



Natural Resources Access Regulator

Board code of conduct

Contents

Introduction	2
Purpose	2
The role and functions of the Board	2
The functions of the Regulator	3
Role and responsibility of Chair.....	4
Role and responsibility of Board members	4
Role and responsibility of Chief Regulatory Officer	5
Board work plan and reporting requirements.....	5
Work Plan.....	5
Reporting Requirements.....	5
Key principles.....	6
Conduct of Board members	7
General conduct	7
Reporting on corrupt conduct	7
Use of public resources	8
Use of official information	8
Public comment.....	8
Conflicts of interest.....	9
Gifts and benefits	9
Rules for lobbyists	10
Employment outside of the Board.....	10
Political participation.....	10
Members contesting elections	10
Compliance with the code.....	10
Links to information.....	10

Introduction

This Code of Conduct applies to all members of the Natural Resources Access Regulator (NRAR or Regulator) Board which has been established under the *Natural Resources Access Regulator Act 2017* (the Act).

The NRAR Board was formed on the recommendation of Ken Matthews in his interim report “Independent Investigation into Water Management and Compliance in NSW” released in September 2017. Mr Matthews noted the need for an independent Board to provide impartial and apolitical oversight of natural resource management.

Given the Board’s independence, this Code stands alone from the NSW Department of Industry’s Code of Conduct, however, it does align to the broader public service principles promoted by the NSW Public Service Commission and the Department.

NSW Department of Industry staff who support the NRAR (who will be referred to in this Code of Conduct as NRAR staff) are required to comply with the Department’s code of conduct.

Purpose

This Code outlines the standards of conduct expected of Board members in their statutory functions. It is the personal responsibility of each Board member to comply with this Code.

The Code has been developed to ensure Board members:

- commit to upholding a high degree of professional service and ethical leadership
- act in a way that promotes public confidence in the conduct of the NRAR
- ensure the NRAR achieves its potential as an independent regulator
- 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.

The Code will be reviewed annually or as required in the context of the build of the NRAR.

The role and functions of the Board

The role of the Board is defined under the Act as a decision-making authority relating to any decisions made by the Regulator. The Board is independent and any directions by the Minister to the Regulator must be made in accordance with the provisions of the Act.

The Board will uphold the principal objectives of the Act which are as follows:

- (a) to ensure effective, efficient, transparent and accountable compliance and enforcement measures for the natural resources management legislation, and
- (b) to maintain public confidence in the enforcement of the natural resources management legislation.

("Natural resource management legislation" consists of the Act, the *Water Management Act 2000* and the *Water Act 1912*).

Any decision of the Regulator is made under the authority of the Board.

The Board's functions include:

- preparation of strategies, policies and procedures relating to enforcement powers under the natural resources management legislation,
- to advise and report to the Minister on any matter relating to the administration of natural resource management legislation,
- to publish details of convictions in prosecutions for offences under the natural resource management legislation,
- to enforce the relevant provisions of the Act outlined in Schedule 2, and
- to determine whether proceedings for offences under the natural resources management legislation should be instituted by the Crown.

In its role as strategic decision-making body, the Board will:

- endorse and oversight the implementation of better practice governance in the NRAR,
- determine and oversight the implementation of an annual strategic plan for the NRAR, including strategic priorities and strategic risks,
- determine a strategic risk management framework for the NRAR and monitor strategic risks
- endorse the NRAR regulatory risk principles and framework, and
- provide an annual report to the Minister each year for the financial year.

The functions of the Regulator

The functions of the Regulator can be delegated to either a member of the Board, a committee of the Board, the Chief Regulatory Office or any other public service employee or any person authorised under the regulations of the Act (no such regulations have yet been made).

The Regulator has the following functions:

- (a) preparation of strategies, policies and procedures relating to enforcement powers under the natural resources management legislation
- (b) determination of whether proceedings for offences under the natural resources management legislation should be instigated by the Crown
- (c) provision of advice and reports to the Minister or any relevant Minister on any matters relating to the administration of the natural resources management legislation

- (d) provision to the Minister or any relevant Minister with other advice or reports as requested in writing by the Minister
- (e) publications of details of convictions in prosecutions for offences under the natural resources management legislation
- (f) a range of compliance enforcement functions under Schedule 2 of the Act
- (g) any functions under any natural resources management legislation administered by a relevant Minister that are prescribed by the regulations made under this Act with the concurrence of the relevant Minister
- (h) any other functions conferred or imposed on the Regulator (including by way of delegation) by or under the natural resources management legislation or any other Act.

