



Queensland Government
Treasury

Government Owned Corporations

Corporate Governance Guidelines for Government Owned Corporations

Version 2.0

© The State of Queensland (Queensland Treasury)

The Queensland Government supports and encourages the dissemination and exchange of information. However, copyright protects this document. The State of Queensland has no objection to this material being reproduced and made available online or electronically, provided it is for your personal, non-commercial use or use within your organisation, this material remains unaltered and the State of Queensland is recognised as the owner of the copyright.

Release Date: February 2009
Document Reference: 48761

Uncontrolled once printed

Table of Contents

1. Revision History	3
2. Introduction	3
3. Application of Guidelines	4
4. Summary of Reporting Requirements.....	6
5. Corporate Governance Principles.....	7
Code of Conduct and Conflicts of Interest Best Practice Guide for Government Owned Corporations.....	18

1. Revision History

Version	Date	Contact	Changes
1.0	30 September 2005	OGOC	Initial release
2.0	December 2008	Policy and Governance	Revised policy reflect revised ASX Principles and introduce a best practice guide on code of conduct and conflict of interest policies

2. Introduction

These Guidelines summarise the expectations of shareholding Ministers in relation to the corporate governance of all Queensland Government owned corporations (GOCs) established under the *Government Owned Corporations Act 1993* (GOC Act). They are intended to provide a framework for GOCs to develop, implement, review and report upon their corporate governance arrangements.

The high levels of public accountability which apply to GOCs as a result of their public ownership make the corporate governance of GOCs very important. GOCs must be properly managed on behalf of their ultimate owners, the people of Queensland.

The Guidelines have been drafted having regard to the following:

- *ASX Corporate Governance Council's Corporate Governance Principles and Recommendations 2nd Edition* (ASX Principles);
- *Auditor-General's Report No. 2 2002-2003 – Review of Corporate Governance and Risk Management at Government Owned Corporations*;
- *Auditor-General's Report No. 10 2002-2003 – Review of Management's Assessment of Fraud Control Risks and Associated Plans and Procedures*;
- *OECD Principles of Corporate Governance*; and
- *Crime and Misconduct Commission (Qld) and Independent Commission Against Corruption (NSW) – Managing Conflicts of Interest in the Public Sector – Guidelines and Toolkit*.

The Guidelines take effect from the date of release and apply to the 2008-2009 and subsequent financial years.

3. Application of Guidelines

There is no single model of corporate governance which is appropriate for all GOCs. As GOCs vary in the size and scope of their business activities and their internal and external environment, it is not possible or desirable to create such a model. The corporate governance arrangements for a GOC may also need to change over time as circumstances change.

All GOCs are required to:

- implement comprehensive, high quality corporate governance arrangements which are appropriate for and adapted to their particular circumstances; and
- properly disclose and report upon those arrangements to the shareholding Ministers, employees and the public.

GOCs should have regard to the Guidelines in designing their corporate governance arrangements, and in monitoring those arrangements for ongoing relevance. The Guidelines also apply, as far as practicable, to GOC subsidiaries.

The approach taken by the ASX Principles has been adopted so that the same eight general principles of corporate governance apply. In the same way as the ASX Principles, each principle contains some recommendations and commentary giving guidance regarding implementation of the principle. The recommendations of the Auditor-General's reports have been included as further recommendations for the relevant principles. The recommendations are intended as a more specific guide as to how the principle may be applied. GOCs should refer to the ASX Principles (and the Auditor-General's report where relevant) for more detailed commentary upon the principles and recommendations. In general, commentary is only provided where some modification or explanation is required for application to GOCs.

In addition, the publication *Managing Conflicts of Interest in the Public Sector – Guidelines and Toolkit* jointly issued by the Crime and Misconduct Commission (Qld) and Independent Commission Against Corruption (NSW) provides useful guidance for the development and implementation of effective conflict of interest management strategies.

The recommendations are not intended to be prescriptive. GOCs have the flexibility to implement the relevant principle in the best manner they see fit, as long as this can be justified. In determining the extent to which to apply a principle, GOCs may consider the costs and benefits, taking into account matters such as the nature of their activities and the risks they face, as well as resources available.

