



Department of Employment and Workplace Relations

Jobs and Skills Councils – Strengthening Australia's National Vocational Education and Training System Program

Code of Conduct

1. PREAMBLE

- 1.1 The *Jobs and Skills Councils – Strengthening Australia's National Vocational Education and Training System Program* (**Jobs and Skills Councils Program**), administered by the Commonwealth of Australia as represented by the Department of Employment and Workplace Relations (**Department**), aims to strengthen industry leadership and engagement to deliver a VET system that can respond rapidly to changes in Australia's economy and build a resilient national workforce.
- 1.2 Jobs and Skills Councils will be established as not-for-profit companies, limited by guarantee under the *Corporations Act 2001* (Cth), and supported to:
- (a) identify, forecast and respond to the current and emerging skills needs and workforce challenges of their industries;
 - (b) develop training products that improve the quality, speed to market and responsiveness of training products, including piloting emerging products and testing new approaches to meet industry needs;
 - (c) work with training providers to ensure training delivery meets employer needs, career pathways are mapped and promoted and the impact of delivery is monitored; and
 - (d) provide strategic advice on skills and workforce needs and the effectiveness of VET system policies and standards.
- 1.3 Jobs and Skills Councils will drive strong outcomes across the VET system through their strategic leadership on skills and workforce challenges, including through the identification of skills needs and the development and delivery of training products. The Jobs and Skills Councils will support the Government's commitment to deliver a collaborative, tripartite VET system that brings employers, unions and governments together to find solutions to skills and workforce challenges.
- 1.4 The purpose of the Code of Conduct is to set clear expectations in relation to the behaviour and decision-making of Jobs and Skills Councils and their directors, advisory committee members, employees, contractors, subcontractors and agents. It is expected that Jobs and Skills Councils will work to instil a culture of integrity through their promotion of a professional and respectful workplace, active guidance and supervision of staff, and implementation of fair and transparent professional standards and best practice stakeholder engagement, governance and reporting.

2. OVERVIEW

- 2.1 The Code of Conduct identifies the ethical obligations and expected standards of both:
- (a) Jobs and Skills Councils, being those organisations funded under the Jobs and Skills Councils Program; and

- (b) the directors, advisory committee members, employees, contractors, subcontractors and agents of the Jobs and Skills Councils.

This Code of Conduct also imposes internal governance practices directed toward minimising the prospect of breaches of the ethical standards set out in this Code of Conduct.

2.2 The Department expects:

- (a) high standards of honesty, integrity, probity, diligence, fairness and ethics of the Jobs and Skills Councils and their directors, advisory committee members, employees, contractors, subcontractors and agents; and
- (b) that Jobs and Skills Councils and their directors, advisory committee members, employees, contractors, subcontractors and agents will comply with the spirit, as well as the letter, of this Code of Conduct.

2.3 Jobs and Skills Councils are to be aware that:

- (a) compliance with this Code of Conduct is a binding obligation under the grant funding agreements for the Jobs and Skills Councils Program (**Grant Agreements**); and
- (b) the Department may take action in respect of any non-compliance by a Jobs and Skills Council under the Grant Agreements.

2.4 The ethical obligations and expected standards set out in this Code of Conduct are in addition to any other legal or ethical obligations or duties imposed on Jobs and Skills Councils, or their directors, advisory committee members, employees, contractors, subcontractors and agents, under:

- (a) any applicable laws and regulations;
- (b) the Grant Agreements; or
- (c) the governing materials (including a Jobs and Skills Council's constitution and any by-laws) and any other internal policies, processes or controls of a Jobs and Skills Council.

