



Code of Ethics and Conduct for Tribunal Members

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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.

IPART is a tribunal of equals. The Tribunal members are appointed individually by the Premier to bring their judgment and expertise to a wide range of industries and markets which are regulated or examined by IPART. While the Chair of the Tribunal exercises duties as the agency head and may resolve an impasse among members with a casting vote, none of the Tribunal members, including the Chair, can direct the others on the way they conduct themselves, or their position on any matter. The Chair is not the employer of the other Tribunal members, and IPART is also independent of, and cannot be directed by, Government in its decision making.

As such, the Tribunal members individually and collectively exercise considerable public power, and they largely conduct their individual obligations and duties of office without direct supervision.

In recognition of the importance that they perform their functions in the public interest, and to the highest ethical standard, each member of the Tribunal has individually committed to abide by this Code of Conduct.

By following the principles set out in this Code, Tribunal members uphold public confidence in the Tribunal 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 Tribunal members differ from those of IPART's Secretariat, this Code applies specifically to Tribunal members. Tribunal members are appointed directly by the Premier, as Minister responsible for the IPART Act. Therefore, unlike members of the Secretariat, they are not subject to the direction of the Chair, IPART's agency head, as employer. As statutory appointees, Tribunal members are also not subject to any code of conduct adopted by the Public Service Commissioner, and nor are they subject to the direction of the Premier in the same way as an employee would typically be subject to the direction of their employer.
- 1.1.2 This Code articulates the standards of conduct that Tribunal members have committed to uphold and are therefore expected to demonstrate. It 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 Tribunal 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. Nothing in this Code prevents a Tribunal member approaching the Premier (or the Premier's representative) with a view to seeking clarity on duties, obligations or any other matter arising in this Code.

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 Tribunal members commit to demonstrating these values at all times, even in their private capacity. As the key decision-makers for IPART, Tribunal members recognise that their conduct has the ability to set a tone for the organisation as a whole. By displaying IPART's values in what they say and do, each Tribunal 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 Tribunal members for the duration of their appointment as Tribunal members. This includes during their participation in conferences, functions and training activities.
- 1.3.2 The Code applies to conduct beyond a Tribunal member's official duties to the extent that such conduct may impact adversely on IPART. Tribunal members acknowledge that the activities, interests and associations in their private life can:
- impact the impartial and efficient performance of their Tribunal responsibilities;
 - affect perceptions of their impartiality, and
 - give rise to apprehensions of bias.
- 1.3.3 The commitments in this Code also apply after the end of the Tribunal member's appointment, where they are expressed to do so. These commitments include, for example, the restrictions on employment by core regulated entities, and obligations to maintain confidentiality. The Tribunal members acknowledge that these commitments must endure beyond the end of their appointment to be meaningful.

To whom?

- 1.3.4 This Code applies to all permanent and temporary members of the Tribunal, including the Chair.
- 1.3.5 While all Tribunal members are expected to uphold the highest standards of conduct in all cases, there may be rare instances where the commitments in this Code cannot be met, or it would be unreasonable to expect that they be met (for example, a temporary member with a pre-existing conflict of interest who is appointed from a regulated industry who is selected expressly for their knowledge). In these cases, following appropriate and transparent declarations, it may be in the public interest to allow exceptions for a time or under agreed arrangements designed to preserve public confidence in decision making.

Chapter 2 Compliance with this Code

2.1 Seeking advice when in doubt

- 2.1.1 Guidance to assist Tribunal members to fulfil their commitments under this Code can be found in the *Tribunal Member Handbook*.
- 2.1.2 If a Tribunal 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 Tribunal member is responsible for their own compliance with this Code, the members of the Tribunal 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 Tribunal 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 Tribunal members have agreed to abide by this Code. Where a Tribunal member fails to fulfil the commitments made under this Code, they will act promptly to bring themselves into compliance. Otherwise, the Tribunal^a may issue reasonable directions to take action to do so.
- 2.2.2 If a Tribunal member breaches this Code, the remaining Tribunal members 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. The Tribunal's decision on these measures will be subject to periodic review, at reasonable intervals to be determined by the Tribunal.
- 2.2.3 A substantial breach may be grounds for the Premier^b to remove the member from office. Under clause 6(2) of Schedule 2 to the IPART Act, the Premier may remove a permanent member from office for misbehaviour, incompetence or incapacity, and may remove a temporary member at any time.
- 2.2.4 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.

^a References in this Code to 'Tribunal' decisions regarding an individual member refer to the Tribunal constituted by the remaining members. For such decisions, consistent with the IPART Act, in the event of an equality of votes, the Chair holds a casting vote.

^b As Minister responsible for the IPART Act.

