

Code of Conduct NSW Child Death Review Team

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1. Scope and Purpose

This Code of Conduct ('the Code') represents a broad framework of ethical conduct that all NSW Child Death Review Team (CDRT) members and other team-related persons¹ have an obligation to uphold.

The standards of conduct in the Code are based on the *NSW Government Boards and Committees Guidelines (2015)*, as well as the *NSW Ombudsman Code of Ethics and Conduct (2020)*.

The purpose of the Code is to provide members with a clear understanding of the standard of conduct expected when performing any duties associated with the CDRT. Members have an obligation to take responsibility for their own conduct, and are expected to familiarise themselves with, and act in accordance with, the Code.

2. Who must comply with the Code?

All members of the CDRT are required to comply with the Code.

The Convenor is responsible for leading and promoting the Code, ensuring that the general conduct and management of CDRT functions and activities are in accordance with CDRT values, and implementing strategies that may assist in preventing breaches of the Code.

Members are responsible for understanding and abiding by the Code, seeking advice from the Convenor or team-related staff when unsure of what behaviour or action is expected, demonstrating ethical and professional behaviour, and reporting possible breaches of the Code to the Convenor or relevant staff.

Adherence to the code protects individual members and the CDRT as a whole. The Act provides that the Minister may remove an appointed member for 'incapacity, incompetence or misbehaviour'. In regard to confidentiality, breaches of s 34L of the Act are unlawful and could result in a penalty or imprisonment.

Please refer to the section 'Response to Code Breaches' for more information.

3. CDRT values

Members have a responsibility to conduct themselves in a professional manner, and demonstrate respect for all persons, whether this is in regard to fellow CDRT members, stakeholders, or other persons.

Members must ensure that their conduct meets the highest ethical standards when discharging their responsibilities. Based on the NSW Government sector values, and the NSW Ombudsman Code of Ethics and Conduct, CDRT members should demonstrate the following core values at all times:

¹ A 'team-related person' is defined under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* as a member of the Team, a member of staff of the Ombudsman's office who is supporting and assisting the Team, and any person engaged to assist the Team in the exercise of its functions, including expert advisors. From this point, a reference to 'member' includes team-related persons.

Integrity

- Act professionally, impartially, and are committed to producing high-quality work
- Act lawfully, honestly and ethically, placing public interest over personal interest
- Apply the same standards to ourselves as we demand of others

Trust and Respect

- Appreciate difference and welcome learning from others
- Build relationships based on mutual respect
- Communicate intentions clearly and invite teamwork and collaboration
- Provide apolitical and non-partisan advice

Service and Professionalism

- Interact with stakeholders in a professional and inclusive manner
- Understand and respond to the diverse contexts and needs of stakeholders to promote effective working relationships and positive engagement with the work of the CDRT

Accountability and Transparency

- We are honest and accountable in how we do our work and how we report our findings
- Communicate openly with stakeholders and welcome scrutiny of our work
- Support our findings and recommendations with evidence

4. Demonstrating core values

Our mission, and the objectives that underpin our work to eliminate preventable child deaths are outlined in the Charter. In order to maintain the high value and trust placed in our work, it is essential that members:

- are mindful of their obligation to individually consider issues and make decisions that are consistent with our objectives when performing their CDRT role
- are transparent in their actions and communications to foster trust and minimise ambiguity
- put honesty and integrity above the desire for personal reward
- ensure they do not place themselves in situations in which their private interests could conflict directly or indirectly with obligations to the CDRT
- act in ways which do not cause others to question their commitment to the CDRT
- do not knowingly make decisions or convey information that may obtain, or appear to obtain, a personal benefit or a benefit for family members, relatives, close friends, business partners of associates, unless it is a benefit received in common with a class of people who would ordinarily receive the benefit.

We are truthful about the services we provide, the knowledge our members possess, and experience that has been gained through the exercise of our functions.

5. Legislative requirement

The CDRT is established under Part 5A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (the Act). All members have a responsibility to comply with legislation, policies, procedures and guidelines, alongside this Code, and to perform their duties effectively.