3. **ETHICAL DUTIES**

3.1 Jobs and Skills Councils must use best endeavours to ensure that their directors, advisory committee members, employees, contractors, subcontractors and agents:

- (a) act ethically, responsibly and in a manner that promotes the proper use and management of Jobs and Skills Council resources;
- (b) act in accordance with the objects of their relevant Jobs and Skills Council and objectives of the Jobs and Skills Councils Program;
- (c) act honestly, in good faith in the best interests of the Jobs and Skills Council as a whole and for a proper purpose;
- (d) act with the care and diligence that a reasonable person would exercise in their position;
- (e) do not misuse their position or any information gained from their position to:
 - (i) gain an advantage for himself or herself, or someone else; or
 - (ii) cause detriment to the Jobs and Skills Council or other industry stakeholders;

- (f) comply with any obligations of confidentiality that apply to the Jobs and Skills Council, or the individual directors, advisory committee members, employees, contractors, subcontractors and agents, however they might arise;
- (g) comply with:
 - (i) all laws and regulations that apply to the Jobs and Skills Council and its operations;
 - (ii) any specific policies which the Department gives the Jobs and Skills Council notice of from time to time, which may include any Commonwealth specific policies and/or specific policy positions agreed by Skills' Ministers;
 - (iii) the requirements set out in the relevant Grant Agreement; and
 - (iv) all governing materials (including the Jobs and Skills Council's constitution and any by-laws) and any other internal policies, processes or controls of the Jobs and Skills Council; and
- (h) act in a manner that does not undermine industry trust and confidence in the Jobs and Skills Council as a steward and representative of their industry sector.

4. **BOARD AND COMMITTEE COMPOSITION**

4.1 Jobs and Skills Council bodies must:

- (a) be satisfied that their board directors, board chair and advisory committee members are fit and proper persons to perform their respective roles and functions; and
- (b) take reasonable steps to remove any board directors or advisory committee members who do not meet this requirement.

In determining whether an individual is a fit and proper person, regard may be had to (without limitation):

- (a) the person's knowledge, skills and industry experience;
- (b) whether the person is disqualified by a law of the Commonwealth, State or Territory from acting as a director or officer of an organisation;
- (c) any other previous criminal convictions relating to a matter of dishonesty, fraud or misuse of funds or position; and/or
- (d) whether a conflict of interest exists that will create a material risk that the person will fail to properly perform their role.

4.2 Jobs and Skills Councils must ensure that a majority of their board comprises of 'independent directors'.

4.3 For the purposes of this Code of Conduct, an 'independent director' is a person who is free of any interest, position or relationship that could significantly influence, or be perceived as significantly influencing, their ability to:

- (a) exercise independent judgement on issues before the board; and
- (b) act in the best interests of the company as a whole, rather than the interests of individuals or a limited group of members or stakeholders.

- 4.4 Whether an individual can be appropriately described as being an 'independent director' in line with the principles above is a matter that should be considered on a case-by-case basis. If a Jobs and Skills Council has identified a director who has an interest, position or relationship that might reasonably be seen to compromise their status as an 'independent director', the Jobs and Skills Council will be permitted to provide reasons to the Department as to why they still consider that in the circumstances the director should be considered independent.
- 4.5 Jobs and Skills Councils are expected to recognise and advance gender balance, diversity, equity and inclusion throughout their organisations, including through the composition of their boards and any advisory committees established.
- 4.6 Jobs and Skills Councils must report annually, via their annual corporate governance statement (see clause 7.11 and the reporting requirements of the Grant Agreement), on:
- (a) any commitments and actions they have undertaken to recognise and advance gender balance, diversity, equity and inclusion throughout their organisation (including through the composition of their board and any advisory committees established); and
 - (b) their processes for reviewing and further progressing the advancement of gender balance, diversity, equity and inclusion throughout their organisation on an ongoing basis.

5. **CONFLICTS OF INTEREST**

- 5.1 Jobs and Skills Councils must develop, adopt and use best endeavours to ensure compliance with a conflict of interest policy setting out the processes for the identification and management of the conflicts of interest of their directors, advisory committee members, employees, contractors, subcontractors and agents.
- 5.2 A conflict of interest policy developed in accordance with clause 5.1 must, at a minimum, be consistent with the obligations regarding the identification and management of conflicts of interest set out in this Code of Conduct.
- 5.3 Jobs and Skills Councils must ensure that their directors, advisory committee members, employees, contractors, subcontractors and agents disclose any material personal interests or material personal associations that could give rise to an actual, potential or perceived conflict with their obligations to act in the best interests of the Jobs and Skills Council body or in line with the objectives of the Jobs and Skills Councils Program.
- 5.4 An interest or association will be considered to give rise to a 'material' conflict if it has a reasonable possibility of influencing, or as reasonably being seen to influence, the decision or actions of the relevant individual. In order for the interest to be considered material it must be of some substance or significance, and not merely a slight or low value interest.
- 5.5 A Jobs and Skills Council must ensure that it does not have any actual, potential or perceived organisational conflict of interest with the objectives of the Jobs and Skills Councils Program. An organisational conflict of interest will be deemed to exist if the Jobs and Skills Council is or becomes, or has or acquires an interest in, a:
- (a) Registered Training Organisation (**RTO**);
 - (b) Group Training Organisation (**GTO**);
 - (c) Employment Services Provider (**ESP**) with an active caseload; or
 - (d) Australian Apprenticeship Support Network (**AASN**) provider.