GOCs should first consider what constitutes better practice in their own particular circumstances. To the extent that the recommendations in these Guidelines represent better practice recommendations, GOCs should adopt an "if not, why not" approach, in the same way as set out in the ASX Principles. That is, if a GOC considers that a recommendation is not appropriate to its circumstances, it has the option of not following the recommendation but will be required to explain why.

In designing their corporate governance practices and frameworks, GOCs also must have regard to governance requirements in legislation such as the GOC Act, *Financial Administration and Audit Act 1977* (proposed to be replaced by the *Financial Accountability Act* in 2009) and the *Corporations Act 2001* (Cth).

4. Summary of Reporting Requirements

Reporting and disclosure are the most important elements of these Guidelines. GOCs must disclose and report on their corporate governance arrangements and how they have considered the principles to a sufficient level to give the shareholding Ministers confidence that corporate governance issues are being adequately addressed.

GOCs must include a separate section on corporate governance in their annual report which deals with the following:

- A general discussion of all aspects of the GOC's corporate governance arrangements.
- The specific information recommended to be disclosed in the annual report in the "Reporting" section of the principles set out below.¹
- Detailed explanations of any departures from the recommendations in these guidelines. Such explanations should address:
 - how the GOC's approach differs from the relevant recommendation;
 - the reasons why the GOC's approach has been adopted and how its approach accords with the intent or spirit of the relevant principle; and
 - that the GOC understands the relevant issues and has considered the impact of its alternative practices.

The detailed explanations of departures from the recommendations must also be included in GOCs' statements of corporate intent.

GOCs must also keep shareholding Ministers informed in relation to any significant issues relating to corporate governance, including any significant changes to their corporate governance practices, as and when they occur. This disclosure may be made through the regular quarterly reporting process, although for more important or urgent issues (e.g. suspected or actual breaches of securities trading policies) specific reporting would be appropriate at the relevant time.

GOCs have the flexibility to adopt the corporate governance practices and arrangements which they consider to be the most appropriate for their particular circumstances, but must report in detail upon why the practices have been adopted and demonstrate how those practices give effect to the principles.

It is each GOC's responsibility to ensure that it provides sufficient information to enable the shareholding Ministers to assess whether its corporate governance practices and structures meet the underlying concerns of the principles and are generally adequate and appropriate.

¹ Where information is already disclosed in other parts of the annual report, that information may be incorporated in the corporate governance section by cross reference.

5. Corporate Governance Principles

Principle 1 Foundations of management and oversight

Recommendations

- The board should have a formal statement or board charter which clearly defines the roles and responsibilities of the board and individual directors and the matters which are delegated to management. This also applies to any committees established by the board.
- A board handbook should be available to facilitate board operations and induction and self-evaluation processes.
- Appropriate induction processes should be developed for new members in relation to their board and committee functions and for senior executives to allow them to participate fully and actively in management decision-making at the earliest opportunity.
- A register of committees and their functions should be maintained.
- The process for performance evaluation of the chief executive officer and senior executives should be disclosed.

Commentary

Clear definition of the roles and responsibilities of the board and management will assist the board to effectively perform the role required by section 88 of the GOC Act (Role of board). It will enable the board to provide strategic guidance for the GOC and effective oversight of management. It will also enhance the accountability of the board and management to the GOC and the shareholding Ministers.

The members of the board and any committees established by the board should also be clearly aware of their roles and responsibilities and fully understand the GOC's business and corporate expectations.

Reporting

A summary of the formal statement or board charter should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section. The corporate governance section of the annual report should disclose whether a performance evaluation for the chief executive officer and senior executives has taken place in the reporting period and how it was conducted.

Principle 2 Structure the board to add value

Recommendations

- A majority of the board should be independent directors.
- The board should develop and implement a plan for identifying, assessing and enhancing directors' competencies.
- Disclose the process for performance evaluation of the board, committees and individual directors.
- The board and committees regularly review their information needs (quality, quantity and timeliness) to ensure the information they receive is appropriate for the effective discharge of their duties.
- Develop and implement appropriate, formal self-evaluation processes for the board and committees.

