

Mining and Petroleum Gateway Panel

Code of Conduct

September 2013

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It should be noted that the code may be affected by changes to legislation at any time and / or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the code and the statutory requirements applying to Mining and Petroleum Gateway Panel under Part 4AA of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.

Mining and Petroleum Gateway Panel Code of Conduct
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Contents

- 1. Introduction** 1
- 2. Purpose of the Code** 1
- 3. Key Principles** 1
 - 3.1 Honesty 1
 - 3.2 Integrity 1
 - 3.3 Leadership 1
 - 3.4 Selflessness 1
 - 3.5 Impartiality 1
 - 3.6 Accountability 1
- 4. General conduct obligations** 2
 - 4.1 General conduct 2
 - 4.2 Fairness and equity 2
 - 4.3 Making decisions and taking actions 2
- 5. Conflicts of interest** 2
 - 5.1 General 2
 - 5.2 Disclosure of pecuniary interests 3
 - 5.3 Disclosure of non-pecuniary interests 4
 - 5.4 Register of declarations of interest 4
 - 5.5 Other business of employment 4
- 6. Personal benefit** 5
 - 6.1 Gifts and benefits 5
- 7. Protecting and using information** 6
- 8. Use of public resources** 6
- 9. Public Comment/Media** 6
- 10. Reporting suspected corrupt breaches** 7
- 11. Lobbying** 7
- 12. Removal from office** 7
- 13. Complaint handling** 7

1. Introduction

This Code of Conduct (Code) applies to all members of the Mining and Petroleum Gateway Panel (the Gateway Panel), including alternates.

The Code outlines the standards of conduct expected of Panel members. It is the personal responsibility of each Panel member to comply with this Code.

The Code should be read in conjunction with the Gateway Panel Charter, Complaints Handling Policy, and Operational Procedures.

The Code may be subject to changes that reflect the experience of the operation of the Panel.

2. Purpose of the Code

The Code has been developed to assist Gateway Panel members to:

- a) understand the standards of conduct that are expected of them,
- b) act honestly, ethically and responsibly,
- c) exercise a reasonable degree of care and diligence, and
- d) act in a manner that enhances public confidence in the integrity of the role of the Gateway Panel in the planning system.

As public officials, members of the Gateway Panel have a particular obligation to act in the public interest. All members of the Gateway Panel must:

- Comply with the Ethical Framework for the public sector set out in the *Public Sector Employment and Management Act 2002*
- Comply with the Code of Conduct
- Have a clear understanding of their public duty and legal responsibilities
- Act for a proper purpose and without exceeding their powers.

The primary source of information on the role and functions of the Gateway Panel is the Charter document.

3. Key Principles

3.1 *Honesty*

You have a duty to act honestly and in good faith for the proper purpose.

3.2 *Integrity*

You must not place yourself under any financial or other obligation to any individual or organisation that might be reasonably thought to influence you in the exercise of your functions as a Panel member.

3.3 *Leadership*

You have a duty to promote and support the key principles of this Code by demonstrating leadership and maintaining and strengthening the public's trust and confidence in the Gateway Panel and its role in the planning system.

3.4 *Selflessness*

You have a duty to make decisions in the public interest. You must not make a decision or take action that causes or results in you obtaining:

- a financial benefit (including avoiding a financial loss)
- other benefits for yourself, your family, friends or business interests.

3.5 *Impartiality*

You should make decisions on merit and in accordance with your statutory obligations when carrying out your functions as a Gateway Panel member.

3.6 *Accountability*

You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others.

3.7 Openness

You have a duty to be open as possible about your decisions and actions.

3.8 Respect

You must treat others with respect at all times.

4. General conduct obligations

4.1 General conduct

You must not conduct yourself in carrying out your functions as a Gateway Panel member in a manner that is likely to bring the Gateway Panel into disrepute. Specifically, you must not act in a way that:

- a) contravenes the EP&A Act¹
- b) is improper or unethical
- c) is an abuse of power
- d) causes, comprises or involves intimidation, harassment or verbal abuse
- e) causes, comprises or involves discrimination, disadvantage or adverse treatment.

You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions as a Gateway Panel member, having regard to the legislative requirements of Part 4AA of the Mining SEPP.

4.2 Fairness and equity

You must consider issues consistently, promptly, conscientiously and fairly.

