

Conflict of Interest

A Guide for Council staff

October 2011

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Introduction



This Guide is for members of staff in Victorian Councils.

What is conflict of interest?

The *Local Government Act 1989* (the Act) requires all Council staff to disclose conflicts of interest.

Being employed by a Council is a position of public trust. As a member of Council staff you must only exercise your duties in the service of the community and the Council. You must never use your position to serve your own or someone else's private interests.

Conflict of interest is about transparency. As a member of Council staff, it has to be clear that your private interests do not affect the way you perform your duties. This is why the law requires you to disclose any conflicts of interests and to not perform duties in which you have a conflict of interest.

Parts of the Guide

Part 1 – describes what to do if you have a conflict of interest

Part 2 – is a checklist to help identify conflicts of interest

Part 3 – describes the various classes of interest in detail

Part 4 – outlines some general exemptions

Part 5 – discusses some particular situations

Part 6 – illustrates the definitions of “family” and “relatives”

Council Staff

Members of Council staff are people who are:

- employed by the Chief Executive Officer (CEO) or by a person authorised by the CEO to employ Council staff, and
- employed to perform, or assist in performing, the functions of the Council and/or the CEO.

The Council CEO is also a member of Council staff.

Volunteers, independent contractors and incorporated bodies are not considered members of Council staff.

Penalties

A failure to disclose a conflict of interest is a breach of the Act. A person who fails to disclose a conflict of interest may be prosecuted in court, convicted and fined.

A member of Council staff who fails to disclose a conflict of interest may be disciplined or dismissed from his or her position.

Your responsibility

It is your responsibility to identify and disclose conflicts of interest. If you are unsure about a possible conflict of interest, you should seek assistance. If you still can't be sure, you should disclose a conflict of interest rather than risk committing an offence.

Getting help

In addition to this short guide, Local Government Victoria publishes more comprehensive material on conflict of interest on its web site at www.localgovernment.vic.gov.au (Under "Publications and Research").

Assistance with conflict of interest matters may also be sought from:

- a lawyer
- your Chief Executive Officer (CEO) or an experienced officer authorised by the CEO to give such assistance
- Local Government Victoria

The type of assistance you get from these sources will vary, depending on who provides it. Assistance from a person who is not a lawyer may be limited to helping you to understand the requirements of the Act, rather than advising you about a specific conflict of interest.

It is important to note that another person can help you to decide whether you have a conflict of interest but he or she cannot make the decision for you. No matter what assistance you receive from someone else, legally you remain responsible for your own actions.

While this Guide summarises your obligations, the definitive statement of your legal obligations is the law itself – particularly sections 76AA to 81 of the Act.

Code of Conduct

In addition to this Guide, you should consult the Code of Conduct for Council Staff that has been approved by your CEO. It is likely to have additional requirements, particularly in regard to the disclosure of gifts and outside employment.

1. Making Disclosures



There are particular situations when members of Council staff are required by law to disclose conflicts of interest, including:

- when exercising delegations
- when a member of a relevant committee
- when providing advice to Council.

Delegations

If you have been delegated a power, duty or function of the Council or the CEO, you must disclose any conflicts of interest.

A delegated power might be:

- authority to approve a permit
- authority to enter into a contract
- power to employ a person
- a financial delegation
- any other responsibility delegated to you.

If you have a conflict of interest in a situation where you have a delegated responsibility you must do the following two things:

- Firstly, you must advise your CEO in writing:
 - that you have a conflict of interest,
 - what “class” of interest it is (see part 3), and
 - the detailed nature of the interest.

(Your Council may have a standard form for this)

- Secondly, you must not exercise the relevant power, duty or function.

When you have a conflict of interest, your manager or the CEO must arrange for another member of staff to make the decision or do the duty. Sometimes the CEO may need to make the relevant decision or do the duty or the CEO may delegate it to another officer.

If you are the CEO, and you have a conflict of interest in a matter, you must disclose it in writing to the Mayor. You must also disclose the conflict of interest to the Council at the next ordinary meeting.

Council committees

Sometimes officers are members of Council committees. If you are a member of a special committee or a section 223 committee you must disclose any conflicts of interest. A “special committee” is any committee that has been delegated a power, duty or function of the Council, including planning powers. A “section 223 committee” is a committee authorised to hear public submissions under section 223 of the Act.