Commentary

GOC directors are appointed by the Governor in Council under the GOC Act. In this regard the board does not play a formal role in setting the composition or size of the board. All GOC directors appointed by the Governor in Council are non-executive directors.

The board should continue to regularly assess the ongoing independence of each director and the board generally to ensure that they continue to exercise unfettered and independent judgement. The board must ensure that the interests of the shareholding Ministers and the public are properly protected and that individual vested interests do not have the opportunity to influence decision-making against the interests of the GOC as a whole.

For GOCs the issue of independence is most relevant in situations where directors are a material supplier or customer of the GOC or its subsidiaries, or have a material contractual relationship with the GOC or its subsidiaries other than as a director. However, assessment of the independence of a director, including materiality thresholds, is ultimately a matter for the board to determine. The key issue is whether the director's independent judgement is impaired by the material relationship. The board should be able to explain to shareholding Ministers its reasoning in relation to the determination of independence, including disclosure of specific relationships and detailed discussion of how materiality (or immateriality) is determined.

GOC boards should have arrangements in place for determining materiality thresholds and for assessing a director's independence in light of interests disclosed by them.

GOC directors should be equipped with the knowledge and information they need to discharge their responsibilities effectively. Individual and collective performance should be reviewed at regular periods not exceeding two years. Board evaluations should be carried out under the responsibility of the chair and according to best practice. The evaluation should address whether the objectives of the board or committee are being met in a cost effective manner. The board should have access to continuing education and training to maintain, update and enhance their skills, knowledge and experience.

In general, the chair should continuously monitor the performance of individual directors, the board and committees.

Internal reporting frameworks should be sufficiently comprehensive to support the monitoring and review functions of the board and committees.

Given the appointment of new directors of GOCs is undertaken by the Governor in Council, a nomination committee (Recommendation 2.4 of the ASX Principles) is not considered necessary as most of the functions of such a committee are not vested in the board. However, the board should still continually assess the skills of the board and develop strategies to enhance them where appropriate, having regard to the nature of the GOC's business. GOC boards should also make shareholding Ministers aware of skills shortages that have been identified and are encouraged to provide nominees with the necessary skills to address such shortages.

Reporting

The corporate governance section of the annual report should disclose:

- the skills, experience and expertise relevant to the position of director held by each director in office at the date of the report;
- the names of the directors considered by the board to be independent and the GOC's materiality thresholds;
- a statement as to whether there is a procedure agreed by the board to take independent professional advice at the expense of the GOC;
- the term of office held by each director in office at the date of the report, including the date the director was first appointed; and
- whether a performance evaluation for the board has taken place in the reporting period and how it was conducted.

A description of the process for performance evaluation of the board, committees and individual directors should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

Whenever a performance evaluation of the board is conducted, the GOC should provide a written report to shareholding Ministers of the results of the evaluation. This report should also cover how the GOC has rated its compliance with the broader GOC policy framework.

Principle 3 Promote ethical and responsible decision-making

Recommendations

- Establish and disclose a code of conduct outlining the practices necessary to maintain confidence in the company's integrity and to guide compliance with legal and other obligations to stakeholders.
- Establish and disclose the policy for trading in securities by directors, officers and employees.
- Establish the code of conduct in line with the best practice guide provided in Appendix A.

Commentary

GOC boards and senior executives must observe the highest standards of ethical behaviour. The GOC should clarify the standards of ethical behaviour required and monitor and enforce observance of those standards.

GOCs have a number of stakeholders in addition to their shareholders to which they owe legal and other obligations. These include employees, clients and customers and the community as a whole. It is important for GOCs to demonstrate their commitment to appropriate corporate practices that recognise these interests and to corporate social responsibility in general.

This may be implemented through a code of conduct or appropriate alternative means such as policy and procedures documents. The code of conduct should deal with ethical matters as well as legal compliance. The code should reflect the significant public responsibility and high standards of conduct that GOCs should have as publicly owned enterprises.

The code of conduct could be a separate code for directors and executives or included as part of the corporate code of conduct.

