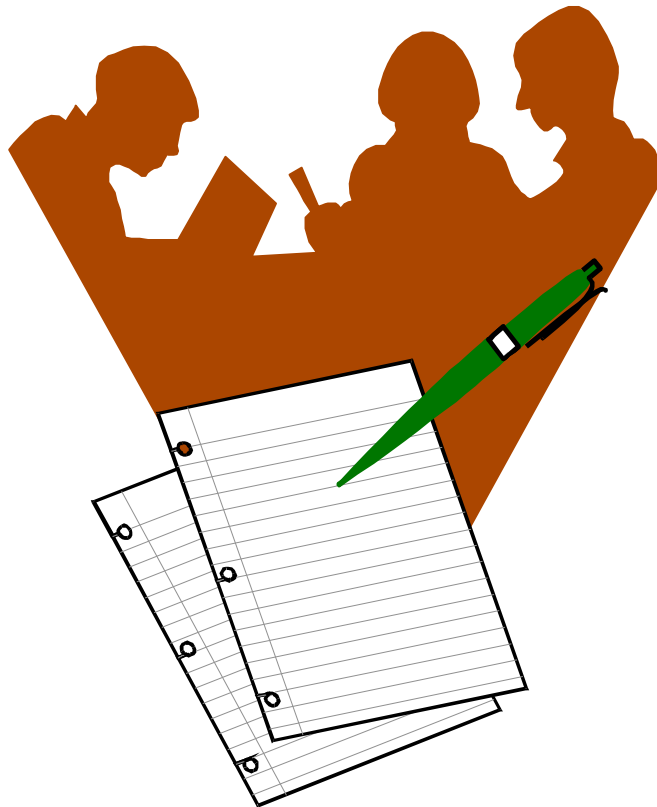


ScreenWest Board
CODE OF CONDUCT
February 2004

ScreenWest Inc. Code of Conduct for

Government boards and committees



Based on the May 2002 Template for
Government boards and committees prepared
by the Office of Public Sector Standards
Commissioner

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SCREENWEST INC.
CODE OF CONDUCT
(ADOPTED AT MEETING 29th AUGUST 2002)

Introduction

This Code of Conduct (Code) has been prepared to promote good practice. It gives Board and committee members a summary of their obligations and provides guidance about ethical conduct.

In this Code, “member” means a Board or committee member duly appointed by the Governor, a minister or other competent authority. The term “Board” also includes committees.

It is based on the *Western Australian Public Sector Code of Ethics* (Code of Ethics), applicable to nearly all public sector bodies, including Boards created for a public purpose under Western Australian legislation. Accordingly, Boards must observe and comply with the Code of Ethics.

People from all over Western Australia serve on Government Boards, often as volunteers. An appointment to a Board carries with it responsibilities and obligations. Ignorance about those responsibilities can damage both the individual and the organisation they serve. People chosen as directors and committee members should understand their responsibilities. This can only assist them to contribute in a positive way.

The Code includes information on ethical issues likely to confront members and provides practical guidance. If a Board chooses to adopt this Code, then it must observe and comply with it, to the extent that it obliges compliance. Similarly should a Board choose to develop its own code, or modify an existing code, that too becomes binding once adopted. Such codes must be consistent with the Code of Ethics.

In performing their responsibilities, Boards must work with the responsible Minister and, in many cases, with the chief executive officer (CEO) of a public sector agency. Under some legislation, the responsible Minister may give a written direction to the Board and the Board must give effect to it. In practical terms, a CEO must, in addition to the Board, cooperate constructively with the responsible Minister and his or her office staff. This can involve a high volume of daily communications and interaction. The employing authority for some CEOs is the Board, but for most it is the Minister for Public Sector Management (the Premier).

A Board may not direct a public sector employee to act contrary to the Code of Ethics, or a code of conduct applicable to that employee, where this obliges compliance.

