that conflict with the authority's objectives.

Pecuniary interest

A pecuniary interest is an interest of a financial nature. To be a pecuniary interest, the likelihood or expectation of appreciable financial gain or loss to the director or an associated person must be reasonable. By their nature, pecuniary interests almost always create a conflict of interest situation due to the strong possibility that a decision made by the board will influence that financial interest. Clause 2 of Schedule 1 to the *RLP Act* exempts interests that are remote or insignificant and that are not likely to influence a decision from the disclosure requirements that otherwise apply to pecuniary interests. A director does not have a pecuniary interest:

- if he or she is unaware of the interest of a relative or associated person;
- by virtue of being a director of a board; or
- by virtue of being a director of a board, or a member of a company or other organisation that has a pecuniary interest in a matter provided the director does not hold a beneficial interest in that company or organisation.

Clause 11 of Schedule 1 of the *RLP Act* requires a director to disclose the nature of a pecuniary interest to the meeting of the board as soon as he or she becomes aware of the relevant facts. This requirement applies to:

- direct and indirect pecuniary interests;
- matters being considered, or about to be considered, at a meeting; and
- matters that appear to create a conflict that would impede the ability of the director to fulfil his or her duties when considering the matters.

The legislation requires the disclosure of any pecuniary interest, even if the director does not think it creates a conflict. For the purposes of the legislation, disclosure of the nature of an interest is fulfilled if the director states that he or she:

- is employed by a company or other body;
- is a partner of, or employed by, a particular person; or
- has some other specific interest in relation to a company, body or particular person.

The particular nature of the interest disclosed must be recorded in a book kept by the authority for that purpose. The book will be available for inspection by any person. Following disclosure of a pecuniary interest in a particular matter, a director must not be present during any deliberation of the matter by the board or take part in any decision regarding the matter.

5. Discrimination, harassment and bullying

The authority is committed to the fair and equal treatment of all its directors. Every individual has the right to dignity and respect in the workplace and therefore, a director must not harass, discriminate against, or support others who harass and discriminate against colleagues, staff or members of the public. Definitions of these terms are contained below:

Discrimination

Under federal and state legislation unlawful discrimination occurs when someone, or a group of people, is treated less favourably than another person or group because of their race, colour, national or ethnic origin; sex, pregnancy or marital status; age; disability; religion; sexual preference; membership of a trade union activity; or some other characteristic specified under anti-discrimination or human rights legislation.

Harassment

Under federal and state legislation unlawful harassment occurs when someone is made to feel intimidated, insulted or humiliated because of their race, colour, national or ethnic origin; sex; disability; sexual preference; or some other characteristic specified under anti-discrimination or human rights legislation. It can also happen if someone is working in a 'hostile'—or intimidating—environment.

Harassment can include behaviour such as:

- telling insulting jokes about particular racial groups;
- sending explicit or sexually suggestive emails;
- displaying offensive or pornographic material;
- making derogatory comments or taunts about someone's race or religion; or
- asking intrusive questions about someone's personal life, including their sex life.

The nature of harassment/discrimination

Harassing behaviour can range from serious to a less serious nature; however one-off incidents can still constitute harassment. Also, where continued, such behaviour can undermine the standard of conduct within a work area, which may erode the well being of the individual or group being targeted and lead to lower overall staff performance. The absence of complaints is not necessarily an indication that no harassment or discrimination is occurring. The person subjected to harassing or discriminating behaviour does not always complain. This is not necessarily because the act is deemed as trivial, but because the person may lack the confidence to speak up on their own behalf or feel too intimidated or embarrassed to complain.

What is workplace bullying?

One definition of workplace bullying is: "the repeated less favourable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice. It includes behaviour that intimidates, offends, degrades or humiliates a worker".

Bullying behaviour can range from very obvious verbal or physical assault to very subtle psychological abuse. This behaviour may include:

- physical or verbal abuse;
- yelling, screaming or offensive language;
- excluding or isolating employees;
- psychological harassment;
- intimidation;
- assigning meaningless tasks unrelated to the job;
- giving employees impossible jobs;
- deliberately changed work rosters to inconvenience particular employees; or
- undermining work performance by deliberately withholding information vital for effective work performance

6. Public comment on the work of the authority

As private citizens directors generally have the same right as any members of the community to make public comment about political and social issues. Public comment by directors includes public speaking engagements, comments on radio and television or in letters to newspapers and expressing views in books, journals or notices if it is expected that the comments will spread to the community at large. In these cases, comments made by directors must be confined to factual information and must not, as far as possible, express an opinion on official policy or practice unless required to do so by the circumstances of the particular situation (for example, when asked to do so in court).