The code should provide guidance as to the practices necessary to maintain confidence in the GOC's integrity, and the responsibility and accountability of individuals for reporting and investigating reports of unethical practices. The code should give clear guidance as to the expected conduct of directors, senior executives and employees and must give consideration to the elements of the best practice guide as per Appendix A. It is also considered to be good practice for the code to be developed with the participation of employees and stakeholders. It should be fully supported and implemented by the board and senior executives.

In drafting the code, GOCs should have regard to the suggestions in the ASX Principles and the recommendations of the Auditor-General. In this regard, the Auditor-General recommends that:

- codes of conduct are enhanced by the incorporation of examples and scenarios to assist in ethical decision-making; and
- the operations of boards are enhanced by the development of specific codes of conduct for directors addressing matters such as potential conflicts of interest and confidentiality.

The *Managing Conflicts of Interest in the Public Sector – Guidelines and Toolkit* jointly issued by the Crime and Misconduct Commission (Qld) and Independent Commission Against Corruption (NSW) should also be considered in the development of the code of conduct where it relates to conflicts of interest policies.

Although the *Public Sector Ethics Act 1995* does not apply to GOCs, the principles set out in that Act may be relevant.

The code should also include or make reference to guidance on procurement processes and contain a system for ensuring compliance and for enabling employees to alert management of misconduct. This should be consistent with, but not necessarily limited to, the requirements of the *Corporations Act 2001* (Cth).

These matters might also be dealt with in other documents, such as policies or compliance programs. In that case, it may be appropriate for the code of conduct to make reference to those documents.

A trading policy, including the application of restricted share trading registers (if used), should be established where directors, officers or employees of the GOC may in the course of their duties have access to inside information about any securities or where trading in securities may create a conflict of interest. This policy would supplement any legal duties which apply to directors, officers and employees in relation to use of information.

Reporting

The code of conduct and trading policy, or a summary of their provisions, should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section and communicated to employees as part of the induction process and on an ongoing basis. GOCs should also consider making advisers, consultants and contractors aware of the GOC's expectations as set out in the code of conduct.

Principle 4 Safeguard integrity in financial reporting

Recommendations

- The board should establish an audit committee.
- The chief executive officer and the chief financial officer (or equivalent) state in writing that the financial reports present a true and fair view and are in accordance with accounting standards.

Commentary

An independent audit committee is a key element of good corporate governance. It should have at least three members who are all financially literate, with at least one member having relevant qualifications and experience (i.e. should be a qualified accountant or other finance professional with experience of financial and accounting matters). Some members of the committee should have an understanding of the industry in which the GOC operates. The chair of the committee should not be the chair of the board. As referred to in Principle 1, the committee should have a clearly defined charter setting out the roles and responsibilities of the committee and its members.

GOCs should have structures in place to ensure the faithful and factual representation of its financial position. Although under the *Corporations Act 2001* (Cth) the statement referred to above is only required to be made in respect of listed entities, it is recommended for GOCs as it encourages management accountability.

Reporting

The corporate governance section of the annual report should disclose:

- details of the names and qualifications of those appointed to the audit committee, or those who perform the functions of an audit committee; and
- the number of meetings held by the audit committee and the names of the attendees.

The audit committee charter should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

Principle 5 Make timely and balanced disclosures

Recommendation

- Establish written policies and procedures to ensure compliance with disclosure requirements (including those in the GOC Act) and generally ensure the accountability of senior management for that compliance.

Commentary

Section 122 of the GOC Act requires GOCs to keep shareholding Ministers reasonably informed about the operations, financial performance and financial position of the GOC and its subsidiaries. This requirement has a similar rationale to the continuous disclosure obligations which apply to listed companies under the ASX Listing Rules. GOCs also have a number of specific disclosure obligations imposed on them by the GOC Act, relevant policies and other legislation.

