



# Code of Ethics and Conduct for Committee Members

November 2024

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## Preamble

The decisions of the Independent Pricing and Regulatory Tribunal (IPART) affect the people of NSW, both now and into the future, for many of the services they can't do without.

The Tribunal has delegated certain functions to Committees. The members of these Committees include Tribunal members, IPART staff and other external experts appointed by the Tribunal. Tribunal members commit to abide by the *Code of Ethics and Conduct for Tribunal members*, and IPART staff are covered by their own *Code of Ethics and Conduct*. The other, external Committee members have committed to abide by this *Code of Ethics and Conduct for Committee members (Committee Code)*, and are required to do so under their professional services agreement with IPART.

Committees perform public duties that would otherwise be performed by the Tribunal. In doing so, Committee members exercise considerable public power within their remit. The Committee members' commitment to abide by this Committee Code is made in recognition of the importance that they perform their functions in the public interest and to the highest ethical standard.

By following the principles set out in this Committee Code, Committee members uphold public confidence in IPART and protect its reputation for impartiality, independence, and integrity.

# Chapter 1 Scope and purpose of this Code

## 1.1 Purpose of this Code

- 1.1.1 As the circumstances of Committee members differ from those of IPART's Secretariat and of Tribunal members, this Code applies specifically to Committee members who do not fall into either of these categories. Committee members are appointed to undertake Tribunal functions under the relevant Committee's instrument of delegation, and aspects of their appointment are governed by a professional services agreement. The agreement requires Committee members to ensure that their work is done in compliance with all applicable codes of conduct. This Code is an applicable code of conduct for the purposes of the professional services agreement. Committee members also affirm their commitment, on an annual basis, to uphold the standards of conduct set out in this Code.
- 1.1.2 The Code is not designed to exhaustively prescribe conduct for every possible situation. While certain commitments in this Code are detailed and specific, the Code also establishes agreed principles for appropriate conduct that Committee members will apply to their circumstances. It provides a reference point for appropriate behaviour, a catalyst for discussion and awareness, and an aid to accountability.

## 1.2 IPART's values and the NSW Government Boards and Committees Guidelines

- 1.2.1 This Code has been established consistent with the *NSW Government Boards and Committees Guidelines* (September 2015). These guidelines provide that each NSW Government board and committee should have a Code of Conduct defining its values and the minimum standards of behaviour expected of its members.
- 1.2.2 This Code uses IPART's values as its foundation. These values are:
- Integrity and Courage
  - Respect and Inclusion
  - Curiosity and Openness
  - Making a Difference

It is also consistent with the core values for the government sector: Integrity, Trust, Service and Accountability.

- 1.2.3 Committee members commit to demonstrating these values at all times, even in their private capacity. As decision-makers for IPART, Committee members recognise that their conduct has the ability to set a tone for the broader organisation. By displaying IPART's values in what they say and do, each Committee member strengthens IPART's culture. Upholding these standards on a continuous basis avoids bringing IPART into disrepute.

## 1.3 When, and to whom, this Code applies

### When?

- 1.3.1 The Code applies to Committee members for the duration of their appointment as Committee members. This includes during their participation in conferences, functions and training activities.
- 1.3.2 The Code applies to conduct beyond a Committee member's official duties to the extent that such conduct may impact adversely on IPART. Committee members acknowledge that the activities, interests and associations in their private life can:
- impact the impartial and efficient performance of their Committee responsibilities;
  - affect perceptions of their impartiality, and
  - give rise to apprehensions of bias.
- 1.3.3 This Code also applies after the end of the Committee member's appointment, where it is expressed to do so. This includes, for example, obligations to maintain confidentiality. The Committee members acknowledge that these elements of the Code must endure beyond the end of their appointment to be meaningful.
- 1.3.4 While all Committee members are expected to uphold the highest standards of conduct in all cases, there may be rare instances where it is in the public interest for the Tribunal to allow exceptions to this Code. Any exceptions will generally be temporary, or under agreed arrangements designed to preserve public confidence in decision-making.