In relation to official comments or release of information to the media, the policy of the authority is that all enquiries should be at first directed to the Chair or the General Manager for response. If authorised to do so by the Chair or General Manager, directors are enabled to disclose official information that is normally given to members of the public seeking that information, but must only disclose other official information or documents:

- in the course of their duties;
- when proper authority has been given;
- when required, or authorised, to do so by law; or
- when called to give evidence in court.

An authority director must observe official protocol when making comment in relation to issues pertaining to the authority, these protocols apply to all directors including the Chair, and a director must not approach the media with the purpose of disseminating information that would be harmful to the objectives of the authority.

7. Access to and protection of confidential information

Director access to information

An authority must provide access to all public documents (as defined in Section 56 of the Act) to all members of the public and to directors. The authority must also provide directors with information sufficient to enable them to carry out their functions. Directors who have a personal interest in a document of the authority have the same rights of access as any member of the public. The General Manager of the authority has an obligation to provide full and timely information to directors about matters that they are dealing with in accordance with board procedures. Directors have an obligation to properly examine and understand all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with the board's charter.

Confidential information

Confidential information means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. Confidential information includes any information about the authority or relevant individual which is not in the public arena. It can relate to:

- Personal circumstances or work arrangements
- Past and current events or future developments

Information in the 'public arena' refers to:

- Information made available through official announcement (in writing or verbal)
- Information which is informally communicated by the person concerned.

Confidential information also includes information in the possession of, or received in confidence, by an authority or director that those parties are either prohibited from disclosing, or are required to refuse to disclose, due to commercial confidentiality agreements or other legislative requirements.

Protection of confidential information

During the course of their duties directors will have access to confidential authority information. Directors must not improperly disclose official information acquired through membership of the authority. This prohibition applies irrespective of whether the directors would directly or indirectly gain a personal advantage or advantage for an associated person, and irrespective of whether detriment would be caused to the authority.

Directors must make sure that they do not disclose or use any confidential information without official approval. Unauthorised disclosures can lead to harm to individuals or give an individual or an organisation an improper advantage. The integrity and credibility of the authority can also be damaged if it appears unable to keep its information secure. Therefore, all directors must make sure that confidential information in any form (including computer files) cannot be accessed by unauthorised people, and that sensitive information is only discussed, within or outside the boardroom, with people who are authorised and have a legitimate, work related reason for access.

Personal information is information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion. Information about fellow directors, members and employees is kept confidential from third parties unless required by law to share with a third party, at which time the consent of the employee will be obtained. When dealing with personal information directors must comply with:

- the *Privacy and Personal Information Protection Act 1998*
- any requirements under relevant Acts

In order to protect information and maintain the integrity of the authority, a director must:

- take all necessary steps to protect confidential documents or information in their possession for which they are responsible;
- only use authority information to fulfil their obligations as a director;
- only use confidential authority information for the purpose for which it is intended to be used;
- only release authority information in accordance with established policies and procedures and in compliance with relevant legislation;
- not use authority information for personal purposes;
- not disclose any information discussed during a confidential session of a board meeting;
- not use confidential information gained through their official position for the purpose of securing a private benefit for the director or for any other person;
- not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for themselves, or any other person or body, from any information to which they have had access in the exercise of their official function or duties by virtue of their office or position; and
- not use confidential information with the intention to improperly cause harm or detriment to the authority or any other person or body.

8. Use of official facilities and equipment

The authority will not tolerate the misuse of authority assets or resources and directors will not use such assets or resources for their own benefit. Where a director is using board resources for a board-related purpose the resource must be used ethically, effectively, efficiently and carefully. Under no circumstances must a director use board resources for a private purpose unless this use is lawfully authorised and proper payment is made where appropriate. Directors must avoid any action or situation which can create the impression that board property, official services or facilities are being improperly used for their own private benefit or gain.