As well as their legal obligations, GOCs are generally accountable to their shareholding Ministers who are in turn accountable to Parliament. It is important that shareholding Ministers have sufficient information about GOCs to fulfil this obligation. GOCs should therefore ensure that the shareholding Ministers have access to material information concerning the GOC, including the operations, financial performance, financial position and governance of the GOC and its subsidiaries. GOCs should adopt a broad approach to disclosure, which may go beyond the disclosures strictly required by law. In this respect, the GOC's code of conduct (refer to Principle 3) must ensure that shareholding Ministers receive timely and complete advice of potential and actual breaches of the code of conduct and securities trading policies by GOC board members, chief and senior executives and where material, GOC employees.

GOCs should also adequately disclose material risk factors and any material changes in the GOC's risk profile. This requires the establishment of sound internal risk management systems as referred to in Principle 7.

Reporting

A summary of the policies and procedures to ensure compliance with disclosure requirements should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

GOCs must regularly assess the information needs of stakeholders to ensure that their needs continue to be met by the GOC's public disclosures.

Principle 6 Respect the rights of shareholders

Recommendation

- Design and disclose a communication strategy to promote effective communication with shareholding Ministers.

Commentary

Shareholding Ministers have a general right to obtain information from GOCs about their operations by virtue of the accountability of the GOC to the government, Parliament and the public via the Ministers.² GOCs should respect the rights of shareholding Ministers and their representatives, having regard to the requirements of responsible government, and facilitate the effective exercise of those rights. They should communicate effectively and actively consult with the shareholding Ministers and give them ready access to balanced and understandable information about the GOC and corporate proposals. GOCs should not only comply with existing legal and regulatory requirements but also go beyond them where relevant in order to build credibility and confidence.

In general it is expected that the shareholding Ministers will communicate with the chair of the GOC, both on a formal and informal basis. The chief executive officer and other officers and employees should communicate with the Office of Government Owned Corporations or representatives of shareholder departments. The GOC should work cooperatively with the Office of Government Owned Corporations and shareholder departments to ensure that the shareholding Ministers can be briefed in a timely manner.

Reporting

A description of the arrangements the GOC has to promote communication with shareholding Ministers should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

² *Hughes Aircraft Systems International v Airservices Australia* (1997) 146 ALR 1 at 88-89 per Finn J.

Principle 7 Recognise and manage risk

Recommendations

- Establish policies on risk management and oversight.
- Require management to design and implement a risk management and internal control system to manage the GOC's material business risks.
- Ensure the integration and alignment of the risk management system with corporate and operational objectives.
- Ensure clear communication throughout the GOC of the board and senior management's position on risk.
- Ensure a common risk management terminology across the GOC.
- Ensure risk management is undertaken as part of normal business practice and not as a separate task at set times.
- Ensure information systems for reporting on risk are integrated to enable aggregation and reporting at a corporate level.
- Undertake a risk assessment to identify any high-risk fraud areas and develop strategies to mitigate any significant fraud risks.
- Implement policies and procedures which include:
 - employee responsibilities in relation to fraud prevention and identification;
 - responsibility for fraud investigation once a fraud has been identified;
 - processes for reporting on fraud related matters to management;
 - reporting and recording processes to be followed to record allegations of fraud;
 - requirements for employee training to be conducted on fraud prevention and identification; and
 - a reference to the GOC's code of conduct for ethical behaviour.
- Implement a fraud control plan for ongoing monitoring and coordination of fraud control activities, which identifies fraud risk, incorporates control strategies, action plans and a timetable for implementation, and sets out responsibilities and accountabilities for fraud control at all levels of the GOC.
- Management reports to the board as to the effectiveness of the GOC's management of its material business risks, allowing the board to assess the effectiveness of the implementation of the company's risk management and internal control systems annually.
- The chief executive officer and the chief financial officer (or equivalent) state to the board that the statement given under the recommendations applying to Principle 4 is founded on a sound system of risk management and internal compliance and control which implements board policies; and the risk management and control system is operating efficiently and effectively in all material respects.

Commentary

It is important that GOCs should have a sound system of risk oversight and management and internal control. The system should be designed to identify, assess, monitor and manage risk, and inform shareholding Ministers of material changes to the GOC's risk profile.

The policies should clearly set out the roles and responsibilities of the board, committees, management and, if applicable, internal audit in relation to risk management.