If you are in one of these committees and a matter comes up in which you have a conflict of interest, you must:

- disclose the conflict of interest immediately before the matter is considered,
- notify the Chair that you are leaving the meeting, and
- leave the room and any area where you can see or hear the meeting until the matter has been concluded.

When making your disclosure, you must state the class of interest (see part 3) as well as describing the detailed nature of the interest.

If disclosing the details of your interest would mean publicly disclosing information that is confidential or private, particularly if it is about another person, you can make a full disclosure to the CEO in writing before the meeting and only disclose the class of interest in the meeting.

For example, you might disclose a conflict of interest in the meeting by saying “I wish to disclose that I have a conflict of interest because of a close association. My partner is an employee of one of the companies that tendered for this contract”. However, if full disclosure had been made in writing to the CEO before the meeting, the second sentence, referring to your partner’s employment, could be omitted at the meeting.

Conflict of interest disclosures are recorded in the minutes of the relevant meeting. When the minutes are considered for adoption at the next meeting, you should check that the record is accurate.

Providing advice

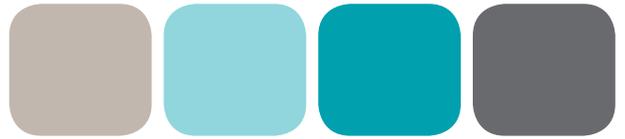
Council staff must disclose conflicts of interest if they are providing advice or a report to the Council, or to a special committee of the Council. This ensures that the Council or committee does not unknowingly act on advice from a person with a conflict of interest. *(Note: this also applies to contractors, even though they are not members of Council staff)*

You must disclose a conflict of interest if you:

- prepare a report for the Council or for a special committee of the Council
- provide information to be included in such a report
- sign a report to Council or a special committee
- present information to the Council or special committee at the meeting.

The Act requires that you disclose the class of interest (see Part 3) to the Council or committee. If the conflict of interest relates to the contents of a report, it is usually best to include the disclosure in the report. It is common at many Councils, and now considered best practice, for all Council reports to indicate whether or not the staff who prepared the report had any conflicts of interest.

A conflict of interest disclosure can also be spoken verbally in the meeting. If you are making a presentation at the meeting, this may be the only option.



While you are only required to disclose the class of interest to the meeting, the Council or committee can ask you to also disclose the nature of your interest. If you are not going to be at the meeting where the relevant report is considered it is advisable to briefly indicate the nature of your interest in the report.

Other disclosures

Section 95 of the Act requires you to act with integrity and to generally avoid conflicts of interest. This may include situations other than those described above.

For example, you should advise your manager or the CEO if you appear to have a conflict of interest in any other role as a member of staff, such as:

- providing advice to another member of staff,
- responding to a public enquiry, or
- performing any other duty as a Council officer.

2. Conflict of Interest Checklist

A useful way to identify a possible conflict of interest is to use the following checklist.

Y/N	Am I, a relative of mine or a member of my household likely to be directly affected by this matter?
Y/N	Is my property, or that of a relative or household member, likely to be directly affected?
Y/N	Am I or a member of my family likely to gain or lose in any other way that can be measured in money?
Y/N	Do I or a member of my family own shares in a company or body that is likely to be directly affected?
Y/N	Am I or a member of my family owed money by a person who is likely to be affected?
Y/N	Do I or a member of my family hold a position in a company or body that is likely to be directly affected?
Y/N	Am I or a member of my family employed by a person, company or body that is likely to be directly affected?
Y/N	Do I or a member of my family act in any way for a person, company or body that is likely to be directly affected?
Y/N	Have I or a member of my family previously dealt with this matter in any other capacity?
Y/N	Have I or a member of my family received any gifts in money or otherwise from a person, company or body that is likely to be directly affected.
Y/N	Have I or a member of my family been involved in any court or tribunal process in relation to the matter?
Y/N	Could the amenity of my or my family's home be altered by this matter?

If you answer “yes” to any of these questions, you should check the specific requirements on the following pages to see if you have a conflict of interest.

(“Family” and “relative” are defined in parts 3 and 6).

3. Direct and Indirect Interests



Classes of interests

The Local Government Act describes seven classes of interests. This includes direct interests and the following six indirect interests.