The interests of a director in their re-election as a director are considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. Board letterhead, logos and other information that gives the impression it is official board material must not be used for these purposes. Directors must not use authority computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

Director access to LHPA buildings

Directors are entitled to have access to the board room, office (subject to availability), and public areas of authority buildings during normal business hours and for meetings. Directors must not enter staff-only areas of authority buildings without the approval of the General Manager (or delegate) or as provided in the procedures governing the interaction of directors and authority staff.

Directors must ensure that when they are within a staff area they are cognisant of potential conflict or pecuniary interest matters and/or a perception that they inadvertently bring influence to bear on authority staff decision and are expected to conduct themselves accordingly.

9. Personal dealings with the authority

A director will inevitably deal personally with the authority (for example, as a ratepayer or recipient of a service). The director must not expect or request preferential treatment for themselves or their family because of their position. Directors must avoid any action that leads members of the public to believe that they are seeking preferential treatment.

10. Interaction with staff and fellow directors

Interaction between directors and staff is potentially contentious as there is a fine line between an effective working relationship between a director and a staff member, and a director trying to, or being perceived as trying to, influence or direct a staff member in the way in which they exercise their functions. In considering this matter a key principle is that individual directors have no authority to direct authority staff. Another key principle is that authorities have structures in place to allow for the management of staff and these structures must be observed when directors interact with staff. Authority employees are its greatest asset and will be treated justly and fairly and will be recognised and rewarded for their achievements and positive behaviour, therefore individual directors must refrain from:

- directing authority staff, unless authorised or requested to do so by the Chair;
- becoming involved in staffing matters;
- in any public or private forum, directing or influencing, or attempting to direct or influence, any staff of the authority;
- contacting a member of the staff of the authority unless in accordance with procedures governing the interaction of directors and authority staff that have been authorised by the Chair or the General Manager; or
- contacting or issuing instructions to any of the authority's' contractors or tenderers, including the authority's' legal advisers, unless authorised or requested to do so by the General Manager.

A guiding principle for the authority is 'respect' and as such directors are required to demonstrate this quality not only to authority staff but to each other. Inevitably, disagreements will arise between directors during the course of arriving at collective decisions; in fact, the discussion of a variety of views is essential to a healthy decision-making process. However a distinction needs to be drawn between disagreement and division, which will result in the board of directors becoming ineffective. Fellow directors deserve professional conduct and appreciation of their commitment and views for the further development of the authority.

11. Ongoing director commitment and obligations

Once elected or appointed, it is a director's responsibility to support the objectives and decisions of the authority and directors have an obligation to do this, even at the expense of the interests of any particular group or individual. In addition to the principles and expected behaviours outlined in this document, directors are also expected to demonstrate a commitment to the following:

Board meetings

It is a requirement for directors to attend board meetings and ensure they are adequately prepared to contribute to the meeting. A director must be physically present to participate in a meeting, although the board can approve of participation by telecommunication in exceptional circumstances. A director is expected to:

- thoroughly prepare for board meetings by allowing adequate time to read board papers and flagging matters which require clarification;
- raising concerns where it is felt that insufficient time has been allocated to allow proper consideration of all relevant issues (either because of the timeframe for the distribution of board papers or the number of matters to be considered);
- requesting that the board seek additional information, including expert and independent legal and financial advice, where necessary to make reasoned judgments; and
- not agreeing to an agenda item being closed while there are still matters of substance outstanding.

Directors must also be mindful of their expected behaviour and conduct during board meetings. Unruly, aggressive or disruptive behaviour will not be tolerated and are considered counter-productive to the objectives of the meeting. Such behaviour will be monitored by the Chair and corrective action put in place when required. The Chair will have the right to adjourn a board meeting in the first instance to give a warning to a director displaying such behaviour. If the behaviour continues, the director will find himself or herself subject to a breach of this Code and corrective action as outlined in schedule 1 will be initiated.

Criminal charges and convictions

A director who is charged with an indictable offence, or convicted in court of any offence, will immediately report the fact and circumstances of the charge or conviction in writing to the Chair. Directors are not entitled to withhold this information on the basis of a belief that the charge or conviction is not relevant to their role as a director.

Fraudulent claiming of expenses

Directors are to ensure they only claim expenses incurred in the fulfilling of their duties as an authority director. Fraudulent claiming of expenses can result in criminal action and directors must make themselves aware of the proper process for submission and approval of reimbursement of claims.