The Act provides protection of personal liability of Board members or any persons or staff acting under the direction of the Board in exercising the functions of the Regulator and any liability rests with the Crown.

Role and responsibility of Chair

The Chair is responsible for leading the activities of the Board.

The Board Chair's responsibilities include:

- ensuring that the Board performs its functions, acting within any relevant statutory powers, legal obligations and complying with policies relevant to the entity (including whole of government policies)
- facilitating the conduct of meetings to allow frank and open discussion
- ensuring individual members make an effective contribution and reviewing the performance and contribution of members
- facilitating the flow of information to members and stakeholders
- reporting to the Minister for Regional Water
- liaison with Departmental Executive as required
- working with the Board Secretariat
- if requested by the Minister or Department, providing input into the nomination, selection and recruitment process for new members
- meeting other requirements as noted in the Board's Operations Manual.

Role and responsibility of Board members

The role and responsibility of Board members include:

- supporting the Board to perform its functions
- attending meetings and participating in decision making processes
- undertaking consultation or research to support and promote discussion of agenda items
- acting in the interests of the Board as a whole
- meeting other requirements as noted in the Board's Operations Manual.

Role and responsibility of Chief Regulatory Officer

As set out in the Act, the Chief Regulatory Officer (CRO) is employed as a public servant in the Department of Industry.

The CRO is required to report to the Board on the day to day management of activities of the Regulator. The CRO will oversight the preparation of Board papers by the Board Secretariat.

The CRO will attend and participate in discussions of the Board but is not entitled to vote at any such meeting.

The CRO has a concurrent reporting line as a staff member of the Department of Industry reporting to the Deputy Secretary of the Lands and Water Division administratively and to the Board in relation to statutory responsibilities and functions.

Board work plan and reporting requirements

Work Plan

The work of the Board will be guided by a Work Plan developed by the Regulator and approved by the Board.

Board activities are funded by the budget of the Regulator which is funded as part of the Department of Industry.

Reporting Requirements

The Board is to provide reports to the Minister on the administration of natural resources management legislation as well as any reports requested in writing by the Minister.

The Regulator is required to prepared and forward to the Minister a report of its work and activities for the financial year. The report needs to include details of notices, orders and directions issued under the natural resources management legislation in connection with the enforcement of that legislation. The report may be included in the Department of Industry's annual report and will be approved by the Board

Key principles

The following principles are key tenets of the Code under which the Board operates:

- **Independence**

The Board will ensure that its decisions and actions are, and are perceived to be, independent and impartial. The Board is apolitical and will not be beholden to stakeholder interests; only the broader public interest. The Board will be fearless in its execution of its duties and provide strong and moral leadership to ensure quality delivery of services and restore public confidence in regulation under the natural resources management legislation.

- **Ethical**

The Board will seek to instil and uphold ethical values and behaviours in both the operations of the Board and of the Regulator. Unethical behaviour by members, NRAR staff or stakeholders will not be tolerated. The Board will act on any unethical behaviour or wrong doing by a member, staff or stakeholder as soon as it becomes apparent

- **Integrity**

The Board will act professionally with honesty, consistency and impartiality at all times to ensure a consistent regulatory environment that treats staff and stakeholders fairly and with respect. The Board will exercise its best judgement in the interests of the NSW community and work with stakeholders to ensure that they are consulted at all appropriate points. The Board will listen and act on stakeholder concerns when these are raised. The Board will ensure that it and NRAR staff do not discriminate on any grounds including age, race, gender, sexuality, marital status, disability, age, religious background and beliefs or political conviction.