- close association
- indirect financial interest
- conflicting duty
- applicable gift
- party to the matter
- residential amenity.

These are described in detail on the following pages.

If you have any of these direct or indirect interests you must disclose a conflict of interest in the way described in part 1, "Making disclosures".

Some important matters

A conflict of interest can only exist if you are doing something or providing advice about something about which you have a direct or indirect interest.

For example, holding shares in a company may be an indirect financial interest. It only becomes a conflict of interest if you are involved in a decision or action that affects that company.

It is not just the final decision that counts. If there is a reasonable likelihood that an alternative decision would affect your direct or indirect interests, you still have a conflict of interest.

For example, if you are on an interview panel and an applicant is a relative of yours, you have a conflict of interest even your relative is not the preferred candidate.

You can have a conflict of interest in a decision which is against your interests.

For example, if the Council is considering an application to rezone land that is next to your home, and the rezoning will reduce the value of your land, you will have a conflict of interest when giving advice to the Council.

Direct interest

A direct interest is an interest that directly applies to a person. It is an interest that is not just the result of a connection with another person, company or body.

A direct interest exists if there is a reasonable likelihood that a person's benefits, obligations, opportunities or circumstances will be directly altered if the matter is decided in a particular way.

Examples of direct interest include proposals that will:

- give you money or property or take it from you
- change the value of your property
- appoint you to a paid position
- increase your salary
- rezone your land
- grant you a permit
- give you an award.

"Direct interest" is not limited to financial interests.

You have a **conflict of interest** in a matter if:

- you have a direct interest in the matter
- a relative of yours has a direct interest in the matter
- a member of your household has a direct interest in the matter

(See "close association" below).

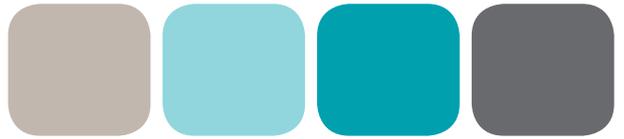
Indirect interest – close association

When your interest in a matter exists only because of the interests of a family member, relative or household member, it is referred to as an indirect interest because of a "close association".

Family members include your spouse or domestic partner and any of the following who live with you:

- your son or daughter
- your brother or sister
- your father or mother.

If a member of your family has any direct or indirect interest in a matter then you have a conflict of interest in that matter.



Relatives include all people who are related to you who are once or twice removed, even if they don't live with you. This includes:

- your spouse or domestic partner
- your son or daughter, brother or sister, father or mother
- your grandparent, grandchild, uncle, aunt, niece or nephew
- your step father, step mother or step child
- your in-laws (son, daughter, brother, sister, mother or father in-law).

(Also see part 6 "Family & Relatives – Definitions").

If your relative has a direct interest in a matter, then you have a conflict of interest in that matter. However, unlike with family members, you don't have a conflict of interest if your relative only has an indirect interest.

For example:

- you have a conflict of interest if your uncle is personally tendering for a Council contract that you are evaluating
- you do not have a conflict of interest if your uncle only has an indirect financial interest as a shareholder in a company that is tendering for the Council contract.

Household member includes any person who lives with you or shares all or part of your residence. If a member of your household has a direct interest in a matter then you have a conflict of interest in that matter.

(For information about "friends" see part 5).

Indirect financial interest

A person has an indirect financial interest if they are likely to gain or lose in a way that can be measured in money, resulting from the interests of another person, company or body.

For example, you may have an indirect financial interest if:

- you hold shares in a company that has tendered for a Council contract
- you own land that adjoins a property which is proposed to be rezoned to allow a change of use.

You automatically have an indirect financial interest if you or a member of your family holds shares in a company that has a direct interest, unless the following exemption applies.

Shares are exempt if both of the following apply:

- the total value of shares held in the company by you and members of your family does not exceed \$10,000, and
- the company has issued shares with a total value of more than \$10 million.

There is no exemption for shares in a small company or body if the total value of all issued shares is less than \$10 million, no matter how few shares you have.

The relevant value for shares is at the date of your last ordinary return (if you are a nominated officer for lodging returns) or on the last 30 June or 31 December – whichever is latest.

You automatically have an indirect financial interest if you are owed money by a person, company or body that has a direct interest, unless the money is owed to you by a bank or credit union.