Board members will:

- Acknowledge and respect the legitimate interests of the Premier and responsible Minister concerning the Board’s role and the operations of the agency involved.
- Ensure lawful directions made by the responsible Minister are followed.
- Pay due regard to the employee / employer relationship between the Premier and CEOs.
- Where applicable, properly observe their responsibility as a CEO’s employer.

1. Personal behaviour

Board members are in a position of trust. Their involvement may affect the welfare, rights or entitlements of the community and individuals.

Government power is derived ultimately from citizens, who expect public officers to carry out their functions with professional integrity and due regard for the public interest. All Board members need a clear understanding of their public duty and legal responsibilities.

Board members will:

Understand the Board's role and public duties

- Gain a clear understanding of the role or purpose of the Board as well as the statutory and regulatory requirements of members carrying out their public duties.
- Develop an understanding of the physical, political and social environment in which the Board operates.
- Stay informed about all relevant activities affecting the Board.
- Comply with legal obligations and implement the decisions taken by the Board.

Be active

- Attend all Board meetings. Where attendance is not possible members will submit an apology. If absence is likely to extend for several consecutive meetings, members will obtain leave of absence.
- Participate actively and work cooperatively with fellow members and stakeholders to achieve agreed goals.
- Prepare for meetings by reading and considering papers circulated with the agenda.

Respect each other

- Treat each other with professionalism, courtesy and respect.
- Not improperly influence other Board members.
- Act loyally and in good faith.

Consult

- Consult stakeholders and affected parties about issues under consideration.

Raise concerns

- Express concerns to the Chairperson or other relevant authority about decisions or actions contrary to the Board's public duty.

- Disclose any information about actual or potentially corrupt or illegal activities to the Chairperson or, if necessary, the Anti-Corruption Commission.

2. **Accountability**

The *Financial Administration and Audit Act 1985* places a responsibility on Board members to ensure efficient and effective operations, to avoid extravagant and wasteful use of resources, and to record processes carried out when purchasing goods and services.

2.1 **Accountability for public expenditure**

Board members will:

- Act in a lawful, ethical and justifiable manner.
- Demonstrate personal integrity and reliability.
- Maintain confidentiality.
- Participate constructively in Board activities.
- Ensure action is taken on audit reports.
- Ensure compliance with statutory and legal requirements.
- Analyse financial statements and management reports with due care, and ensure he or she is properly informed.

2.2 **Remuneration or sitting fees**

Board members will not:

- Accept any fee, reward, gratuity, gift or remuneration of any kind other than sitting fees or allowances officially applicable to the Board.

2.3 **Allowances**

Accommodation and travel expenses

Board members will:

- Obtain approval for travel from the Chief Executive Officer.
- Comply with the travel conditions and guidelines set down in current Government policies. Circular to Ministers 6/93 and Circular to Chief Executive Officers 21/91 provide that:
 - Travel will not be undertaken unless it is demonstrably the most cost effective and efficient method of performing the function or obtaining the information required.
 - Attendance at interstate or overseas conferences and courses must be justified in the public interest.

- All travel proposals will include a clear statement of the benefits to Western Australia and the Board, of such travel.
- All overseas travel is to be approved by the Minister.

Board members will be reimbursed travel and accommodation expenses as follows:

- Air and rail travel costs approved by the Board.
- Members using their own motor vehicle on official business (other than attending normal Board meetings) are entitled to claim an allowance at public service rates.
- Accommodation, meals and out of pocket expenses, incurred on official business will be reimbursed at public service rates or booked and paid directly by the Board.

2.4 Entertainment and catering

Any entertainment should be consistent with the Board's genuine needs and public duty. Members should not lose or gain financially as a result of entertainment. The Board will ensure the efficient and responsible expenditure of public funds.

Board members will ensure:

- Catering is limited to basic food and drink items.
- Members approving entertainment expenditure are responsible for its propriety and scope.
- Transparent consideration and due thought before accepting hospitality offered by suppliers or potential suppliers, to avoid actual or perceived conflicts of interest or undue influence.