For the avoidance of doubt, this clause 5.5 is not an exhaustive list of the circumstances in which an organisational conflict of interest might arise.

5.6 Examples of when a conflict of interest *might* (depending on the specific circumstances) arise include, without limitation, instances where:

- (a) **Officer positions (Including directorships):** an individual holds an officer position in any other organisations which could benefit from or have an interest in any matter relating to the Jobs and Skills Council. A person will be considered to hold an 'officer' position in an organisation if they are:
 - (i) a director of an organisation, where the organisation is a corporation; or
 - (ii) a person holding a managerial position in the organisation who:
 - (A) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the organisation; or
 - (B) has the capacity to affect significantly the organisation's financial standing.

The reference to 'organisations' here is intended to be understood broadly to apply to both body corporates (i.e. *Corporations Act 2001* (Cth) companies, incorporated associations, statutory body corporates) and unincorporated bodies (i.e. partnerships, unincorporated associations, unions).

- (b) **Shares / membership:** an individual holds shares or membership in other organisations that could benefit from any or have an interest in any matter before the Jobs and Skills Council;
- (c) **Outside employment / contracting, consulting or advising:** an individual engages in employment or contracting, consulting or advisory work outside of the Jobs and Skills Council with an organisation who could benefit from any matter before the Jobs and Skills Council;
- (d) **Family / friends / professional associations:** an individual has family or close friends and professional associates who could benefit from any matter before the Jobs and Skills Council;
- (e) **Financial gain:** an individual could make a personal financial gain from any matter before the Jobs and Skills Council. This would include, without limitation, by way of any direct payments or any contracts awarded by a Jobs and Skills Council;
- (f) **Gifts, benefits and hospitality:** an individual has received any form of gifts, benefits or hospitality that could, or could be seen to, compromise the decision-making of the individual; or
- (g) **Registered training and other organisations:** an individual has a close connection, association or relationship to an organisation which is an:
 - (i) RTO;
 - (ii) GTO;
 - (iii) ESP with an active caseload; and/or
 - (iv) AASN provider,

and the relevant organisation is involved in the delivery of, or has a direct interest in, a training package that falls within the responsibility of the Jobs and Skills Council. A conflict may also exist if an individual has a close connection, association or relationship to an organisation which owns a training product outside of a training package (i.e. owns an accredited course).

For the purposes of this example, an individual should identify if they have any connection, association or relationship to any organisation which may have:

- (i) subsidiaries; or
- (ii) branches,

which may be classified as one of the types of organisations listed above.

5.7 For the avoidance of doubt, the:

- (a) requirement to declare any conflicts of interest under this Code of Conduct is a continuing obligation; and
- (b) any previous conflict of interest declarations made by an individual or organisation should be updated if any further conflict of interest arises after the date of any initial declaration.

5.8 Where an actual, potential or perceived conflict of interest is identified, the Jobs and Skills Council must:

- (a) take appropriate steps to mitigate or manage the conflict, so that this does not undermine the actual or perceived integrity of the Jobs and Skills Council's decisions or actions, where it is reasonable and appropriate to do so; or
- (b) where the conflict cannot be managed through other controls, remove the conflict of interest.

5.9 If any interest or association identified by a director or advisory committee member is potentially material to the matters being considered by the board or the advisory committee (as the case may be):

- (a) whether this is a material conflict should be determined by a majority of non-conflicted directors or advisory committee members (as the case may be); and
- (b) the reasons for the decision should be recorded in the minutes.