### To whom?

- 1.3.5 This Code applies to all members of Committees to which the Tribunal has delegated functions, other than permanent and temporary members of the Tribunal or IPART staff.
- 1.3.6 At the time of writing, these Committees are the Energy Network Regulation (ENR) Committee, the Local Government Contributions Plans Committee and the Energy Sustainability Schemes (ESS) Committee.

## Chapter 2 Compliance with this Code

### 2.1 Seeking advice when in doubt

- 2.1.1 Guidance to assist Committee members to fulfil their commitments under this Code can be found in the *Tribunal Member Handbook*. Although the Handbook is written primarily for the benefit of Tribunal members, given the substantial degree of overlap between this Code and the *Code of Ethics and Conduct for Tribunal members*, the Handbook is also relevant to Committee members.
- 2.1.2 If a Committee member has any doubt as to the propriety of any proposed course of action or involvement in any matter, the member should raise it with their fellow members at the earliest opportunity. While each Committee member is responsible for their own compliance with this Code, the members of the Committee will share with one another their views on the propriety of a proposed course of action in the spirit of collegiality.
- 2.1.3 Where the matter may involve or raise legal issues or consequences (including a potential conflict of interest), members should also consult with the General Counsel. Members are also encouraged to seek advice from the General Counsel in relation to any questions they might have regarding their obligations as a Committee member under applicable law. For other advice, they may seek the counsel of the Chief Executive Officer.

### 2.2 Consequences of breaching this Code

- 2.2.1 All Committee members are to abide by this Code. Where a Committee member fails to fulfil the commitments made under this Code, they will act promptly to bring themselves into compliance. Otherwise, the Tribunal<sup>a</sup> may issue reasonable directions to take action to do so.
- 2.2.2 If a Committee member breaches this Code, the Tribunal will assess the risks associated with the breach and put in place whatever arrangements they consider appropriate to address any risks arising from the non-compliance, taking into account the views of the relevant Committee. The Tribunal's decision on these measures will be subject to periodic review, at reasonable intervals to be determined by the Tribunal. This may include amending an instrument of delegation to remove the Committee member from the Committee, either permanently or temporarily, or for the purpose of certain matters or for all matters.<sup>b</sup> The Tribunal may also request that matters be returned to the Tribunal for a time.
- 2.2.3 Conduct amounting to a substantial breach of this Code may also constitute corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988* or breach other applicable laws, and attract penalties under those laws.

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<sup>a</sup> References in this Code to 'Committee' decisions regarding an individual member refer to the Committee constituted by the remaining members. For such decisions, in the event of an equality of votes, the Chair holds a casting vote.

<sup>b</sup> Depending on the functions involved, this may require Ministerial approval.

## Chapter 3 Requirements of this Code

### 3.1 Acting in the public interest

3.1.1 A Committee member will, in performing their responsibilities:

- act in the public interest; and
- prioritise the public interest over all other interests, including their own.

The requirement to act in the public interest also informs sections 3.2 to 3.11 of this Code, and should be used to guide their interpretation.

### 3.2 Proper exercise of power

#### Independence and avoiding apprehension of bias

3.2.1 Committee members will perform their Committee responsibilities independently and free from undue influence. In addition, Committee members will conduct themselves at all times so as to maintain confidence in their capacity to make apolitical, independent decisions in the public interest.

3.2.2 Committee members will not say or do anything that would give a stakeholder a reasonable impression that they or the relevant Committee may have pre-empted a future decision, or will approach a decision with a mind that is not open.

3.2.3 Where a Committee member may have (whether before or during their appointment) done anything that would give a stakeholder a reasonable impression that they would approach a decision with a mind that is not open, they will declare the matter to the Committee as soon as practicable. This may include, for example:

- making public comments on a matter that is or is anticipated to be before the Committee,
- giving legal or other professional advice on a matter that is or is anticipated to be before the Committee, or
- previous employment with a regulated entity.

#### *Commentary*

*For clarity, the Committee's actions before appointment that might give an impression of bias do not constitute a breach of this Code, but must be declared and managed.*

3.2.4 Committee members will not meet or discuss the work of the Committee with a person listed on the NSW Register of Third Party Lobbyists without approval from the Committee on advice of the Secretariat.