2.5 Entering Government premises

The Chief Executive Officer of ScreenWest is responsible for its day to day management. The Board as a whole or individual members may need to visit the agency in a formal capacity or to use Government facilities and equipment.

Board members will:

- Cooperate with the Chief Executive Officer when using the premises for meetings, or other Board business or wishing to use Government facilities or equipment for Board purposes.

2.6 Engaging consultants / contractors

Government guidelines and procedures ensure a consistent approach in recording the engagement of consultants/contractors. It is important

that a Board determines whether the person is to be engaged as an employee, or as a contractor.

An employee is engaged on a contract of service which implies an employer / employee relationship under which the Board is responsible for the person's wages, worker's compensation, PAYE tax instalments and group certificate etc. A contractor is engaged on a contract for service, which implies there is no employer / employee relationship. Accordingly a contractor submits an invoice for the service performed.

Board members will ensure:

- Persons employed under contracts of service will be recruited, appointed and managed in accordance with Public Sector Standards in Human Resource Management.
- Contracts for service will be made following correct purchasing procedures, according to current State Supply Commission guidelines on contracts for professional services.

3. Use of public sector resources

All vehicles, computers, furniture and other equipment provided to the Board remain the property of the ScreenWest and will only be used for official purposes. Board assets are publicly owned and are not provided to members for exclusive use.

Board members will ensure:

- Equipment is operated in accordance with the manufacturer's specifications, is maintained in good condition and stored securely.
- Any damage or loss of property or equipment is reported immediately to the Board.
- Resources, funds, employees and equipment are used effectively and economically for Board business. Official resources include, but are not limited to; motor vehicles, computers, software, photocopiers, telephones, facsimile machines, printers and any similar items of office equipment.
- Requests by an external party such as a charitable body to use Board facilities shall be referred to the Board for approval.

3.1 Use of telephones

All Government mobile telephone accounts are monitored.

Board members:

- Will keep personal calls to a minimum and will not make private business calls.
- With a Government mobile telephone will:
 - Certify calls made on behalf of agency business, prior to the payment of the account.

- Reimburse the agency for private call costs. Alternatively, Board members may pay the account and claim reimbursement for Board calls.

3.2 Frequent flyer points

Board members travelling on official business should not accept gifts, free travel or other benefits.

Board members:

- Will not use travel points accumulated on Government business under frequent flyer or other programs to acquire benefits such as upgrading of tickets above normal entitlements or for private travel, whether or not members personally have met the costs of membership to a frequent flyer scheme.
- Should only accept travel incentives for the Board's benefit, including future free travel on Board business.
- Eligible for travel incentives from membership of Golden Wing, Flight Deck, Frequent Flyer or similar schemes should advise the travel booking officer of their membership when making travel arrangements; and the number of accumulated (Government) points each quarter.

Once a member leaves the Board (and is not a State employee), any entitlements such as membership to the frequent flyer scheme must be discontinued. Benefits accrued on Government business can only be used for official purposes.

3.3 Purchasing of goods and services

Board members will:

- Comply with State Supply Commission policies and guidelines.

The State Supply Commission policy manual "Policies and Guidelines for Buying Wisely" contains the State Supply Commission policies and guidelines, which specify standards for public sector bodies to meet when purchasing goods and services.

Copies of the manual are available for purchase from the State Supply Commission, or can be downloaded from the State Supply Commission web site at www.ssc.wa.gov.au.

In addition, Board members should be aware of the Government's *Buy Local Policy*, which applies across Government and is administered by the State Supply Commission.

Boards are encouraged to seek advice and assistance from the State Supply Commission when purchasing goods and services.

3.4 Corporate credit cards

Each corporate credit card is issued to an individual and responsibility rests with that person.

Board members will:

- Use corporate credit cards only for official purposes and comply with conditions set by the issuing financial institution.

The corporate cardholder may requisition goods and services directly from a supplier. The corporate credit card may be used to procure approved goods and services and accommodation within financial limits approved by the Board.