Risk management and internal control systems should be implemented by senior management and incorporate planning for business continuity and disaster recovery. The systems should deal with significant business risks which are relevant to the GOC, which may include risks such as trading, financial (as addressed in the Code of Practice for GOCs' Financial Arrangements), security, public liability and workplace health and safety risks.

GOCs should also give consideration to the establishment of an internal audit function which will bring a systematic and disciplined approach to improve risk management, financial control and governance procedures. The establishment of a risk management committee may also be appropriate.

Internal auditors should ensure that procedures are adequately implemented and be able to guarantee the quality of information disclosed by the GOC. Consultation between internal auditors and the Auditor-General as external auditor should be encouraged.

In relation to systems for fraud and corruption control, the Crime and Misconduct Commission has produced *Fraud and Corruption Control: Guidelines for best practice*. Although GOCs are not subject to the jurisdiction of the CMC, this provides a useful guide as to the elements of such a system.

Reporting

A description of the GOC's risk management policy and internal compliance and control systems should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

The corporate governance section of the annual report should also disclose that the GOC's management has reported to the board as to the effectiveness of the GOC's management of its material business risks.

Principle 8 Remunerate fairly and responsibly

Recommendations

- GOCs should disclose their remuneration policies to show the broad structure and objectives of the policies and the link between remuneration of the chief executive officer and senior executives and corporate performance.
- The board should establish a remuneration committee.

Commentary

Remuneration is an important issue for GOCs. As a result of the public ownership of GOCs, public accountability and transparency is required in relation to remuneration policies.

When setting remuneration for chief executive officer and senior executives, GOCs should aim to ensure a balance between public accountability and transparency and the GOCs' need to attract and retain high calibre employees from competitive labour markets. The remuneration arrangements for chief and senior executives are set in accordance with Government approved principles, having regard to specific key criteria or standards.

GOCs are also required to have a remuneration policy endorsed by shareholding Ministers which should include:

- the principles used to determine the nature and amount of remuneration including the broad structure and objectives of the GOC's remuneration policy; and
- details of how the principles establish a link or relationship between remuneration paid and the performance of the GOC.

In accordance with Principle 1, the remuneration committee should have a formal charter which sets out the roles and responsibilities of committee members.

Reporting

The corporate governance section of the annual report³ should include the following information:

- disclosure of the GOC's remuneration policies;
- the names of the members of the remuneration committee and their attendance at meetings of the committee.
- The charter of the remuneration committee should be made publicly available, preferably on the GOC's website in a clearly marked corporate governance section.

³ To the extent that this information is already disclosed in the financial statements in accordance with AASB 124, that information can be incorporated in the corporate governance section by cross reference.



Queensland Government
Treasury

Government Owned Corporations

Code of Conduct and Conflicts of Interest Best Practice Guide for Government Owned Corporations

Version 1.0

© The State of Queensland (Queensland Treasury)

The Queensland Government supports and encourages the dissemination and exchange of information. However, copyright protects this document. The State of Queensland has no objection to this material being reproduced and made available online or electronically, provided it is for your personal, non-commercial use or use within your organisation, this material remains unaltered and the State of Queensland is recognised as the owner of the copyright.

Release Date: February 2009
Document Reference: 48761

Uncontrolled once printed

1.0 Revision History

Version	Date	Contact	Changes
1.0	February 2009	OGOC	Initial release

2.0 Introduction

This guide has been developed to assist Government owned corporations (GOCs) with the development of a code of conduct (or equivalent documents) and more specifically conflicts of interest policies that meet the expectations and/or requirements of shareholding Ministers.

This guide supports the recommendations of Principle 3 of the Corporate Governance Guidelines for Government Owned Corporations and should be read in conjunction with these guidelines.

The guide discusses the following points that are relevant in the development of code of conduct/conflicts of interest policies as follows:

- Purpose of code of conduct and conflicts of interest policies;
- Code of conduct – content;
- Conflicts of interests – guiding principles; and
- Guidelines for conflicts of interest policies.