5.10 If the interest is assessed as giving rise to a material conflict, the conflicted director or advisory committee member (as the case may be) must not:

- (a) be present while any matter which relates to their conflict of interest is being considered at the meeting; nor
- (b) vote on the matter.

However, the majority of non-conflicted directors or advisory committee members (as the case may be) may also determine by resolution that a conflicted director or advisory committee member may provide their views on the matter to the board or advisory committee in writing. The provision of any such written views must be recorded in the minutes.

- 5.11 Jobs and Skills Council boards will be responsible for exercising oversight of and ensuring no actual, potential or perceived conflicts of interest, or other unethical conduct, adversely impact the deliberations or recommendations of any of their advisory committees.
- 5.12 A standing agenda item for each board meeting and advisory committee meeting should be the making of any conflict of interest declarations, or the making of any updated or varied declarations, by board directors and advisory committee members. Any declarations made and decisions as to how the board or advisory committee resolves to manage any declarations made are to be recorded in the meeting minutes.
- 5.13 Jobs and Skills Councils must maintain a register of interests or associations, which documents the following:
- (a) the name of the relevant individual or organisation;
 - (b) details of their role in relation to the Jobs and Skills Council;
 - (c) a record and description of any declared interests or associations, including details of how this interest or association relates to any actual or potential activities of the Jobs and Skills Council;
 - (d) the date of disclosure;
 - (e) an assessment of the integrity risks posed by the declared interest or association; and
 - (f) any steps taken to mitigate, manage or remove the conflict (if any), including identifying any follow up actions required.

For the purposes of maintaining this register, Jobs and Skills Councils are to use the form at **Attachment A**.

- 5.14 Jobs and Skills Councils must provide to the Department:
- (a) notice of a declared conflict of interest immediately, if this presents a serious risk to the integrity of the decisions or actions of a Jobs and Skills Council or the integrity of the Jobs and Skills Councils Program, and detail the steps taken to mitigate, manage or remove this conflict; and
 - (b) updated versions of the Jobs and Skills Council's conflict of interest register and gifts, benefits and hospitality register on:
 - (i) a biannual basis, on dates as notified by the Department; and
 - (ii) as soon as reasonably practicable following a request by the Department.
- 5.15 Jobs and Skills Councils must take any additional steps the Department reasonably requires to mitigate, manage, remove or otherwise deal with a conflict of interest.
- 5.16 If a Jobs and Skills Council proposes to enter into any related party transactions, being a transaction subject to Chapter 2E of the *Corporations Act 2001* (Cth), involving the use of funds provided under a Grant Agreement, the Jobs and Skills Council must obtain the Department's prior written and fully informed consent before entering into such an arrangement.

5.17 In order to enable the Department to make a fully informed decision under clause 5.16, the Jobs and Skills Council must prior to entering into this transaction provide the Department with all material facts concerning the transaction, including:

- (a) the terms of the transaction;
- (b) information to assess whether those terms are arm's length terms; and
- (c) the business purpose of the transaction.

For the purposes of assessing whether the terms of a transaction are on an 'arm's length' basis, a Jobs and Skills Council body should identify:

- (a) whether there are other options available to the Jobs and Skills Council body;
- (b) whether the terms of the proposed transaction are fair to the Jobs and Skills Council and on the same basis that would apply if the transaction did not involve a related party;
- (c) whether the proposed transaction will or could be seen to impair the independence of a director, and any mitigation strategies implemented to manage this; and
- (d) the implications of the transaction on the Jobs and Skills Council body's financial position and performance.

The Department may request further information regarding any proposed related party transactions, as it sees fit. The Jobs and Skills Council must comply with any such requests.

5.18 Jobs and Skills Councils must ensure that any gifts, benefits and hospitality received by its directors, advisory committee members, employees, contractors, subcontractors and agents, in their capacity performing these roles, are:

- (a) declared by the recipient and a register of all such declarations is maintained, which documents:
 - (i) who the recipient of the gift, benefit or hospitality is;
 - (ii) who provided the gift, benefit or hospitality;
 - (iii) a description of the gift, benefit or hospitality and its value;
 - (iv) the circumstances in which the gift, benefit or hospitality was provided; and
 - (v) an assessment of whether the nature and/or circumstance in which this gift, benefit or hospitality was provided could give rise to an actual or perceived conflict of interest.