The corporate credit card must not be used:

- To withdraw cash.
- To purchase fuel for Government vehicles.
- For private purchases.
- To purchase assets.

3.5 Incurring expenditure

Those incurring expenses must be authorised incurring officers, as described in Section 33 of the *Financial Administration and Audit Act 1985* and Treasurer's Instruction 305(1).

Board members will:

- Not approve their own expenditure for travel claims, credit card payments, private telephone subsidies and similar. These should be referred to the Board for approval.

4. Record keeping and use of information

All documentation produced by the Board forms part of the public record.

Board members will:

- Ensure records are properly organised and kept in safe custody.
- Comply with the provisions of the General Retention and Disposal Schedules established by the Public Records Office of the State Archives of WA.

4.1 Documentation of decisions

All decisions affecting the policy, practice and welfare of a public body or public officers must be transparent. Decisions and processes should be documented. Documentation protects all parties involved in a decision, both collectively and individually.

The Board will:

- Prepare and retain minutes for all official Board meetings.
- Ensure adequate procedures are observed for documenting decisions, events and transactions involving the Board.

4.2 Use of confidential information

Sometimes highly sensitive matters are discussed by Boards. These may be discussed with only Board members present and in strict confidence. Nevertheless all decisions should be documented and appropriate minutes prepared, while according certain records an extra level of security.

The Board will:

- Ensure confidential records are subject to appropriate access procedures.
- Respect confidential information and observe any restrictions agreed by the Board (subject to Freedom of Information Act requirements).
- Maintain confidentiality and not divulge information deemed confidential or sensitive. If members are uncertain they should seek direction from the Board Chairperson.
- Not misuse information obtained in the course of Board duties for direct or indirect gain, or to do harm to other people or the Board.
- Respect the privacy of individuals.

4.3 Security of information

While the secretary or executive officer of the Board may be the person primarily responsible for the storage and handling of records, all Board members have individual responsibility for any document, tape, disk or other record in their custody. Records should not be left in places where they may be seen by non-Board members such as at home, an office or motor vehicle.

Board members will:

- Ensure recorded information, in both paper and electronic form, under their control is kept in a secure place.
- Be cautious about leaving Board records on fax machines, photocopiers or computer screens.
- Lock away sensitive documents rather than leave them lying on desks.

- Avoid discussing Board business in public places where there is a likelihood of being overheard.
- Dispose of duplicate copies of records no longer required in accordance with archive procedures.

4.4 Amendment or falsification of records

Under criminal law, Western Australian Government Board members are Public Officers (s.85 of the Criminal Code).

Board members will:

- Not falsify, destroy, alter or damage any public record.
- Not backdate information or remove folios from files.

4.5 Freedom of information (FOI)

The *Freedom of Information Act (FOI) 1992* was introduced to help people gain access to documents and to check personal information in documents.

Board members will:

- Comply with the letter and spirit of the *Freedom of Information Act (FOI) 1992*, to assist the public to gain access to documents; allow access promptly and at the lowest possible cost, and ensure personal information held is accurate, complete and not misleading.
- Record facts in documents; avoid recording disparaging remarks and personal opinions about individuals; and avoid removing documents from a file.

5. Conflicts of interest

5.1 Gifts and gratuities

Board members should not accept gifts or benefits likely to place them under an actual or perceived financial or moral obligation to other organisations or individuals.

Board members will:

- Not demand or accept in connection with their official duties any fee, favour, reward, gratuity or remuneration of any kind, outside the scope of their entitlements as a Board member, unless authorised by the Chairperson of the Board.
- Not use their public position for personal profit or gain.
- Not accept a gift if it could be seen by the public, knowing the full facts, as intended or likely to cause a member to act in a particular way or deviate from public duty.

5.2 Private interests

Board members are expected to place public interest above personal interests and not to use their position for personal gain.

Conflicts between private interests and public duties can arise when:

- A member stands to make a financial gain from a Board decision.
- A member's spouse, children or near relative stands to make a financial gain.
- A member holds membership of another organisation likely to benefit from a Board decision.
- A member's spouse, children, near relatives or close associates are members of an organisation affected by Board decisions.