In summary, GOC boards are accountable for ensuring GOCs have appropriate codes of conduct and policies for trading in securities in place in accordance with the principles of the Corporate Governance Guidelines. Boards are further accountable for ensuring the policies are applied and enforced.

For ease of reference, the term “code of conduct” is used from this point forward to refer to both the code of conduct or policies and procedures that are equivalent to a code of conduct.

3.0 Purpose of Code of Conduct and Conflicts of Interest Policies

The high level of public accountability which applies to GOCs as a result of their public ownership requires the establishment and implementation of good corporate governance principles. GOCs must be properly managed on behalf of their ultimate owners, the people of Queensland.

The public has an expectation that the conduct or the perceived conduct of board members, executive and employees adheres to the highest ethical and moral standards. In this respect, shareholding Ministers and the public can gain confidence through GOCs clearly articulating appropriate practices for directors, senior executives and employees.

A code of conduct assists in developing a common understanding at the company level of expected behaviour and provides a framework for dealing with situations that are or may be perceived as unacceptable by shareholding Ministers and the public. Further, a code of conduct mitigates the risk of board members or employees engaging in conduct which may compromise their work or may cause a breach of legislative requirements or Government policy.

As part of the code of conduct, a clear set of policies and procedures for identifying, disclosing and managing misconduct and conflicts of interest will lead to a reduced risk of improper behaviour occurring, and provides an efficient mechanism to deal with any accusations of bias. Clear definitions are required in the code of conduct/conflicts of interest policy to ensure a clear understanding of what is understood by misconduct and situations that may give rise to conflicts of interest.

GOCs, as publicly owned companies, must also ensure that conflicts of interests are seen to be managed in a transparent and accountable manner. The perception that conflicts of interests are not being managed properly can undermine confidence in the integrity of the GOC board or management.

It is not required for GOCs to adopt a separate code of conduct for directors and senior executives. Depending on the nature and size of the GOC, the code of conduct for directors and senior executives may be separate or form part of the corporate code of conduct.

4.0 Code of Conduct – Content

It is expected that whether or not a separate code is established for directors and executives, the code of conduct would address the issues listed below. It is recognised that some of these issues may be addressed through alternative means, such as policy and procedure documents, that are separate from the code of conduct.

- **Ethical standards and guidelines** – outline the ethical standards and principles of the company including the company's core values and expected conduct in compliance with the ethical standards. Identify measures adopted to encourage the reporting of unlawful or unethical behaviour and to actively promote ethical behaviour.
- **Commitment to code of conduct** - provide a clear commitment by the board and senior executives to the code of conduct.
- **Company's responsibilities** - detail the company's responsibilities to shareholding Ministers, clients, business partners, consumers and the public generally.
- **Responsibilities to the individual** - this might include the company's privacy policy, and its policy on the use of privileged or confidential information.
- **Complaints** – detail the company's policies in respect of dealing with complaints made by members of the public and stakeholders, including board members, senior managers and employees of the company.
- **Employment practices** - this might include reference to occupational health and safety, employment opportunity practices, special entitlements above the statutory minimum, employee security trading policies, training and further education support policy, practices on drug and alcohol usage and on outside employment.
- **Fraud** – define what constitutes fraud, which may include examples and clearly outline how the company would handle fraud if it were to arise.
- **Gifts and benefits** – include clear guidelines on the acceptability of gifts and benefits, including appropriateness, limits and the use of gift registers, including reporting mechanisms.
- **Active compliance with legislation** - state the measures in place to promote compliance with legislation applying to the GOC.
- **Conflicts of interests** - specify how the company handles actual, potential or perceived conflicts of interest. The issue of conflicts of interest and dealing with them is a pivotal element of the code of conduct and is therefore discussed as a separate item in this guide.
- **Managing breaches of code of conduct** - describe the means by which the company monitors and ensures compliance with its code and clearly outline its policies in respect of any breaches, including reporting mechanisms and reporting lines, anti-victimisation provisions, disciplinary actions and grievance and appeal rights. GOCs must inform shareholding Ministers in a timely manner of any potential or actual breach of the code of conduct by GOC board members, chief and senior executives and, where material, by GOC employees.