Chapter 3 Requirements of this Code

3.1 Acting in the public interest

3.1.1 A Tribunal 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 Tribunal members will perform their Tribunal responsibilities independently and free from undue influence. In addition, Tribunal 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 Tribunal members will not say or do anything that would give a stakeholder a reasonable impression that they or any IPART decision maker have pre-empted a future decision, or will approach a decision with a mind that is not open.

3.2.3 Where a Tribunal 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 Tribunal as soon as practicable. This may include, for example:

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

3.2.4 Tribunal members will not meet or discuss the work of the Tribunal with a person listed on the NSW Register of Third Party Lobbyists without approval from the Tribunal on advice of the Secretariat. Any engagement with a person listed on the NSW Register of Third Party Lobbyists must be recorded in the Tribunal's list of external meetings.

Commentary

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

Proper decision-making

3.2.5 Tribunal members will observe relevant standards of procedural fairness and lawful decision-making applicable to their decisions. In particular, Tribunal 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 Tribunal under this Code (for example, under clause 3.7) as well as to decisions made by the Tribunal in the performance of its statutory functions.

Improper influence

3.2.6 Tribunal 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 the Tribunal makes 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 Tribunal member. Further guidance is available in the Tribunal Member Handbook.

3.2.7 Tribunal members will not, after ceasing their appointment, attempt to influence members of the Tribunal or 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 Tribunal members will consider stakeholders equally, without prejudice or favour.

3.3 General conduct

Use of public resources

3.3.1 Tribunal members are provided with resources and facilities at public expense, to support the effective conduct of their functions. Tribunal members will not use these for personal benefit or an unauthorised purpose, and will use them efficiently, effectively and prudently.

3.3.2 Tribunal 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 Tribunal's functions.

Respect for people

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

Diligence and efficiency

- 3.3.4 Tribunal members will be diligent and timely in the performance of their Tribunal responsibilities.
- 3.3.5 Tribunal members will be thorough and careful in the performance of their Tribunal 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 Tribunal members will prepare sufficiently for Tribunal engagements (including Tribunal meetings, public hearings, and so on) to enable their constructive participation in those engagements and support their efficient conduct.
- 3.3.7 Tribunal members will maintain and enhance the knowledge, skills and personal qualities necessary to the performance of their Tribunal 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 Tribunal members will demonstrate respect for the law in the performance of their Tribunal 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 Tribunal member.
- 3.3.9 Tribunal members will also demonstrate respect for the law in their private life, so that public and Ministerial confidence in the Tribunal is not undermined by questions about the good character of individual members.
- 3.3.10 Where a Tribunal 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 Tribunal member will immediately inform the Premier, IPART's Chair and IPART's CEO.

Working safely

- 3.3.11 Tribunal members will work in a safe and responsible manner that protects not only their own safety but the safety of others. Tribunal 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.

3.4 Proper use of information

Use of confidential information

- 3.4.1 A Tribunal 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 Tribunal responsibilities.
- 3.4.2 A Tribunal 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; and
 - 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 Tribunal member's appointment to the Tribunal ends. A Tribunal 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 Tribunal members acknowledge that copyright in material created in the course of a Tribunal member's work belongs to IPART.
- 3.4.5 Tribunal 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 Tribunal member's appointment.

Information security

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

3.5 Making public comments

3.5.1 Tribunal members will not comment publicly (whether in a personal or professional capacity, including to the media or social media) on government policy or contentious issues related to IPART's areas of responsibility or expertise, without Tribunal 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), Tribunal 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 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

Tribunal members may, like any member of the community, enter into public discussions in a private capacity. However, members also recognise that in doing so they may be seen as speaking about the Tribunal 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 Tribunal member should make it clear when speaking in a private capacity.

3.6 Declaring and managing conflicts of interest

Conflicts of interest - general

3.6.1 Tribunal 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 Tribunal 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 Tribunal member's private interest. Tribunal members will do all that they can to avoid any conflict that:

- involves a 'core regulated entity' listed in the Schedule; or
- would otherwise fundamentally compromise the Tribunal member's capacity to act as a Tribunal member.

3.6.3 Tribunal members will not take part in decision-making where they have a conflict of interest, except where the Tribunal^c determines that the conflict can be managed such that the disadvantages of removing the Tribunal 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

3.6.5 Tribunal 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 Tribunal member or another IPART decision-maker to act in a partial manner.

3.6.6 Tribunal 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 Tribunal members of relevant updates to this policy so that they are aware of disclosure obligations.

^c As Minister responsible for the IPART Act, the Premier may also determine (where a conflict arises from a pecuniary interest) that a Tribunal member may take part in decisions of the Tribunal despite the conflict (see clause 6(4) of Schedule 2 to the IPART Act.