### Commentary

*The provisions of this Code relating to management of conflicts of interest also protect Committee members' independence and IPART's reputation for impartiality. Sections 3.6 to 3.8 of this Code detail Committee members' commitments in this regard.*

## Proper decision-making

3.2.5 Committee members will observe relevant standards of procedural fairness and lawful decision-making applicable to their decisions. In particular, Committee members will ensure that their decisions are unaffected by bias or irrelevant considerations, such as considerations of private advantage or disadvantage.

### Commentary

*The commitment to observe relevant standards of procedural fairness and lawful decision-making applies to decisions made by the Committee under this Code (for example, under section 3.7) as well as to decisions made by the Committee in the performance of the Tribunal functions delegated to it.*

## Improper influence

3.2.6 Committee members will not use their position to improperly obtain, or seek to obtain, benefits, preferential treatment or advantage for themselves or for any other person or body.

### Commentary

*As Committees may make decisions affecting broad groups of people (sometimes the entire State), section 3.2.6 is not to be taken as an absolute commitment not to make any decisions that benefit the Committee member. Further guidance is available in the Tribunal Member Handbook.*

3.2.7 Committee members will not, after ceasing their appointment, attempt to influence members of the Tribunal, any of its Committees or the Secretariat to improperly obtain, or seek to obtain, benefits, preferential treatment or advantage for themselves or for any other person or body.

## Impartiality

3.2.8 Committee members will consider stakeholders equally, without prejudice or favour.

## 3.3 General conduct

### Use of public resources

- 3.3.1 Committee members may be provided with resources and facilities at public expense, to support the effective conduct of their functions. Committee members will not use these for personal benefit or an unauthorised purpose, and will use them efficiently, effectively and prudently.
- 3.3.2 Committee members are to regard the skills, abilities and time of the IPART Secretariat as a public resource. They will not seek to deploy Secretariat members for purposes that are not connected with the Committee's functions.

### Respect for people

- 3.3.3 Committee members will treat stakeholders (including the general public), Secretariat members, Tribunal members and other Committee members with courtesy, respect and dignity, and demonstrate respect for diversity.

### Diligence and efficiency

- 3.3.4 Committee members will be diligent and timely in the performance of their Committee responsibilities.
- 3.3.5 Committee members will be thorough and careful in the performance of their Committee functions, including demonstrating a strong commitment to making robust decisions in the public interest on the basis of established facts within the relevant legal framework.
- 3.3.6 Committee members will prepare sufficiently for Committee engagements (including Committee meetings, public forums and so on) to enable their constructive participation in those engagements and support their efficient conduct.
- 3.3.7 Committee members will maintain and enhance the knowledge, skills and personal qualities necessary to the performance of their Committee responsibilities. Although IPART will assist individual members to acquire and develop the knowledge necessary for the execution of their functions, members also make a personal commitment to their own development.

### Respect for the law

- 3.3.8 Committee members will demonstrate respect for the law in the performance of their Committee responsibilities. This includes giving due consideration to the legal framework for their decision-making and complying with any obligations imposed directly on the member in their capacity as a Committee member.

3.3.9 Committee members will also demonstrate respect for the law in their private life, so that public and Ministerial confidence in IPART is not undermined by questions about the good character of Committee members.

3.3.10 Where a Committee member is charged with, convicted of, or issued with a Court Attendance Notice for an offence which carries a maximum penalty of 12 months' imprisonment or more, the Committee member will immediately inform IPART's Chair, the Committee Chair and IPART's CEO.

## Working safely

3.3.11 Committee members will work in a safe and responsible manner that protects not only their own safety but the safety of others. Committee members will comply with any reasonable instructions issued by an officer of the Tribunal, Secretariat or Government designed to protect their health and safety or the health and safety of others. Committee members are to ensure that they understand and comply with their obligations under the *Work Health and Safety Act 2011*.

## 3.4 Proper use of information

### Use of confidential information

3.4.1 A Committee member will not knowingly take advantage of, or benefit from, information not generally available to the public obtained in the course of the performance of their Committee responsibilities.