You have a **conflict of interest** in a matter if:

- you have an indirect financial interest in the matter
- a member of your family has an indirect financial interest in the matter.

Indirect interest – conflicting duty

A conflicting duty arises when you or a member of your family has a particular type of duty to another person or organisation that may conflict or overlap with your duties as a Council officer. This arises where you, or a member of your family, have any of the following positions or relationships with another person or organisation:

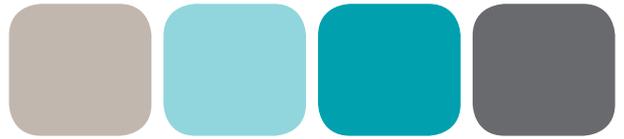
- a manager or a member of the board/committee of the organisation
- a partner, consultant, contractor, agent or employee of the person or organisation
- a trustee for the person.

For example, you are likely to have a conflicting duty if:

- you are on the committee of a club or community organisation that has applied for Council funding (unless you are a Council representative on the committee as described below)
- you are a board member of a company that has tendered for a Council contract
- you work part-time for a person who is applying for a permit from the Council.

Also, if you previously held one of those positions and in that position dealt with the relevant matter, a conflicting duty exists.

For example, you have a conflicting duty in relation to a development proposal if you previously worked for the developer and helped prepare the proposal.



However, you do not have a conflicting duty as a result of your position with another organisation if you are the **Council's representative** on that organisation, with the Council's approval, and you receive no remuneration for that position.

For example, you do not have a conflicting duty with respect to a regional library if you have been appointed to the regional library board to represent your Council.

You have a **conflict of interest** in a matter if:

- you have a conflicting duty in relation to the matter
- a member of your family has a conflicting duty in relation to the matter.

Indirect interest – applicable gift

An “applicable gift” includes a gift, or gifts, received in the past five years from someone who has a direct interest in a particular matter and where the total value of the gift, or gifts, is at least \$500. This includes:

- gifts in the form of money
- gifts in the form of good or services
- multiple gifts from a single source with a total value of \$500 or more.

For example, you have an indirect interest because of an applicable gift if:

- a friend, who has applied for a planning permit, has sometimes given you free use of her holiday house and the estimated value of the free accommodation is over \$500
- a sporting club that has subsidised training programs for you to a total value of more than \$500, has applied for Council funding.

When estimating the cost of a gift that is not in the form of money you should consider how much any other person would have to pay to purchase the gifted item or service.

While the Act defines a threshold value for applicable gifts that give rise to conflicts of interest, your CEO may also require you to disclose gifts of lower values in a “gift register”. You should consult your staff code of conduct or your CEO for information about this.

The following are not counted as “applicable gifts”:

- gifts received more than 12 months before you became a member of Council staff (even if received in the past five years)
- reasonable hospitality provided at a function or event you attended in an official capacity as a member of Council staff.

The hospitality exemption only applies if the hospitality was reasonable and you were attending the function or event in an official capacity.

- In regard to the test of reasonableness, the hospitality must be of a standard and type that an independent observer would consider appropriate and not excessive.
- In regard to the “official capacity” test, it must clearly be your duty as a member of Council staff to attend the relevant function or event.

For example:

- If a council contractor gives you tickets to a sporting event worth over \$500, but your attendance at the event is not related to your Council duties, the tickets are not exempt hospitality.
- If you are attending a conference as part of your Council duties, any reasonable hospitality received at the conference would be exempt.

(Also see part 5 regarding conferences and training).

You have a conflict of interest in a matter if:

- you have received an applicable gift from a person company or body that has a direct interest in the matter
- a member of your family has received an applicable gift from a person company or body that has a direct interest in the matter.

Indirect interest – party to the matter

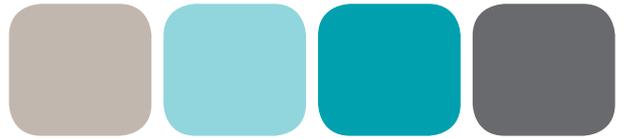
If you or a member of your family has been a party to civil proceedings relating to a matter, you have a **conflict of interest** in that particular matter.

This includes

- being an applicant or respondent in a past or present court case
- being an applicant or respondent in a matter before a tribunal (such as VCAT).

There is no time limit on interests arising as a party to the matter.

