

Managing Personal Interests in Local Government

A manual for council managers and governance officers

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Part 1 – Introduction

Introduction

Avoiding conflicts of Interest is an important factor in public decision making. This is particularly important at local government level, where councillors and staff have interests in the local area and close connections within the local community.

Background

Conflicts of interest have been the subject of major legislative reforms in Victoria in recent years, replacing outdated provisions that were largely limited to pecuniary interests in council meetings.

- The *Local Government Amendment (Councillor Conduct and Other Matters) Act 2008* made major changes to the definitions of interests and applied conflict of interest rules to a wider range of actions.
- The *Local Government Act 2020* (the Act) has updated the 2008 reforms to address anomalies, simplify definitions and to fit within the functional arrangements under the new principles-based Act. It also replaces the conflict of interest provisions in the *Local Government Act 1989* (the 1989 Act).

Legal compliance

While this Manual seeks to provide helpful information and assistance, Councillors, council officers and affected members of the public are ultimately required to comply with the law. That includes the Act and the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations).

Using this manual

This Manual describes the changes made to the conflict of interest rules by the Act and Regulations

and provides advice about the administration of the rules.

Who is it for?

The Manual is intended for use by staff managing conflict of interest and related processes, as well as staff advising councillors, committee members and council staff about interest disclosure matters.

It may be particularly useful for:

- Chief Executive Officers,
- Council managers, and
- Council governance officers.

Other affected people may also find this Manual useful. However, the Guides listed below may provide more immediate value.

Overview of the Manual

Material covered in this Manual includes:

- Part 1. This introduction
- Part 2. Overview of reforms
- Part 3. Conflict of interest definitions
- Part 4. Conflict of interest procedures
- Part 5. Consequences and penalties
- Part 6. Gifts
- Part 7. Personal interest returns
- Part 8. Conflict of interest and effective decision making
- Part 9. Providing assistance

Related Guides

- Conflict of interest guide for relevant persons
- Governance rules guide
- Quick Guide on Personal Interests Returns for Local Government

Relevant Legislation

- Local Government Act 2020 (the Act);

- Local Government (Governance and Integrity) Regulations 2020 (the Regulations).

Part 2 – Overview of Reforms

This Part describes the main changes to conflict of interest rules in the Act compared with those previously contained in the *Local Government Act 1989* (the 1989 Act).

The Act alters the requirements for disclosing conflicts of interest. It also introduces new provisions for interest returns and gift disclosures.

The conflict of interest provisions in the Act come into effect on 24 October 2020.

Conflict of interest

While conflict of interest standards currently observed by Councils are high, the rules need reform.

The Act makes changes to the conflict of interest rules in several ways, including

- updating the definitions of conflict of interest
- giving Councils greater responsibility for detailed procedures
- defining the consequences for a failure to disclose a conflict.

Definition changes

In practice the definitions of conflict of interest introduced in 2008 to the 1989 Act have proven functionally complicated as they included seven different types of interests, each with its own complicated rules and exemptions.

The overall level of complexity has meant that conflicts of interest are often difficult to understand, remember and apply.

Some interests are hard to define, such as interests that arise because of friendships. Also, some definitions can capture situations that might not normally be considered conflicts of interest.

The strictly definitional approach also encouraged a “compliance only” attitude, where people focus on the “letter of the law” rather than the underlying principles of transparency and accountability.

Two types of conflict of interest are now specified in the 2020 Act:

- “General conflicts of interest”, which are not defined in prescriptive detail.
- “Material conflicts of interest”, which are specifically defined.

These are described in detail in Part 3 of this Manual.

Procedural changes

Changes have been made to the procedures for disclosing conflicts of interest which has involved removing most of the detailed prescription from legislation and requiring councils to adopt appropriate procedures in their respective rules and codes.

Specific changes include the following:

- Procedures for the disclosure of conflicts of interest in council and delegated committee meetings must be in the Governance Rules and are no longer in the Act.
- Previous complex requirements for “assemblies of councillors” will be replaced by procedures in Governance Rules for meetings conducted under the auspices of the council.
- Procedures for staff disclosing conflicts of interest regarding the exercise of statutory or delegated powers will be in the staff code of conduct.