You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

4.3 Making decisions and taking actions

You must ensure that decisions and actions are reasonable, fair and for the proper purpose and that parties involved in the process are dealt with fairly.

You must ensure that no action, statement or communication between yourself and others (such as applicants, submitters and public) conveys any suggestion of willingness to provide improper concessions or preferential treatment or shows that you are not bringing a fresh mind to the decision.

5. Conflicts of interest

5.1 General

Members of government boards and committees are appointed for their expertise and skill in particular areas. As a consequence of their expertise in these areas there may be the potential for conflicts of interest to arise between a member's duties to the Gateway Panel, and his or her personal interests (or his or her duties towards others).

A conflict of interest exists when it is likely that a member could be influenced by a current or previous personal or business interest. If a conflict of interest leads to partial decision making, it may constitute corrupt conduct. A conflict of interest, whether real, potential or perceived, may arise for example from:

- 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.

¹ A reference to the *Environmental Planning and Assessment Act 1979* (EP&A Act) includes a reference to the *Environmental Planning and Assessment Regulation 2000*.

The work of the Gateway Panel means that the following situations may give rise to a potential conflict of interest risk to members where they may have previously given, or currently be giving, professional advice to parties or applications subject to Gateway Panel processes. These instances are deemed to be declarable interests (however this list is not exhaustive):

- Current or previous involvement in a specific project that is subject of a Gateway application;
- Previous advice, as consultant, to a Government Agency on a project now subject to Gateway review processes; and
- Current or previous pecuniary or non-pecuniary interest in a specific proponent who is an applicant in a Gateway application.

A member has a duty to declare any private interest that may impinge on a Gateway Panel decision. When an issue arises, the Gateway Panel member must as soon as practicable disclose full and accurate details of the interest or issue to the Chairperson via the Panel Secretariat.

Any conflicts of interests must be managed to up-hold the probity of Gateway Panel decision making. When considering whether or not you have a conflict of interest you should consider how others would view your situation.

Private interests can be of two types: pecuniary or non-pecuniary. The sections below further detail the nature and treatment of pecuniary and non-pecuniary interests.

5.2 Disclosure of pecuniary interests

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision that person might make².

A member has a pecuniary interest in a matter if the pecuniary interest is the interest of the member, the member's spouse or de facto partner or a relative³ of the member, or a partner or employer of the member, or a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

The obligation on Gateway Panel members with respect to pecuniary interests are set out in **Appendix A**. All Gateway Panel members must comply with the requirements set out in this provision. In particular:

- (a) If a member has a pecuniary interest in a matter being considered by the Gateway Panel and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter the member must, as soon as possible after the relevant facts have come to the member's attention disclose the nature of the interest.
- (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Chairperson otherwise determines:
 - be present during any deliberation of the Gateway Panel with respect to the matter, or
 - take part in any decision of the Gateway Panel with respect to the matter.

As a member of a Government Board or Committee, all Gateway Panel members are also required to adhere to the NSW Government Boards & Committees Guidelines – July 2013, issued by the Department of Premier and Cabinet, ("the Guidelines").

² See s.442(2) *Local Government Act 1993* or if it is an interest referred to in s.448(a), (b), (e) or (g) of the *Local Government Act 1993*.

³ The term 'relative' adopted by this Code is the definition of that term under s 3 of the *Local Government Act 1993*.

In accordance with the Guidelines, Gateway Panel members are required to disclose interests which include positions and pecuniary interests in corporations, partnerships or other businesses that may be relevant to the activities of the Panel.

These declarations will be required to be made by Gateway Panel members on an annual basis.

5.3 Disclosure of non-pecuniary interests

A non pecuniary interest is a private or personal interest that a person has that may, for example, be based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature⁴.

You should consider possible non pecuniary interests that may arise while carrying out your duties as a Gateway Panel member. Where possible, the source of potential conflict should be removed.

However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in Appendix A in the same manner as if the interest was a pecuniary interest.

5.4 Register of declarations of interest

The Panel Secretariat will record in a register all disclosures of interest made by a Gateway Panel member. The register will be available for inspection at the Panel Secretariat during normal office hours.