For the purposes of maintaining this register, Jobs and Skills Councils are to use the form at **Attachment B**;

- (b) not solicited or improperly encourage by the recipient; and
- (c) declined where acceptance could, or could reasonably be seen to, compromise the decision-making or actions of the recipient. Cash or cash-like equivalent gifts, benefits or hospitality must not be accepted in any circumstance.

6. **INDUSTRY AND STAKEHOLDER ENGAGEMENT**

6.1 Jobs and Skills Council bodies must:

- (a) cooperate with stakeholders within their relevant industry and across the VET sector, including, without limitation other Jobs and Skills Councils, employer and employees (and their representative organisations), educational and training organisations, governments and learners;
- (b) undertake adequate and reasonable consultation with stakeholders within their relevant industry and across the VET sector; and
- (c) treat both their formal members and other industry stakeholders fairly and equitably.

6.2 In meeting its obligations under this Code of Conduct, Jobs and Skills Councils must:

- (a) act respectfully, openly and honestly when engaging and consulting with different industry stakeholders; and
- (b) provide all interested stakeholders a fair opportunity to contribute to the activities of the Jobs and Skills Council.

6.3 Jobs and Skills Councils must take reasonable steps to:

- (a) be accountable to their stakeholders;
- (b) ensure there are no unreasonable barriers to interested and relevant stakeholders with a legitimate industry connection to become members of a Jobs and Skills Council;
- (c) ensure their membership base:
 - (i) is open and inclusive;
 - (ii) is representative and reflective of their respective industry; and
 - (iii) provides for the corresponding representation of a wide range of industry and stakeholder interests; and
- (d) ensure that if their membership base comprises of different membership classes, these class arrangements support the fair and equal representation of different industry and stakeholder interest groups;
- (e) ensure no single interest group exercises disproportionate or inappropriate control or influence over the organisation to the detriment of other industry stakeholders; and
- (f) ensure that it does not unreasonably exclude potential members.

6.4 For the avoidance of doubt, nothing in clause 6.3 requires a Jobs and Skills Council to permit a stakeholder(s) to become a member of their organisation if, in the reasonable opinion of the board of the Jobs and Skills Council:

- (a) the stakeholder(s) does not have a legitimate interest in, or connection to, the work of the Jobs and Skills Council;
- (b) the stakeholder(s) are acting in bad faith;

- (c) admission of the stakeholder(s) as members would result in the unequal or unfair representation of different industry stakeholder groups or would result in a single interest group exercising disproportionate or inappropriate control or influence over the organisation; and/or
 - (d) admission of the stakeholder(s) as members would otherwise compromise the good and effective governance of the Jobs and Skills Council.
- 6.5 A Jobs and Skills Council must provide the department of notice of any changes to the composition of its membership as soon as is reasonably practical, including any changes resulting from:
 - (a) the admission of new members to the Jobs and Skills Council; or
 - (b) the cessation of a member's membership to the Jobs and Skills Council.
- 6.6 If a Jobs and Skills Council proposes to expel a member, with their membership being cancelled, the Jobs and Skills Council is to:
 - (a) afford the relevant member with procedural fairness prior to any expulsion; and
 - (b) provide the Department reasons as to why this expulsion is being proposed.
- 7. **TRANSPARENCY, OPENNESS AND ACCOUNTABILITY**
- 7.1 Jobs and Skills Councils must operate and govern themselves in an open and transparent manner. In line with these transparency expectations, Jobs and Skills Councils are required to publicise on their respective websites:
 - (a) the names of:
 - (i) board directors;
 - (ii) key management personnel;
 - (iii) any established advisory committees; and
 - (iv) advisory committee members,
 - (b) the registers maintained in accordance with this Code of Conduct;
 - (c) the details of any remuneration provided to board directors and advisory committee members; and
 - (d) key governance documents, including by way of disclosure of the Jobs and Skills Council's constitution, any by-laws and other internal policies or controls concerning the governance of the Jobs and Skills Council.
- 7.2 Jobs and Skills Council bodies must ensure that any disclosures of information made in accordance with this Code of Conduct complies with the relevant Jobs and Skills Council body's obligations under the *Privacy Act 1988* (Cth), including by obtaining all required consents to such disclosures.
- 7.3 Jobs and Skills Council bodies must appoint board directors and advisory committee members through an open and transparent process. This includes:
 - (a) developing either a policy or by-laws detailing how the appointment of:
 - (i) board directors; and