Schedule 2 of the Act contains provisions relating to members and procedures of the Team, such as: term of office of members; vacancy in office of appointed members; and removal from office. In particular, members should note their position becomes vacant in a range of circumstances, including if they are absent from four consecutive CDRT meetings without being excused by the Minister for having been absent.

6. Conflict of interest or roles

6.1. What are conflicts of interest or roles?

In the CDRT context, a conflict of interest exists where a reasonable, informed observer would perceive a member's responsibilities to the CDRT might be influenced by their own, or someone else's, private interest. In addition, a conflict of roles can occur when a member's obligations to the CDRT, or CDRT observations or recommendations in themselves, are in conflict with a member's home (employer) agency policy or public position.

The type of conflict that may arise will depend, in part, on the member's role and/or work outside the CDRT, and given the Team's structure and membership it is important to address any potential conflict issues. Managing conflicts involves disclosure, management and, where possible, avoidance.

Examples of likely scenarios that might arise include:

- where a member belongs to a research institution that puts in a bid for a CDRT research project
- the CDRT recommends a change to legislation that is administered by a member's agency
- the CDRT makes a recommendation that imposes a burden on the member's agency (eg. proposes a new support program)
- the CDRT's work and public reporting highlights a systemic issue that it considers may contribute to risk to children (eg. poor regulatory oversight) by a member's agency
- the CDRT proposes an evidence-based recommendation that a member's agency does not support
- a member has a role in other groups, organisations or projects that are doing work that is not aligned to the CDRT's position.

6.2. Response to potential conflicts

Members must be willing to put aside or go beyond their key interests or the mandate of their agency to focus on adding value to all aspects of the CDRT's broad scope.

If conflicts arise, members should promptly, fully and appropriately disclose any actual or potential conflict of interest they may have in a matter under consideration by the CDRT. This should be disclosed through a declaration to the Convenor. Where this conflict involves the interests of a member's family or friends, those interests should be disclosed to the extent that they are known to the CDRT member.

Members should also bring to the notice of the Convenor any circumstances that could result in a third party reasonably perceiving a conflict of interest to exist. Such disclosures must be made at the first available opportunity to the Convenor for a decision as to what action should be taken to avoid or deal with the conflict.

A conflict of role is the most likely situation in which a potential conflict may arise, and we have strategies in place to minimise conflicts of this type. For example, information sought from agencies (such as documents, advice, comments on draft reports, and requests for progress reports on recommendations) are directed to the head of agency, rather than the CDRT agency representative.

Where a disclosure of actual or perceived conflict of interest is made to the Convenor, depending on the circumstances of the case the Convenor may consider the following options:

- taking no further action because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision
- noting the matter in which there is an interest and restricting information to the member in relation to the matter so that a conflict does not arise
- requesting that the member absent themselves from or not take part in any debate or voting on an issue in which there is a conflict or a perceived conflict.

For further information on the management of conflict see *Good Conduct and Administrative Practice (3rd edition)* NSW Ombudsman March 2017.

https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/3634/Good-conduct-and-administrative-practice-guidelines-for-state-and-local-government.pdf

7. Confidentiality

Members must abide by confidentiality provisions in the Act (s 34L).

7.1. What is confidential in the CDRT context?

The legislation states that a team-related person (inclusive of members, expert advisers and staff) must not make a record of, or directly or indirectly disclose any information, including the contents of any document, that was acquired by them by reason of being a team-related person, unless:

- The record of disclosure is made in good faith for the purpose of exercising a function of the CDRT. Our functions are detailed at section 34D of the Act (Attachment A).
- The record or disclosure relates to a draft report of the team. This allows members to consult within their home agencies and with relevant external agencies or individuals to gain advice in order to make comment on draft reports. It should be noted that this provision for consultation applies only to draft CDRT reports.

In the main, information can be released or shared only if it is for the purposes of our core functions. The Convenor alone has the power to disclose information in connection with research, or to provide information for specific identified purposes (see section 34L of the Act).