Accordingly Board members will:

- Openly declare matters of a private interest such as investments, relationships, voluntary work and membership of other groups that may conflict or be perceived to conflict with the member's public duty.
- Record any issues of conflict to ensure they are transparent and capable of review.
- Disqualify themselves from any Board discussions and decisions where a conflict of interest has, or could occur.

6. Public sector employees on Boards or committees

- If a public sector employee is appointed to a Board, the reasons should be documented and made public.
- Public sector employees serving on a Government Board have the same fiduciary responsibilities as other Board members, but should not receive remuneration additional to their salaries.

7. Compliance with the Western Australian Public Sector Code of Ethics and Codes of Conduct

The Commissioner for Public Sector Standards monitors compliance with the WA Public Sector Code of Ethics and applicable codes of conduct. The Commissioner may report any public sector bodies, found to be in breach of the codes, to their relevant Minister and to Parliament.

Accordingly Board members will:

- Receive a copy of the Western Australian Public Sector Code of Ethics, read it and comply with it.
- Receive a copy of this Code of Conduct, read it and abide by it.

CHAIRPERSON:

Date:

**SCREENWEST
CONFLICT OF INTEREST CODE
AND DIRECTORS DUTIES**

Background

The ScreenWest Board is appointed by the Minister for the Arts and includes Board members with a diverse range of skills and expertise, including a number of Board members who are professionally employed in the national and international film, television and screen culture industry. Accordingly, it is inevitable that such a Board will at times be called upon to make decisions on matters which may affect the personal interest of one or more of the Board members.

It is important that the Board and Management be aware of what action should be best taken in such circumstances. This may be problematic at times, due to the fact that Board Members must have as much information as possible on which to base their decision upon whether a conflict of interest exists and at times this disclosure may result in information being disclosed.

Under Common Law, Statute (including the Corporations Act) and the ScreenWest Constitution, a duty is placed upon Board members to act in the best interests of ScreenWest as a whole. This duty results in an obligation to avoid situations where there is a “real and sensible possibility” of a conflict of interest arising between the Director’s personal interest (including the interests of third parties with whom they are associated) and the interests of ScreenWest.

The ScreenWest constitution states in Section 15:

- 15.1** *“The property and income of the Association shall be applied solely towards the promotion of the objects of the Association and no part of that property or income may be paid or otherwise distributed directly or indirectly to Members except in good faith in the promotion of those objects provided that nothing herein contained shall prevent the payment in good faith of:*
- a** *reasonable and proper remuneration to any officers or servants of the Association or to any member in return for services actually rendered to the Association including remuneration to Board members for services rendered as members of the Board; and*
 - b.** *financial assistance for any project or activity in which any Board member, officer, servant or Member of the Association has a direct or indirect pecuniary interest where such assistance is within the objects of the Association.”*

Section 16 states:

- 16.1** *“A Board member having any direct or indirect pecuniary interest in a contract or proposed contract referred to in section 21 or 22 of the Act or in any other matter under consideration by the*

Board shall comply with those sections. In particular, a Board member having a direct or indirect pecuniary interest in a funding application under consideration by the Board shall disclose the nature and extent of his or her interest to the Board and shall not take part in any deliberations or decisions of the Board with respect to that matter and shall, at the request of the Board, absent himself or herself from the meeting during consideration of that matter.

16.2 For the purpose of this clause, a Board member shall be taken to have an indirect pecuniary interest in a contract or a proposed contract or other matter under consideration by the Board if he or she or his or her nominee or a member of his or her family holds a beneficial interest in more than one (1) percent of the capital of a corporation with which the contract is made or proposed to be made or which has a direct pecuniary interest in the other matter under consideration or is a partner or an employee or a director of a person or corporation with whom the contract is made or proposed to be made or who has a direct pecuniary interest in the matter under consideration”.