3.4.2 A Committee member will treat information that they acquire in the course of their functions as confidential, and will not disclose it outside of IPART except:

- in the course of their official duties;
- with the express authority of the Tribunal or Committee; and/or
- where required or authorised to do so by law.

3.4.3 The commitments in sections 3.4.1 and 3.4.2 continue to apply after a Committee member's appointment to the Committee ends. For the avoidance of doubt, this prohibits a Committee member from using in any future employment any confidential information obtained in the course of the performance of their Committee responsibilities. A Committee member will return or, to the extent allowed by IPART's Records Management Policy, destroy or delete any documents held by them at the conclusion of their appointment unless the information contained in them would otherwise be in the public domain.

## Intellectual property

3.4.4 Committee members acknowledge that copyright in material created in the course of a Committee member's work belongs to IPART.

3.4.5 Committee members will not use IPART's intellectual property (including copyright) for purposes other than IPART's work without obtaining the Tribunal's approval. This commitment continues to apply after the end of a Committee member's appointment.

## Information security

3.4.6 Committee members, to the extent that they have access to IPART's ICT systems, will comply with the IPART ICT User Security Awareness & Acceptable Use Policy, Mobile Devices Policy and any other policies governing the security of IPART's ICT systems. It is the Committee member's responsibility to understand their information security responsibilities, which include:

- reporting security incidents,
- protecting the integrity of ICT resources to the extent it is within their control, and
- not using IPART systems or devices for unauthorised purposes.

## Records management

3.4.7 Committee members will protect any confidential, personal and private data or information received in the course of their role as a Committee member by following IPART's Records Management Policy.

## 3.5 Making public comments

3.5.1 Committee members will not comment publicly (whether in a personal or professional capacity, including to the media or on social media) on matters that are on the Committee's current or recent work program, without Committee authorisation.

3.5.2 Where contributing to public discussions in their private capacity (including on community and social issues or issues of government policy that are not related to IPART's areas of responsibility or expertise), Committee members will:

- take reasonable steps to ensure that any comment the member makes will be understood as representing their personal views, not those of the Committee, the Tribunal or IPART as an organisation;
- maintain the confidentiality of information they have access to due to their roles; and
- not make comments that may compromise, or reasonably be perceived to compromise, the member's capacity to perform their duties in an independent, unbiased manner.

### Commentary

Committee members may, like any member of the community, enter into public discussions in a private capacity. This is particularly to be expected where a Committee member has expertise in an industry or issue of public interest. However, members also recognise that in entering public discussions, particularly where there is a connection to IPART's work, they may be seen as speaking about IPART, the work of the Committee or government from a privileged position. 'Public comment' or discussion could include a letter to the editor of a newspaper, an article for a professional journal or a speech to an interest group. To avoid doubt, the Committee member should make it clear when speaking in a private capacity.

This section of the Code is not intended to limit a Committee member's professional participation in discussions, but to establish clarity as to how to separate their participation from their IPART work and avoid perceptions of bias.

## 3.6 Declaring and managing conflicts of interest

### Conflicts of interest - general

- 3.6.1 Committee members will comply with the *Disclosure of Interests – Protocol for Tribunal and Committee members*. This Protocol sets out the process for declaring and managing conflicts of interest in a way that facilitates transparency and a considered, proportionate approach to conflict management.
- 3.6.2 Committee members will ensure that any conflict of interest is avoided (where possible) or effectively managed. Management of any conflict of interest is to be resolved in favour of the public interest, rather than the Committee member's private interest. Committee members will do all that they can to avoid any conflict that would fundamentally compromise the Committee member's capacity to act as a Committee member.
- 3.6.3 Committee members will not take part in decision-making where they have a conflict of interest, except where the Committee or Tribunal determines that the conflict can be managed such that the disadvantages of removing the Committee member outweigh the risks of their participation.

### Commentary

Consistent with IPART's *Conflict of Interest Policy and the NSW ICAC's sample conflict of interest policy (December 2019 update)*, 'conflicts of interest' should be read as including any situation where a reasonable person might perceive that a personal interest could be favoured over a public duty.

For specific obligations relating to external employment, see sections 3.7 and 3.8 of this Code.