For example, if you were previously an applicant in VCAT against a proposed retail development near your home and a revised proposal has been submitted to Council for a decision, you have an indirect interest in the matter.



Indirect interest – residential amenity

If your residential amenity, or that of your family, is reasonably likely to be altered by a decision of the Council then you have an indirect interest in the decision.

An indirect interest arising from residential amenity may, for example, arise from:

- a planning permit application relating to a neighbouring property
- a change in use of a nearby property that will impact on your enjoyment of your home
- a change to parking arrangements in your street.

There is no simple distance rule to decide whether your residential amenity will be altered by a proposal, as each situation needs to be considered on its merits. However, even though you may have a residential amenity issue in relation to a matter, you might not have a conflict of interest if either the “remoteness” or “in-common” exemptions apply (*see part 4*).

For example, you would probably not have a conflict of interest because of a likely change to your residential amenity if a proposed development, that would increase the amount of traffic in your town or suburb, was likely to affect most other people in the town or suburb to the same extent.

Other interests

Some interests may not fit clearly into one or other of the classes described above. That doesn’t mean they can be ignored.

As a public official you are required to act with integrity at all times. If you have a personal connection in a matter with which you are dealing as a member of Council staff, you should notify your manager or CEO. This may include:

- where a close friend has a direct or indirect interest (*see part 5*)
- where a relative of yours has an indirect interest
- where your previous employer is affected.

4. Exemptions

General exemptions

The Act provides three types of general exemptions to a conflict of interest. These relate to remoteness, interests held in common and lack of knowledge.

Remoteness

If your interests in a matter are so remote or insignificant that a reasonable person would not consider the interests capable of influencing your decision then you are not considered to have a conflict of interest.

In common

If your interests are generally held in common with other residents, ratepayers, voters or with any other large class of persons and your interests do not exceed the interest generally held by those other people then you are not considered to have a conflict of interest.

No knowledge

If you do not know the circumstances that create the conflict of interest, and a reasonable person would not expect you to know those circumstances, you are not considered to have a conflict of interest.

Seek advice

It is strongly recommended that you seek advice from someone who is familiar with the conflict of interest rules before relying on any of these exemptions (*See "Getting help" on page 4*).

CEO exemptions

As the position of CEO is a statutory position with specific responsibilities that cannot be exercised by the Council, the Act includes specific exemptions for CEOs. These are in relation to:

- the adoption or amendment of general staffing policies
- the adoption of a code of conduct for Council staff
- a decision to delegate a power, duty or function to a member of Council staff.

5. Additional issues



Tenders, contracts and purchasing

You must be particularly alert for possible conflicts of interest if you are involved in Council purchasing processes in any way. This includes being on a tender evaluation panel, being authorised to make purchases for the Council or able to approve Council contracts.

It is not unknown for Council staff to be offered gifts or hospitality by people interested in winning current or future Council contracts or who want to sell goods or services to the Council. Gifts may also be offered in forms such as prizes, awards or special staff discounts. Particular care should be taken before accepting such gifts, as their acceptance may place you in a current or future conflict of interest situation.

In some situations, accepting a gift from a potential supplier may be a serious crime in itself. If a gift is given in exchange for favourable consideration it may constitute a “secret commission” under the Crimes Act 1958, which is a serious criminal offence.

Planning and other permits

If you have a delegation to approve permits of any kind, including planning permits, you should be alert for possible conflicts of interest.

If any of the connections described in the “Checklist” in part 2 exist, you should give careful consideration to a possible conflict of interest. If you have a conflict of interest you must not approve or refuse the permit.

Outside employment

If you have any other employment outside Council you are likely to have a conflict of interest if your external employer may be affected by any decision, action or advice of yours. (See “Conflicting duty” in part 3).

You can also have a conflict of interest arising from self employment.

To ensure that you are not placed in conflict of interest situations, you should advise your manager or CEO of any outside employment. (It may also be a condition of your employment with Council that you obtain approval for outside employment.)

Conferences and training

Depending on the circumstances, free or discounted training or conference admission may constitute a gift that can give rise to a conflict of interest. The risks are greatest where the gift is provided by a business that may tender for Council work, such as a law firm or an information technology company.

As a general rule, free or discounted access to training or conferences is more likely to be regarded as an applicable gift if it is offered to you directly by an external person or organisation. It is less likely to be an applicable gift if it is offered to the Council organisation and the organisation then selects you to attend.