1. When can a conflict of interest arise?

A conflict of interest arises when a Board member may have the opportunity to prefer his or her own interests above those of ScreenWest.

Whilst some examples may be given of situations where a “real and sensible possibility of conflict” does or does not exist, the law does not provide any clear guidance on this matter, and there is no precise definition of a “real and sensible possibility” of conflict.

Individual Board members must decide if the situation may give rise to a conflict of interest in the context of the relevant transaction and the Director’s interest.

Examples of situations in which a conflict of interest will arise include:

1. Where a financial gain is likely to be made by a Board member of his or her family;
2. Where a Board member, his or her family or a company of which any of them is a director, shareholder or creditor:
 - a) Is competing with ScreenWest in respect of a commercial transaction;
 - b) Is or is threatening to take legal action against ScreenWest;
 - c) Is proposing to enter into a contractual arrangement with ScreenWest.

The following situation does not automatically result in a conflict of interest arising;

1. Where a Board member, his or her family or a company of which any of them is a director, shareholder or creditor is a member of another organisation eg a Board member who is a member of AWG or SPAA when it is seeking funding.

2. What should a Board member do if he or she believes a potential conflict of interest may arise?

The Board member must:

1. Make a declaration to the Board that a conflict of interest has arisen;
2. Fully disclose the nature of the conflict to the Board;
3. The Board, at its discretion, may request that person to absent him/herself from the meeting during discussion of the said matter.

3. Where a conflict of interest is believed to arise, what action should be taken by the Board?

A range of actions may be appropriate, depending on the circumstances. These include:

1. The Board member deciding to or being requested to refrain from voting;
2. The Board member deciding or being requested not to participate in the discussions, but to remain in the room;
3. The Board member deciding or being requested to leave the room during the relevant discussions;
4. The Board member seeking the consent of the Board to be present and vote or the Board determining this is the appropriate course of action;
5. The Board member deciding to resign from the Board.

A resolution should be passed by the Board, specifying the name of the Board member, the interest and the circumstances. In addition, the event of Point 4) above, the resolution should state that the Board members voting for a particular resolution are satisfied that the interest held by the conflicted Board member should not disqualify the conflicted Board member from considering or voting on the matter.

4. What are the obligations of Management with regards to potential conflicts of interest?

1. The Chief Executive shall bring to the attention of the Board the existence of a conflict of interest;
2. Where Board briefing papers relate to a matter in which a conflict of interest arises, these papers shall be withheld from the relevant Board member;

3. Written notice regarding the exclusion of these papers shall be provided to the relevant Board member and reasons for their exclusion given.

5. What are the obligations of other Board members in relation to potential conflicts of interest?

If a Board member believes that a fellow Board member has or may have a conflict of interest in a specific matter, and a declaration has not been made to the Board by that Board member at the time the matter is to be discussed, the fellow Board member has an obligation to inform the Board of the potential conflict.

6. What happens if there is a dispute regarding whether a conflict of interest arises?

This is a matter for the Board, not Management. A Board member shall be given written notice if Management decides to withhold Board briefing papers from a particular Board member and the reasons for this decision. In these circumstances, reasonable notice shall be given in the circumstances, to ensure that the Board member may have the opportunity to seek advice on this decision, should that person so choose.

If the decision to withhold Board briefing papers is objected to by the relevant Board member, the matter shall be referred to the Board, which will determine whether legal advice should be sought.

7. Are there other specific duties of Board members under the law?

Yes, in general a Board member must act in the best interests of the organisation as a whole, and not make improper use of his or her position. Accordingly, Board members must not make improper use of information or corporate opportunities which arise from their positions as Board members and commercial dealings should be carefully dealt with in the event of potential related party transactions. Where a Board member, his or her family or a Company of which any of the is a director or shareholder enters into commercial dealings with ScreenWest, this must only occur where the transaction is to the advantage of ScreenWest and on commercial terms, negotiated if possible without the personal intervention of the Board member concerned and fully disclosed to the Board and entered into with the full knowledge and agreement of the other Board members.