3.7 External employment of Tribunal members

Risks of prospective employment

3.7.1 Tribunal members are expected to be appointed to the Tribunal with previous and current employment that is unavoidably relevant to the work of the Tribunal. Tribunal 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, Tribunal 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 Tribunal (sections 3.7.5 to 3.7.7). Sections 3.7.1 and 3.7.2 apply to employment with core regulated entities as well as any other entity.

Core regulated entities

3.7.3 Tribunal members will not, during their appointment as a Tribunal 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.

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

Other entities

3.7.5 Tribunal members will immediately declare any prospective employment by any entity that may be impacted by an IPART decision.

Commentary

In practice, Tribunal members may discuss the risks of prospective employment amongst themselves or with the Secretariat, and will ordinarily seek and provide views in a collegiate manner. In this way, a Tribunal member may be alerted to risks that they did not themselves identify, and withdraw from consideration for prospective employment.

Nevertheless, wherever the Tribunal member pursues prospective employment by an entity that may be impacted by an IPART decision, the Tribunal member will be expected to manage the risks in an appropriate way, and the other Tribunal members will generally have a responsibility to determine whether any further management action is required to manage the risks.

3.7.6 Unless the Tribunal member declines the prospective employment, the Tribunal will, after seeking the advice of the Secretariat and taking into account the relevant views of the Tribunal member, consider:

- the risks associated with the prospective employment
- the costs (if any) that would be incurred in bringing those risks within the Tribunal's risk appetite, and
- the extent to which actions that bring the risks within the Tribunal's risk appetite would fetter the member's discharge of their Tribunal duties or the Tribunal's discharge of its duties.

3.7.7 On the basis of that consideration, the Tribunal may decide to:

- note and record the prospective employment, and request that the Tribunal member provide updates to the Tribunal on any developments, or
- take action to manage any risks, for example, by directing the Tribunal member not to participate in relevant decisions, amending delegations, or restricting access to systems or information.

If the Tribunal forms the view that:

- the risks of the prospective employment cannot be managed;
- the risks of the prospective employment cannot be managed without:
 - incurring unreasonable costs at the public's expense;
 - unreasonably interfering with the Tribunal's ability to discharge its functions; or
 - unreasonably interfering with the Tribunal member's ability to discharge their functions as a Tribunal member,

the Tribunal will inform the member of this view and may recommend that the Tribunal member decline the prospective employment. Where the Tribunal member does not decline the prospective employment, or resign their appointment as a Tribunal member, the Tribunal may seek the Premier's advice in relation to the Tribunal member's continued appointment under Schedule 2 of the IPART Act.

The Tribunal's decisions under this section 3.7.7 are to be guided by what is in the overall public interest, having regard to the matters set out in section 3.7.6.

Review of external employment

3.7.8 Where a Tribunal member engages in external employment, the Tribunal will consider, at least annually, whether there has been change in circumstances that would warrant a re-assessment of the risks associated with the employment. This should occur immediately where an obvious change of circumstances occurs (eg the Tribunal is commissioned to review a relevant industry). Where there has been such a change in circumstances, the Tribunal:

- after seeking the advice of the Secretariat, will consider the matters set out in section 3.7.6, and
- may update the actions to manage the risks, or direct that the Tribunal member withdraw from the other employment or stand aside from Tribunal duties.

3.8 Post-separation employment

Core regulated entities

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

Other entities

3.8.2 Tribunal members will promptly notify the Tribunal of any prospective employment by any entity that may be affected by an IPART decision. This obligation:

- continues to apply for 6 months after the end of the Tribunal member's appointment as a Tribunal 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 recipient of a retail water bill).

3.9 Reporting of actual or potential ethical issues

3.9.1 Tribunal members may become aware of 'serious wrongdoing' as defined in the *Public Interest Disclosures Act 2022* (whether by other 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 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 Tribunal member becomes bankrupt, or becomes aware of circumstances that are likely to lead to their bankruptcy, they will inform the Premier, Chair and CEO immediately.

Commentary

Under clause 5(1)(g) of Schedule 2 of the IPART Act, the office of a member becomes vacant if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

3.10 Annual declarations

3.10.1 Tribunal 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 Tribunal member, Tribunal 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 Tribunal 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 Tribunal members;
- to abide by the commitments made under section 3.2.7 of this Code not to attempt to influence members of the Tribunal 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.

Schedule – Core Regulated Entities

- Ausgrid
- Australian Rail Track Corporation
- A council (within the meaning of the *Local Government Act 1993*)
- Endeavour Energy
- Essential Energy
- Hunter Water Corporation
- Sydney Desalination Plant Pty Ltd
- Sydney Water Corporation
- Transgrid
- Transport Asset Holding Entity
- WaterNSW