Reporting breaches

Integrity is one of the core values of the authority. Misconduct and malpractice breach trust and endanger our reputation and business. The best way of protecting trust and to secure our place within the community is for directors who have a genuine concern about wrongdoing to know they have a safe environment in which to speak up without fear of reprisal or victimization. Consequences for the breach of any of the sections within this Code of Conduct fall under the legislative guidelines provided by the relevant sections of the Act and *the Australian Corporations Act (2001)*. Directors should make themselves aware of the following sections outlining the consequences and process for action following a breach. Directors are expected to follow the authority's process contained within schedule 1 if they suspect a breach of any relevant legislation or behaviours and guidelines expressed in this document.

Ongoing development

A commitment to director development is a commitment to the continuing development of the authority. It is a process that adds value to the authority by enhancing its intellectual capital and serves to build confidence with staff and other stakeholders. Directors must attend provided training as part of their personal development.

Schedules

Schedule 1 – Process for addressing breaches of the Code of Conduct

Introduction

The authority expects all directors to fully comply with the legislative and behavioural expectations contained within the Code. This schedule outlines the processes associated with identification, notification, investigation and finalisation of any breaches of the Code of Conduct as per the Act and other common law requirements. Each breach must be assessed on a case by case basis and as such timings for resolution will be reflective of the details of the case; however directors are assured that due processes of natural justice will be applied and resolution will not be guided by structured timeframes:

Rural Lands Protection Act 1998 – section 57D

Formal censure for contravention of code of conduct

- (1) An authority may, by resolution at a board meeting, formally censure a director of the board of the authority for a contravention of the code of conduct.
- (2) A formal censure resolution may be passed only if the board is satisfied that the director has contravened the code on one or more occasions.
- (3) The board must specify in the formal censure motion the grounds on which it is satisfied that the director should be censured.

Rural Lands Protection Act 1998 – section 57E

Process for initiating suspension or other action

- (1) An authority may, by written notice given to the State Council, state the authority's belief that grounds may exist that warrant the suspension of a director of the board of the authority for a contravention of the code of conduct.
- (2) The State Council, on receipt of the notice, may request that the authority make a report in relation to the alleged contravention.
- (3) The authority must make the report to the State Council requested under subsection before the date specified in the State Council's request or before a later date allowed by the State Council.
- (4) The State Council may:
 - (a) conduct an investigation into any or all of the matters raised by or connected with such a notice or report, or
 - (b) authorise another person ("an investigator") to conduct such an investigation and to prepare a report into those matters.
- (5) If the State Council has conducted an investigation or considered an investigator's report into the matters concerned and is satisfied that grounds exist that warrant action being taken in relation to the director, the State Council may do any one or more of the following:
 - (a) by order in writing suspend the director from office for a period not exceeding 3 months,
 - (b) direct the director to take specified remedial or other action,
 - (c) recommend to the Minister that the director be removed from office under clause 6 of Schedule 1.

- (6) A copy of the order referred to in subsection (5) (a) must be served on the director.
- (7) A copy of the direction referred to in subsection (5) (b) must be served on the director.
- (8) A director, while suspended from office under this section:
 - (a) is not entitled to exercise any functions of the office, and
 - (b) is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the office.
- (9) The period of suspension under an order made by the State Council commences on the date 7 days after the service of the order on the director or the date specified in the order for the commencement of the period of suspension, whichever is the later.
- (10) If the director fails to take the specified remedial or other action referred to in subsection (5) (b), the State Council may recommend to the Minister that the director be removed from office under clause 6 (2) of Schedule 1.

Process to enact legislation

The State Management Council will have its own defined process for addressing breaches of the Code of Conduct as outlined in this document. For a director to enable the above sections of the Act, the following process is provided:

Section 57D:

- a director can raise the issue of a breach of the Code at a board meeting and put forward a request for a vote on formally censuring the responsible director. This request is to be documented in the minutes recording the director raising the breach and the seconder;
- if a majority vote is attained, the reason for the formal censure and the voting results is to be recorded into the minutes and the decision to formally censure (rebuke) the director is engaged.

Section 57E:

- the authority, via the Chair (unless the Chair is the focus of the action, then the deputy Chair), must provide written notice to the State Management Council outlining the suspected breach and evidence of that breach (the decision to refer the matter to the State Management Council must be a decision of the board of directors);
- if requested by the State Management Council, the authority will complete a report into the alleged contravention within the timeframe allocated;
- the authority must assist the designated 'investigator' into the contravention;
- the authority must ensure compliance by the director to the actions recommended by the State Management Council.