5.0 Conflicts of Interest – Guiding Principles

A conflicts of interest policy is an intrinsic part of a company's code of conduct, as conflicts of interest may undermine employee and community confidence in the effective management of a company. Conflicts of interest can be actual, perceived or potential.

- An **actual conflict of interest** involves a direct conflict between an officer's current duties and responsibilities and existing private interests.
- A **perceived conflict of interest** can exist where it could be perceived, or appears, that an officer's private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
- A **potential conflict of interest** arises where a public official has interests that could conflict with their official duties in the future.

The following guiding principles are key considerations in the development of a conflicts of interest policy:

- **Protect public and shareholders' interest** – ensuring that the public and shareholding Ministers' interests are not compromised is the overriding objective of any conflicts of interest policy and associated management strategy. Directors and senior executives should act within the limits of their proper roles, and focus on the merits of each case without regard for private interests, personal attitudes or opinions. Directors, senior executives and employees must comply with the law and company policies without bias or favour and act with integrity.
- **Support transparency and accountability** – conflicts of interest must be seen to be managed fairly and effectively and the process for identifying, disclosing and managing conflicts of interest must be transparent, i.e. the process should be open to scrutiny and help maintain accountability.
- **Promote individual responsibility and personal example** – it is important for directors, senior executives and employees to take responsibility for identifying and acknowledging conflicts of interest. Clear policies and procedures should be in place to assist in the identification and reporting of conflicts of interest.
- **Build a supportive organisational culture** – provide and implement a policy environment that helps and encourages effective decision-making when conflicts of interest arise and encourages communication so employees are comfortable to disclose and discuss conflicts of interest.

6.0 Guidelines for Conflicts of Interest Policies

Outlined below are guidelines to be considered in developing and managing a conflicts of interest policy:

- **Identify** the different types of conflicts of interest that may occur and the main risk areas. Risks will differ from sector to sector (e.g. transport versus investment management) and also between GOCs within the same sector depending on company specific issues.
- **Develop** an appropriate conflicts of interest policy and associated strategies to manage these risks. A conflicts of interest policy should outline the expectations and responsibilities of employees and management in relation to:
 - recognising conflicts of interest, with clear examples;
 - disclosing how conflicts of interest are to be managed; and
 - monitoring the effectiveness of strategies to manage conflicts of interest.

The policy should include a requirement that shareholding Ministers be fully apprised, in a timely manner, of actual conflicts of interest arising with respect to board members, chief and senior executives and where material, GOC employees. Policies must also provide for the establishment and maintenance of a register of declared material personal interests of directors, senior executives and employees.

- **Educate** staff, managers and the senior executive and publish the conflicts of interest policy across the organisation. Consider an employee communication program involving some form of interactive discussion or training relating to any revised policy. Ensure managers know how to manage conflicts of interests and breaches of the code of conduct effectively to help maintain the GOC's functional integrity.
- **Lead** the organisation through example. Managers will need to demonstrate leadership commitment to the code of conduct and conflicts of interest policy by considering them a priority and modelling compliance and appropriate behaviour. Managers should encourage employees to disclose conflicts of interest and assist employees in resolving or managing conflicts of interest.
- **Communicate** the corporation's commitment to its policies and procedures to all stakeholders including business partners and contractors.
- **Enforce** the policy. Consequences of non-compliance should be clearly set out and employees made aware of these consequences as part of their training. If the code of conduct or conflicts of interest policy is breached, the board must give close consideration as to whether the matter should be referred to an independent regulator for review, such as the Australian Securities and Investments Commission. The nature and severity of the breach is a relevant factor.
- **Review** the policy regularly. The policy should be updated as necessary to ensure it remains relevant and effective in dealing with conflicts of interest. GOC boards have the discretion and are encouraged to seek (where appropriate) an independent external party to review their code of conduct/conflicts of interest policy, together with any declarations of conflicts of interest or any breaches of the code of conduct/conflicts of interest policy. A formal process should be established for regularly monitoring and evaluating the effectiveness of the conflicts of interest policy in terms of compliance and outcome.