5.5 Other business of employment

You must ensure that any outside employment or business you engage in or have previously engaged in will not:

- a) conflict with your functions as a Gateway Panel member
- b) involve using confidential information or resources obtained through your role as a Gateway Panel member
- c) discredit or disadvantage the Gateway Panel.

If you believe that any past or present outside employment or business will conflict with your functions as a Gateway Panel member, you must, as soon as possible after the relevant facts have come to your knowledge, disclose the nature of the matter to the Chairperson.

Where a conflict of interest has been identified, the matter should be considered by the Chairperson and wider panel if considered necessary. The Chairperson should make a decision as to how to manage the conflict of interest and record reasons for that decision.

There are a number of ways of managing conflicts of interest including:

- Agreeing that the member will not to take part in any discussion of the board or committee Gateway Panel relating to the interest or issue, not receive any relevant board or committee Panel papers, be absent from the meeting room when any discussion or determination is taking place and not vote on the matter
- Divestment of the interest/issue that is creating the conflict, for example the sale of shares
- Severing the connection, for example resignation from a position in another organisation giving rise to the conflict, or ceasing to provide services
- Resignation of the member from the Gateway Panel

⁴ The term 'non-pecuniary interest' as adopted by this Code is based on the meaning of that term under the Local Government Model Code of Conduct.

When the potential or perceived conflict of interest arises as a result of a personal interest of the Chairperson then the process is for the Acting Chairperson to assume the Chairperson's leadership role in the management of the conflict of interest process.

The overriding principle for managing potential or perceived conflicts of interest – both pecuniary and non-pecuniary – is early and complete disclosure to the Chairperson. The onus for this disclosure lies with the Panel Members.

When complex matters involving potential or perceived conflicts of interest are disclosed and discussed the Chairperson and/or Gateway Panel as a whole may elect to refer decisions to probity or peer review for guidance or assurance including legal review.

In the event of multiple Gateway Panel Members disclosing potential or perceived conflicts of interest then the Chairperson, Acting Chairperson or Gateway Panel as a whole can elect to suspend decision making until such time as appropriate alternate Panel members can be temporarily or permanently appointed.

A decision process flow on management of potential conflicts of interest, pecuniary and non-pecuniary interest and other matters is included as **Appendix B** to this Code of Conduct.

6. Personal benefit

6.1 Gifts and benefits

Panel Members should be aware that it is illegal to seek, offer or receive money or gifts in order to obtain a benefit or favour.

Panel Members must also not accept gifts or benefits that could place them under an actual or perceived financial or moral obligation to another organisation or individual.

Gifts or hospitality of nominal value may be accepted in limited circumstances where the member's position will not be compromised.

As a general principle offers of nominal gifts or benefits should be disclosed and discussed by the Gateway panel in advance of acceptance to enable due consideration and guidance from the Chairperson or Acting Chairperson.

The Gateway Panel has chosen to establish a Register of Gifts to provide a high degree of transparency. Panel members are required to disclose any gifts to the Panel Secretariat.

Further guidance is given below.

You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than nominal value
- e) accept an offer of money, regardless of the amount.

Generally speaking, nominal gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - i. the discussion of matters before the Gateway Panel
 - ii. conferences
 - iii. social functions organised by groups.
- b) invitations to and attendance at local social, cultural and sporting events.
- c) gifts of single bottles or reasonably priced alcohol at end of year functions and public occasions.
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers or similar token items.

Gifts and tokens that are likely to have more than a nominal or token value include, but are not limited to, tickets to major sporting events, corporate hospitality at a corporate facility at

major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel. For the avoidance of doubt, matters should be disclosed to the Chairperson via the Panel Secretariat for guidance prior to acceptance.

As a general rule, any gift from an applicant, associate of an applicant or objector in relation to a matter to be determined by the Gateway Panel would fall into a category referred to in paragraph 4.2(b-d) and therefore should not be accepted.

The Panel Secretariat is to maintain a Register of Gifts for each Panel to ensure the receipt and disposal of gifts is conducted in an open and transparent manner. When offered a gift or benefit Panel members must inform the Panel Secretariat of the following information for the purposes of making a recording on the Register of Gifts:

- the person who made the offer and the date on which the offer was made
- whether or not you accepted the gift/benefit
- whether the gift or benefit was allocated to another person or body, and
- the value of the gift or benefit.

You should also advise the Chairperson of any such notification to the Panel Secretariat.