- **Innovation**

The Board recognises the need for innovation in the natural resource regulatory environment and will explore new and better approaches to assist stakeholders meet their regulatory requirements. The Board will demonstrate intellectual leadership and innovation to ensure that better practices are developed and implemented. The Board will act on suggestions for improvements when they are raised and will look to develop and assess these on their merit.

- **Service**

The Board will ensure effective and efficient regulatory services that focus on stakeholder, industry and community needs and build community confidence in natural resource regulation. The Board will make decisions fairly, consistently, in a timely manner and without bias using the best factual information available. The Board will focus on quality while maximising service delivery and engage with a broad range of stakeholders, including government, industry (agricultural, technological etc) and environmental organisations, in developing and implementing service solutions.

- **Professionalism**

The Board will conduct all actions, including interactions with stakeholders, to a high professional standard mindful of probity, equity and effective use of resources. The Board will ensure the systems and procedures used by NRAR staff are effective and will initiate and encourage system improvements. The Board will maintain adequate and secure documentation to support its decisions and transparently disclose information in the public interest guided by legislative requirements, this code and the Board's good judgement.

- **Transparency**

the Board will ensure its decisions actions and processes are transparent and accessible. The Board recognises the need for public information that is accessible, reliable and current. The Board will initiate proactive reporting on key milestones and achievements as well as acknowledge any challenges to achieving good regulatory outcomes.

- **Accountability**

The Board will demonstrate its accountability to the Minister, Parliament, regulated community and the public against the Board's legislative mandate through public reporting and provision of information. The Board will actively promote public scrutiny. The Board will be fiscally responsible and ensure effective, efficient and prudent use of resources.

Conduct of Board members

As public officials, members of the Board have a particular obligation to act in the public interest. Members should be aware of the strict rules that apply to the affairs of public bodies and their employees in terms of acting in accordance with the law or charter; expending public money and resources only with proper authority; using public powers appropriately; and accounting for the use of public resources.

General conduct

Board members must act in the following ways:

- uphold the objectives and intent of the NRAR Act
- be aware of and comply with legislation dealing with privacy, discrimination and corruption
- ensure their behaviour is ethical and provides moral leadership
- act lawfully, honestly and respectfully
- exercise a reasonable degree of care and diligence in carrying out their functions.

Reporting on corrupt conduct

The Chair is required to report corrupt conduct or suspected corruption to the Independent Commission Against Corruption (ICAC). Corruption in this context includes the dishonest or partial exercise of public official functions. It may also involve the conduct of non-public officials which adversely affects the honest and impartial exercise of a public official's functions. For conduct to be considered corrupt under *the Independent Commission Against Corruption Act 1988* definition, it has to be serious enough to involve a criminal offence, a disciplinary offence, be grounds for dismissal or, in the case of Members of Parliament, involve a substantial breach of their Code of Conduct.

A report must be made to the ICAC as soon as the Chair has a reasonable suspicion that corrupt conduct may have occurred or may be occurring. Matters must be reported to the ICAC regardless of any duty of secrecy or other restriction on disclosure. It is important that reports to the ICAC be made without advising the person(s) to whom the report relates and without publicity.

Board members can also report directly to the following investigative bodies:

- disclosures concerning corrupt conduct should be made to the 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.

Use of public resources

Board members may be provided with equipment and other resources to perform their statutory functions. All such resources are to be used for Board and NRAR purposes and in accordance with any guidelines or rules about the use of those resources. Members should be mindful of the need to be efficient and economical in their use of public resources.

Use of official information

During the course of duties, members will gain information on a range of areas of government policy, stakeholder groups and individuals. 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 the Board and NRAR. Each member has a responsibility to maintain the Board and NRARs reputation for integrity and credibility in relation to the use and release of official information.

Misuse of official information or documents includes:

- speculation in 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.

In relation to confidential information, members must:

- protect confidential information
- only release confidential information if they have authority to do so
- only use confidential information for the purpose it is intended to be used
- not use confidential information gained through their position as a Board member for the purpose of securing a private benefit for themselves or any other person
- not use confidential information with the intention to cause harm or detriment to the Board or any other person or body

Members must comply with the *Privacy and Personal Information Protection Act 1998*.