### Gifts and benefits

- 3.6.4 Committee members will not solicit or accept a gift or benefit (such as sponsored travel or hospitality) that:
- a. could reasonably be expected to give rise to a conflict of interest, or

- b. is intended, or could reasonably be perceived as likely to cause, the Committee member or another IPART decision-maker to act in a partial manner.

3.6.5 Committee members will follow *IPART's Gifts and Benefits Policy* in relation to any offer of a gift or benefit.

#### *Commentary*

*IPART's Gifts and Benefits Policy includes obligations to disclose gifts and benefits above a certain value. The Secretariat will inform Committee members of relevant updates to this policy so that they are aware of disclosure obligations.*

## 3.7 External employment of Committee members

### Risks of prospective employment

3.7.1 Committee members will not:

- allow other employment, whether past, current or prospective, to:
  - affect the impartial exercise of their duties, or
  - affect their availability such that it impacts the proper performance of their duties, or
- by their actions, give rise to a reasonable perception that their impartiality is affected.

3.7.2 'Employment' in the context of this Code includes the ordinary meaning of employment (paid or unpaid), as well as:

- appointment or election to a board, committee or council, and
- acting as a contractor, consultant or advisor.

#### *Commentary*

*As part-time appointees, Committee members may be expected to take up external employment during their appointment. Under this Code, employment by 'Core regulated entities' is not permitted (sections 3.7.3 to 3.7.4). Employment by other entities is to be the subject of consideration by the relevant Committee and, in certain circumstances, Tribunal (sections 3.7.5 to 3.7.8). Sections 3.7.1 and 3.7.2 apply to employment with core regulated entities as well as any other entity.*

*A Committee member may be employed by a company that acts as a consultant to a core regulated entity. In such a case, the Committee member themselves must not provide their services to the core regulated entity, but provided any conflict of interest is appropriately declared and managed and the Committee member otherwise complies with the Code, such a situation would not give rise to a breach of this Code.*

### Core regulated entities

3.7.3 Committee members will not, during their appointment as a Committee member engage in or pursue any employment with a 'core regulated entity' listed in the Schedule.

### Commentary

*The schedule of core regulated entities will be reviewed at least once every 12 months.*

*The lists of core regulated entities for Committees include peak bodies and industry associations. This does not preclude a Committee member from being employed by an entity that is a member of one of these peak bodies or industry associations, or attending their events. The Committee should nevertheless consider whether this relationship or event attendance raises any perception of a conflict of interest that should be declared.*

3.7.4 Where a Committee member is approached in relation to employment by a core regulated entity, they will declare the approach to the Committee.

### Other entities

3.7.5 Committee members will immediately declare any prospective employment by any entity that may be impacted by a Committee decision, any 'core regulated entity' listed in the Schedule relevant to their Committee, or any entity that the Committee member is aware may be impacted by an IPART decision. For the purposes of this section, 'prospective employment' includes:

- an intention to apply for a role
- an intention to stand for election to a position
- an approach by an employment agency or organisation in relation to a role, or
- a request that the Committee member provide services or a quote for services.

The Committee member may declare prospective employment to the Committee as a whole, or directly to the Committee Chair or Tribunal Chair.

### Commentary

*An approach in relation to prospective employment may be highly confidential. Tribunal members and staff will maintain the confidentiality of such declarations and discuss them within IPART only to the extent necessary to seek appropriate advice and manage any conflict of interest.*

3.7.6 Unless the Committee member declines or decides not to pursue the prospective employment referred to in section 3.7.5, the Committee Chair will, after seeking the advice of the Secretariat and taking into account the relevant views of the Committee member, consider whether to refer the matter to the Tribunal for its consideration. The Committee Chair will refer the matter to the Tribunal where the action that would be required to manage any risks associated with the prospective employment would, in the Committee Chair's view:

- materially impede the Committee's performance of its functions or the Committee member's performance of their Committee role, or
- require IPART to incur substantial costs or divert substantial resources.

3.7.7 Where the Committee Chair raises a Committee Member's prospective employment with the Tribunal, or where the Committee Member directly raises the matter with the Tribunal Chair, the Tribunal will decide appropriate management action, in the public interest. This may include, for example:

- noting and recording the prospective employment,
- amending delegations to remove or suspend the Committee member, or amend the Committee's functions, or
- directing the Committee not to undertake its functions, or certain of its functions, for a time.