7. Protecting and using information

Information must be handled in accordance with section 148 of the EP&A Act.

In addition to the obligations under section 148 of the EP&A Act you must:

- a) protect confidential information
- b) only release confidential information if you have authority to do so
- c) only use confidential information for the purpose it is intended to be used
- d) not use confidential information gained through your position as a Gateway Panel member for the purpose of securing a private benefit for yourself or for any other person
- e) not use confidential information with the intention to cause harm or detriment to the Gateway Panel or any other person or body
- f) not disclose any information discussed during a confidential session of the Gateway Panel.

In respect of the *Privacy and Personal Information Protection Act 1998* the Gateway Panel and Members must:

- a) Observe the *Privacy and Personal Information Protection Act 1998* when collecting and handling information relating to members or potential candidates for membership.
- b) In requesting personal information from members or potential candidates must make the person aware of the purposes for which the information is being collected, the intended recipients of the information, why it is necessary for the information to be collected and the right to access and correct the information.
- c) Inform individuals that their personal information may be disclosed to other NSW Government departments and agencies, including the Department of Premier and Cabinet, and/or Ministers for the purposes of the appointment process.
- d) Ensure the personal information should not be used for any purpose that was not originally disclosed to the person unless the person has consented to that use.

8. Use of public resources

You may be provided with equipment and other resources to perform Gateway Panel functions. All such resources are to be used only for Gateway Panel purposes and in accordance with any guidelines or rules about the use of those resources.

9. Public Comment/Media

The Chairperson is responsible for speaking to the media on behalf of the Gateway Panel, to allow its decisions to be properly represented and communicated. The Chairperson can

authorise another Panel member to speak to the media on behalf of the Gateway Panel at any time.

10. Reporting suspected corrupt breaches

Gateway Panel members are subject to the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

Gateway Panel members are urged to report suspected corrupt conduct, as well as maladministration and serious and substantial waste of public resources.

The *Public Interest Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. Gateway Panel members can make reports concerning suspected corrupt conduct to the Chairperson. The Chairperson is under a duty to report to the Independent Commission Against Corruption (ICAC) any matter that she/he suspects on reasonable grounds concerns or may concern corrupt conduct.

Gateway Panel members can also report directly to the following investigative bodies:

- corrupt conduct should be made to ICAC;
- maladministration should be made to the NSW Ombudsman;
- serious and substantial waste of public money should be made to the NSW Auditor General.

11. Lobbying

All Gateway Panel members must comply with the NSW Government Lobbyist Code of Conduct published on the Department of Premier and Cabinet's website (www.dpc.nsw.gov.au).

The Lobbyist Code regulates contact between registered lobbyists and Government representatives and Premier's Memorandum M2011-13 *Lobbying of NSW Government Officials* restricts the circumstances in which a lobbyist can be appointed to a NSW Government board or committee.

Members of the Gateway Panel have a responsibility to consider the Lobbyist Code and declare if they could potentially be considered a lobbyist. The application of the Lobbyist Code then takes precedence for further action and decisions and would be monitored by the Chairperson.

12. Removal from office

The Minister may remove Gateway Panel members from office at any time and without notice.

The Minister may remove any Member if the ICAC recommends that consideration be given to the removal of the Member because of corrupt conduct by the Member.

13. Complaint handling

Complaints against Gateway Panel members are to be handled in accordance with the Mining and Petroleum Gateway Panel Complaints Handling Policy.

Appendix A

Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the Gateway Panel, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the Chairperson, via the Panel Secretariat.

- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
 - (a) the member, or
 - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
 - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
 - (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.

- (4) A disclosure by a member at a meeting of the Gateway Panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (5) Particulars of any disclosure made under this clause must be recorded by the Gateway Panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Gateway Panel.

- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Gateway Panel otherwise determines:
 - (a) be present during any deliberation of the Gateway Panel with respect to the matter, or
 - (b) take part in any decision of the Gateway Panel with respect to the matter.

- (7) For the purposes of the making of a determination by the Gateway Panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Gateway Panel for the purpose of making the determination, or
 - (b) take part in the making by the Gateway Panel of the determination.

- (8) A contravention of this clause does not invalidate any decision of the Gateway Panel.

Appendix B

Managing Potential or Perceived Conflict of Interest – Process Flow