Abuse of Reporting Process

Abuse of the confidential reporting process will not be tolerated. All persons making reports should be sure of the truth of their concerns before reporting the conduct. All reports will be kept confidential and secure within the law; however, if anonymity during the investigation cannot be maintained, the director reporting the breach will be notified in advance. Maliciously reporting unfounded allegations will be treated as a serious breach of the authority's Code of Conduct. All reports made under the confidential reporting process must be made in good faith.

Common Law Obligations

Breaches against directors fiduciary duties can, under the *Corporations Act 2001*, bring the following consequences to the directors of the authority:

- financial penalty of up to \$200,000;
- disqualification;
- an order for the payment of compensation if directors are found to be personally liable; or
- if there is evidence of fraudulent actions by the directors, then under s.184 of the Corporations Act, ASIC can seek a criminal penalty of up to \$220,000 or imprisonment for up to five years.

Corrupt Activity

The Independent Commission Against Corruption (ICAC) was created in 1988 with the aim of protecting the public interest and preventing breaches of public trust. It has three main functions:

1. To investigate and expose corrupt conduct;
2. To assist in the prevention of corruption through providing advice and assistance;
and
3. To provide education to the community and the public sector about corruption.

ICAC is independent and its investigations cannot be controlled by politicians or the government. To enable it to perform its investigative functions, ICAC has wide-ranging powers. It is accountable to the NSW Parliament through the Parliamentary Joint Committee on ICAC, the Operations Review Committee and regular reporting requirements. ICAC cannot prosecute public officials involved in corruption. Its function is to investigate matters that are reported to it; make findings of corrupt conduct, and refer matters to the Director of Public Prosecutions, who ultimately is responsible for deciding whether to prosecute.

All principal officers of NSW public agencies are obliged to report suspected corrupt conduct under s 11 of the *Independent Commission Against Corruption Act 1988*. Section 11(5) of that Act in effect defines the principal officer as the chairman of the board. Other public officials are encouraged to report suspected wrongdoing, although in the first instance it is appropriate to report such activities to the relevant principal officer.

Corrupt conduct is defined in the ICAC Act, and essentially involves a breach of public trust that can lead to inequality or wasted public resources (including money). Corruption will often involve the dishonest misuse of power or position that results in giving one person an advantage over another person. Corrupt conduct might include the dishonest exercise of the powers of a director, a breach of trust or misusing information available as a result of holding the position of director. Suspected corrupt conduct must be reported to the chairman of the board of directors, who is under an obligation to investigate the matter and report any corrupt activity to ICAC. Even if inappropriate conduct is not found to be corrupt, it must still be dealt with.

Schedule 2 – Additional guiding principles for consideration by authority directors

In addition to those guiding principles highlighted within this document, the directors involved in the development of this Code have presented the following list of additional guiding principles for directors when acting and making decisions, on behalf of the authority:

- **Teamwork**

Directors will embrace the concept of working as a team in order to achieve the objectives of the authority.

- **Economy and Efficiency**

The authority will operate and make decisions based upon the best interest of its stakeholders whilst being mindful of the best return on investment of time and money in those decisions.

- **Constructive debate**

Rigorous debate is to be encouraged as long as the tone is of a positive nature and not targeted at personalities or for individual agendas.

- **Value delivery**

Directors must act to ensure the authority meets its stated deliverables on time and on budget.

- **Responsiveness**

Directors will strive for appropriate and timely outcomes consistent with the authority's stated goals when considering an authority response to an issue.

- **Consultative**

The authority will value the opinions of others and will seek to conduct its operations with open and consultative dialogue.

- **Flexibility**

The authority must be flexible enough to meet the demands of the constantly changing environment in which it operates.

- **Diversity**

The authority and its directors respect the opinions of all groups, genders, religions and ages. The authority will ensure representation where possible in its decision making and operational processes.

- **Understanding**

Directors and the authority must ensure an understanding of stakeholder requirements and issues so that they may act from an informed position.

- **Cooperation**

The authority will cooperate with other government and community groups to ensure its objectives are met.

- **Reasoning**

Directors must apply an appropriate level of reasoning to their decision making process