- (ii) advisory committees will occur,
and publicly disclosing such policies or by-laws; and
 - (b) reporting to the Department, as soon as practicable after any appointment, on:
 - (i) who has been selected to perform these roles;
 - (ii) the process that was followed to select them;
 - (iii) the reasons for appointing these individuals and rejecting others; and
 - (iv) in respect of board directors, whether the director is considered to be an 'independent director'.
- 7.4 Jobs and Skills Councils must provide the Department with notice of the removal or resignation of any board directors or advisory committee members as soon as reasonably practicable after this occurs and provide the Department with the details of this removal or resignation.
- 7.5 Jobs and Skills Councils must:
 - (a) notify the department of any proposed changes to their constitution; and
 - (b) obtain the prior written consent of the Department prior to making any changes to their constitution.

For the purpose of assisting the Department determine whether to provide its consent under this clause 7.5 a Jobs and Skills Council must provide all information reasonably requested by the Department regarding the nature of the proposed change.
- 7.6 A Jobs and Skills Council must provide to the Department a copy of:
 - (a) its constitution;
 - (b) its register of directors;
 - (c) its register of members; and/or
 - (d) any internal policies relating to the Jobs and Skills Council's governance and internal controls,

within a reasonable period following a request by the Department.
- 7.7 Jobs and Skills Councils must establish processes for investigating and rectifying any actual or potential contraventions of this Code of Conduct. In developing any such processes, the Jobs and Skills Councils should have regard to their legal obligations concerning the protection of whistle-blowers under the *Corporations Act 2001* (Cth).
- 7.8 A Jobs and Skills Council must:
 - (a) notify the Department, as soon as is reasonably practicable, of any actual or potential non-compliance with this Code of Conduct;
 - (b) provide an explanation for the non-compliance and any proposed steps to remedy the non-compliance; and
 - (c) comply with any reasonable directions provided by the Department to rectify the non-compliance.

- 7.9 In the course of exercising its access, monitoring and inspection rights under any Grant Agreement, the Department (or any of its delegates or agents) may audit a Jobs and Skills Council's compliance with this Code of Conduct.
- 7.10 Action taken by the Department under the Grant Agreement for any non-compliance with the Code of Conduct might, depending on the nature and seriousness of the non-compliance, include (without limitation):
- (a) provision of a negative performance evaluation;
 - (b) imposition of performance management measures;
 - (c) withholding or suspending funding payments under the Grant Agreement;
 - (d) the return of funds paid under the Grant Agreement;
 - (e) a reduction in future activity funding made available to the Jobs and Skills Council;
 - (f) appointment of a grants administrator to oversee the administration of grants funding;
 - (g) a reduction in the scope of the Grant Agreement;
 - (h) re-allocation of the ANZSIC industry sectors allocated to the Jobs and Skills Council to a different Jobs and Skills Council; and/or
 - (i) termination of the Grant Agreement.
- 7.11 Jobs and Skills Councils are required to report on their governance practices and compliance with this Code of Conduct by way of an annual corporate governance statement provided to the Department in accordance with the Grant Agreement.

* * *

ATTACHMENT A
CONFLICT OF INTEREST REGISTER

No.	Individual / Organisation	Role	Description of declared interest or association	Date of disclosure	Assessment of integrity risk	Mitigation strategy
Board						
1.						
2.						
Advisory Committee						
3.						
4.						

ATTACHMENT B

GIFTS, BENEFITS AND HOSPITALITY REGISTER

No.	Recipient of GB&H	Provider of GB&H	Description of GB&H	Value of GB&H	Circumstances / Reason for GB&H	Assessment of actual or perceived conflict of interest
Board director						
1.						
2.						
Advisory Committee						
3.						
4.						