Public comment

The Board Chair is responsible for speaking to the media on behalf of the Board to allow its decisions to be properly represented and communicated. The Chair can authorise another member to speak to the media on behalf of the Board at any time.

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

Conflicts of interest

Members are required to disclose as soon as possible any conflicts of interest and any direct or indirect pecuniary interests at a meeting of the Board. Particulars of the disclosure must be recorded by the Board and accessible for inspection by any person.

The [NSW Government Board and Committees Guidelines](#) (September 2015) clarifies that members must disclose interests "which include positions and pecuniary interests in corporations, partnerships or other businesses that may be relevant to the activities of the board or committee". When an issue arises, the board or committee member must as soon as practicable disclose full and accurate details of the interest or issue to the Board Chair. All declarations are to be recorded within a register maintained by the Chair, with the assistance of the Secretariat and noted within the minutes of the meeting.

A conflict of interest arises when a board member is influenced, or appears to be influenced, by personal interests. The perception of a conflict of interest can be as damaging as an actual conflict, because it undermines public confidence in the integrity of the organisation involved, its staff and its board.

A pecuniary interest is a conflict of interest which involves an actual or potential financial gain. It may result from a board member, or a member of his or her family, owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving income from a second job. Money does not have to change hands. A conflict of interest may also arise from personal or family relationships, or involvement in sporting, social or cultural activities, without having a financial component.

Board Members should be aware of the process for identifying, declaring and dealing with pecuniary interests, set out in clause 9 of Schedule 1 of the Act (included as an appendix to the Operating Manual).

The Department's Board Member's Pecuniary Interests Declaration and Undertaking form must be completed on appointment and when an issue arises.

Gifts and benefits

Gifts and benefits include any items, service, hospitality or travel which has intrinsic value to the member, their family, relation or associate.

Board members must not:

- seek or accept a bribe or other improper inducement
- seek gifts or benefits of any kind
- accept any gift or benefit that may create a sense of obligation or may be perceived to intended or likely to influence their decision making as a Board member
- accept any offer of money of any kind.

Rules for lobbyists

Board members who are involved in lobbying must not represent the interests of a third party in relation to any matter that relates to the functions of the Board and must be aware of and comply with the following laws and guidance: [Lobbying of Government Officials Act 2011](#), the [Lobbying of Government Officials \(Lobbyists Code of Conduct\) Regulation 2014](#), [Lobbyists Code of Conduct](#), www.lobbyists.elections.nsw.gov.au and the Premier's Memorandum M2014-13 NSW Lobbyists Code of Conduct at: www.dpc.nsw.gov.au.

Employment outside of the Board

Board members must ensure that any employment, business or other roles or activities they engage in will not:

- conflict with, impair or otherwise prevent the full exercise of their functions as board members
- involve using confidential information or resources obtained through their role as a board member
- discredit, bring into disrepute or disadvantage the reputation of the NRAR or the Board.

Political participation

Members should ensure that any participation in political matters does not bring them into conflict with their duties as Board members. A determination of what is appropriate in any particular case will depend upon the extent of the participation of the individual and the nature of the issue.

Members contesting elections

If members are considering contesting elections, they should refer to the rules outlined in the joint Department of Premier and Cabinet Circular C2013-04 and Public Service Commission Circular 2013-03 Contesting Elections: <http://arp.nsw.gov.au/c2013-04-pscc-2013-03-contesting-elections>.

Compliance with the code

If a member does not comply with the code, the Chair 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 Chair is in breach of the code, members of the Board may take similar relevant actions.

In the case of a serious breach, the Chair may need to refer to the 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 has having on the work of the Board and the Regulator.

Links to information

NSW Ministers: <https://www.parliament.nsw.gov.au/members/Pages/ministers.aspx>

NSW legislation: <http://www.legislation.nsw.gov.au/#/view/act/1996/77/whole>

NSW Public Sector Governance Framework:

http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0019/158005/NSW-Public-Sector-Governance-Framework-2013.pdf

NSW Boards and Committees Guidelines:

http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0003/174342/NSW_Government_Boards_and_Committee_Guidelines_-_Updated_September_2015.pdf

Department of Industry: <http://www.industry.nsw.gov.au/>