3.7.8 Where the Committee Chair does not raise a Committee member's prospective employment with the Tribunal, the Committee will decide on appropriate management action, in the public interest.

## Review of external employment

3.7.9 Where a Committee member pursues or engages in external employment with an entity that may be affected by a Committee decision, they must update the Committee when there is any change in circumstances that would warrant a re-assessment of the risks. Whenever the Committee member provides such an update, the Committee Chair will consider whether to refer the matter for the Tribunal's consideration as set out in section 3.7.6.

## 3.8 Post-separation employment

### Core regulated entities

3.8.1 Committee members will not, at any time within 6 months after the end of their appointment as a Committee member, engage in or pursue any employment with a core regulated entity for a Committee of which they are a member (see the definition in section 3.7.2 and the entities listed in the relevant Schedule).

### Other entities

3.8.2 Committee members will promptly notify the Tribunal of any prospective employment by any entity that may be affected by a decision of a Committee of which they are a member. This obligation:

- continues to apply for 6 months after the end of the Committee member's appointment as a Committee member, and
- does not apply where the entity is impacted only by reason of being a member of a broad class (for example, as a customer connected to an electricity network).

## 3.9 Reporting of actual or potential ethical issues

3.9.1 Committee members may become aware of 'serious wrongdoing' as defined in the *Public Interest Disclosures Act 2022* (whether by other Committee or Tribunal members, other public officials, or themselves). This includes:

- corrupt conduct,
- serious maladministration,
- serious and substantial waste of public money,
- a government information contravention (ie, breach of the *Government Information (Public Access) Act 2009* or *State Records Act 1998*), and
- privacy contravention (ie, breach of the *Privacy and Personal Information Protection Act 1998* or *Health Records and Information Privacy Act 2002*).

If they do, they will report the matter to the Tribunal Chair, Committee Chair, CEO, General Counsel and/or relevant integrity agency as appropriate and applicable. The responsibilities and systems for notification, reporting and investigation are set out in IPART's *Fraud and Corruption Control Charter* (read in conjunction with the *Public Interest Disclosures Policy*).

3.9.2 Where a Committee member becomes bankrupt, or becomes aware of circumstances that are likely to lead to their bankruptcy, they will inform the Tribunal Chair, Committee Chair and CEO immediately.

## 3.10 Annual declarations

3.10.1 Committee members will make an annual declaration that they commit to comply with this Code.

## 3.11 Undertakings following end of appointment

3.11.1 Upon the end of their appointment as a Committee member, Committee members will provide an undertaking re-affirming their commitment to relevant elements of this Code. They will undertake:

- to maintain the confidentiality of information received in the course of their duties as a Committee member,
- neither to take, nor use, material and data not ordinarily available to the public,
- to avoid direct involvement in matters with which they were concerned while they were still Committee members,
- to abide by the commitments made under section 3.2.7 of this Code not to attempt to influence members of the Tribunal, Committee or Secretariat to improperly obtain, or seek to obtain, benefits, preferential treatment or advantage for themselves or for any other person or body, and

- to abide by the commitments made under section 3.8 of this Code regarding post-separation employment.

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## Schedule 1 – Core Regulated Entities for ENR Committee

- ACERERZ Partnership
- Ausgrid
- Endeavour Energy
- Essential Energy
- Transgrid
- Any entity carrying on a partnership or joint venture in the name of any other core regulated entity
- Any peak body, industry association or lobby group representing electricity network operators in New South Wales

## Schedule 2 – Core Regulated Entities for ESS Committee

- Any accredited certificate provider under the Energy Savings Scheme or Peak Demand Reduction Scheme
- Any scheme participant in the Energy Savings Scheme or Peak Demand Reduction Scheme
- Any peak body, industry association or lobby group representing either group listed above

## Schedule 3 – Core Regulated Entities for Local Government Contributions Plans Committee

- Any peak body, industry association or lobby group representing local governments in New South Wales
- Any peak body, industry association or lobby group representing property developers in New South Wales