As noted above, the important exception to this relates to draft annual, biennial or research reports. Members can disclose information in connection with these draft reports to Ministers or senior agency staff, or to other individuals or organisations in order to obtain information or advice to enable the member to provide comments on the drafts.

More generally, members who want to seek advice or information that may assist them in contributing to other CDRT work or discussions should only do so without sharing CDRT records or documents (including emails) that are not in the public domain.

7.2. Breach of Confidentiality

Our legislation has strict confidentiality provisions, and release of information that is acquired by reason of being a member or an expert adviser is by exception only.

The maximum penalty for contravening the confidentiality provisions of the Act is 50 penalty units or imprisonment for 12 months, or both. The nature of this penalty highlights the seriousness of this issue and the importance for members to understand the confidentiality provisions.

Members should consult with the Assistant Ombudsman or the Convenor, should any questions about confidentiality or potential release of information arise.

8. Privacy considerations

In addition to confidentiality requirements, members are expected to protect the integrity and security of information and documents for which they are responsible, and:

- must not improperly collect, use or disclose the personal information of other members
- must securely and safely store all documents provided for the purpose of CDRT business, including emails and electronic information
- must not remove official information from the Ombudsman's premises without authorisation.

9. Public comments by CDRT members

Public comment is any comment made where it is expected that it will be seen or heard by members of the public. This includes public comment through open social media accounts. While members have the right to participate in public debate, and will have expertise in areas aligning with our work, members must not make any comment on behalf of the CDRT unless authorised by the Convenor to do so.

Unless authorised, in discussing the work of the CDRT, members should confine themselves to material that has entered the public domain by way of reports, media releases, fact sheets, public addresses, submissions, and so on.

10. Reporting conduct

10.1. Self-reporting bankruptcy and serious criminal offences

Members must notify the Convenor if they become bankrupt or are convicted or found guilty of a serious offence. In both cases, the office of an appointed member becomes vacant (Schedule 2 of the Act).

A 'serious offence' means an offence punishable by imprisonment for life or for 12 months or more (including an offence committed outside NSW that would be an offence punishable if committed in NSW).

10.2. Reporting suspected wrongdoing

Members must report to the Convenor all information they become aware of that they honestly believe, on reasonable grounds, shows or tends to show, instances of:

- corrupt conduct (as defined in the *Independent Commission Against Corruption Act 1988*)
- maladministration (action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives)
- serious and substantial waste of public money (the uneconomical, inefficient or ineffective use of resources which results in a loss/wastage of public funds/resources)
- Government information contravention (a failure to exercise functions in accordance with the *Government Information (Public Access) Act 2009*).

11. Lobbying

Members must comply with the *Premier's Memorandum M2014-13- NSW Lobbyists Code of Conduct* published on the Department of Premier and Cabinet's website, as amended from time to time.

12. Use of public resources

As a member of the CDRT, you have an obligation to:

- use public resources, including office facilities and equipment, travel and catering, in an efficient, effective and prudent way
- provide reasonable evidence when claiming for travel costs or other CDRT-related expenditure.

13. Gifts and Benefits

Members should avoid gifts, favours and benefits that could in any way influence, or appear to influence, business decisions in favour of the provider or recipient.

Gifts from all third parties, other than token gifts, should be declined.

14. Response to Code breaches

14.1. Monitoring Compliance with the Code

The Convenor promotes and monitors compliance with this Code by providing education on this and other policies from time to time, and by monitoring and conducting periodic reviews of activities and policies.

14.2. Reporting violations of the Code

All members have an obligation to report instances of conduct that is not in line with the Code to the Convenor.

Reports will be taken from any person, whether or not a CDRT member. You may remain anonymous if you wish. There will be no reprisals against any member reporting a violation or suspected violation in good faith. If you know of, or suspect, a violation of the Code, you should report the issue.

14.3. Code Breaches

Any suspected violation of the Code will be investigated, and appropriate action taken.

When deciding what, if any action should be taken to a breach of the Code, the Convenor will consider each case on its own facts and circumstances. The Convenor will also have regard to the seriousness of the breach, and the risk the breach poses to the CDRT, members, stakeholders, and the Ombudsman's Office.

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