Training and conferences that you attend and which are paid for by the Council are not applicable gifts. (Also see page 14 in regard to hospitality).

Clubs and community organisations

Being a member of a club or other community organisation is not regarded, by itself, as being a ground for a conflict of interest.

However, you will have a conflict of interest:

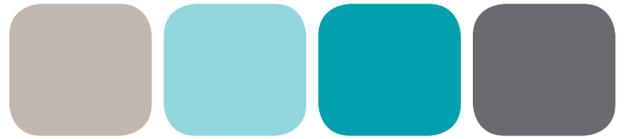
- if you have a conflicting duty as a board or committee member, or as an office bearer, employee, consultant or agent of the club or organisation, or
- if you have an indirect financial interest (for example, the decision is likely to alter your membership fees).

Friends

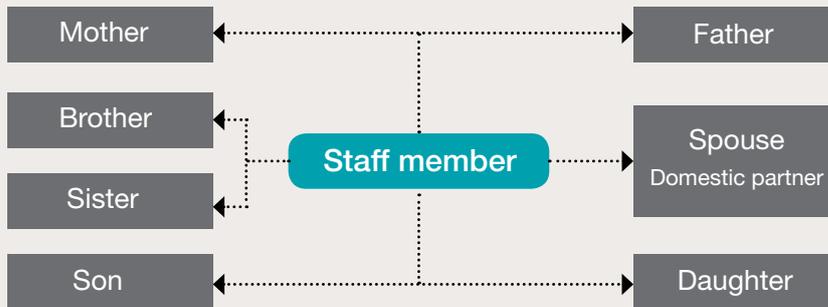
The Act does not define “friends” as a category for identifying conflicts of interest. The reason for this is the difficulty in determining the level of closeness that should be regarded as an indirect interest.

However, you may face situations where the interests of someone you are particularly close to will be affected. If this happens it is recommended that you act as if you have an indirect interest in the matter. That is, advise your manager or CEO that you have a conflict of interest and make sure you don't exercise the relevant power, duty or function.

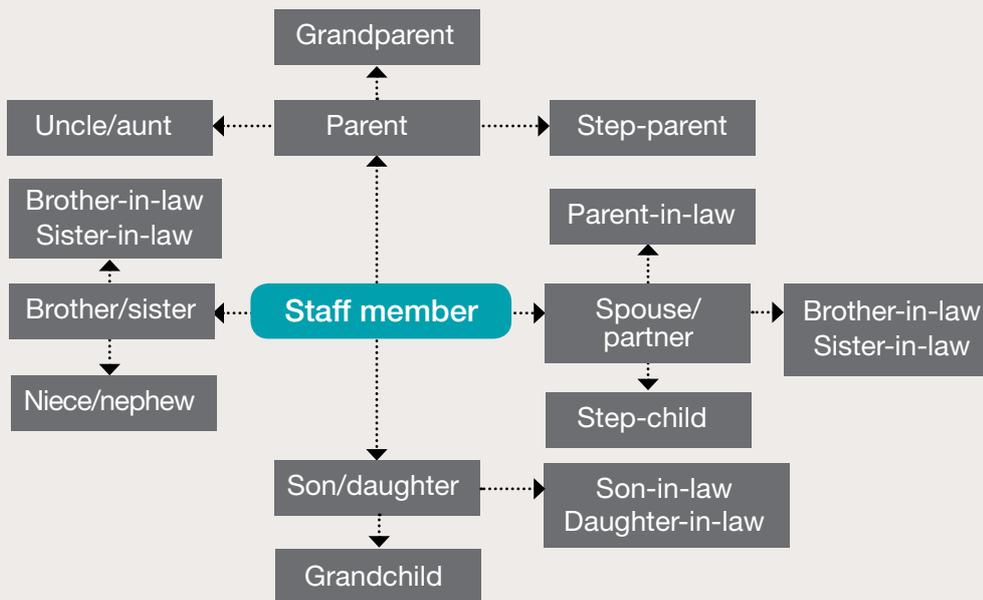
6. Family & Relatives - Definitions



Family



Relatives



Notes:

- For "Family" - your father, mother, brother, sister, son or daughter is defined as a family member only if they live with you.
- These diagrams should be read in conjunction with pages 10 and 11.

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