- Procedures for conflict of interest disclosures in a community asset committee will be prescribed by the CEO in the committee’s rules.
- The Act no longer specifies staff disclosure when reporting to Council, as this becomes a matter for the Governance Rules.

Part 4 of this Manual considers conflict of interest procedures, including Governance Rules requirements.

Changes to penalties

The Act makes some substantial changes to what happens if a person fails to disclose a conflict of interest.

The most significant reform involves a distinction between criminal breaches and breaches that should be treated as disciplinary matters. Under the 1989 Act, all breaches were treated as criminal offences.

In broad terms, a criminal breach is limited to a material conflict of interest or a general conflict of interest after a previous finding of a conflict of interest breach by a court or a Councillor Conduct Panel, and where the breach is committed by a councillor, a member of a delegated committee, or member of council staff.

Part 5 of this Manual looks at the consequences of failure in detail. Including new reporting requirements for the CEO.

Gifts

A new feature in the Act is the introduction of a specific requirement for gift registers.

While many councils previously maintained gift registers as a matter of good practice, the Act now requires the following:

- the CEO to include gift disclosure requirements and a gift register in the staff code of conduct, and
- the Council to adopt a councillor gift policy that includes a gift register.

Gifts are discussed in detail in Part 6 of this Manual.

Personal interest returns

New rules for interest returns will replace older dated provisions. This includes the following terminology changes:

- “Initial personal interest returns” will replace “primary returns”, and
- “Biannual personal interest returns” will replace “ordinary returns”.

The specific matters to be disclosed in returns are being updated to reflect modern standards. They are prescribed in the Regulations.

Significant changes have been made to the public availability of returns, as the actual return will be treated as a confidential document and a summary of each person’s return will be made publicly available.

Personal interest returns are covered in Part 7 of this Manual.

Part 3 – What is a conflict of interest?

This Part considers the nature of conflict of interest. What does it mean and how is it defined?

This will be done in four stages:

- Overview
- General conflict of interest
- Material conflict of interest
- Conflict of interest exemptions

Overview

Conflict of interest is essentially about transparency. A failure to provide the right level of transparency or to take appropriate action may be perceived as an indicator of impropriety.

Why “transparency”? People in public office disclose conflicts of interest as a way of demonstrating they are not using their public office to further their private interests.

Disclosure usually involves making a statement that the conflict of interest exists and then stepping aside from the decision or action:

- Being open about the conflict of interest demonstrates that the person is being open and transparent.
- Stepping aside from the decision removes doubt that the decision might be influenced by private interests.

Conflict of interest definition

Two types of conflict of interest are defined in the Act:

- a “general conflict of interest”, and
- a “material conflict of interest”.

These are described in detail further in this Part.

There are good reasons for having these two definitions.

- General conflict of interest describes the basic concept underlying conflict of interest. It requires a councillor, member of a delegated committee or member of council staff to exercise good judgement in identifying situations where they have conflicts of interest. A failure to take appropriate action on a general conflict of interest may be a disciplinary matter in a Councillor Conduct panel or under the Staff Code of Conduct, and may even result in a prosecution as a criminal offence.
- Material conflict of interest specifies particular situations that are clearly conflicts of interest. Being more clearly defined, these are more “black and white” and more easily identified by councillors and officers. A failure to properly identify and act on a material conflict of interest is a criminal offence that may be prosecuted in a court.

Core Terminology

Relevant person

The Act requires a “relevant person” to disclose conflicts of interest. It includes councillors, council staff and members of delegated committees.

Matter

A “matter” means a matter with which a Council, delegated committee, community asset committee or a member of Council staff is concerned ¹.

A matter includes:

¹ Section 126 of the *Local Government Act 2020* (the Act).

- any matter that will require a power to be exercised, or a duty or function to be performed, by the Council, delegated committee or community asset committee in respect of the matter, and
- any matter that will require a power to be exercised, or a duty or function to be performed by a member of Council staff in respect of the matter.

General conflict of interest

The Act says a general conflict of interest exists if, *“an impartial, fair minded person would consider that the person’s private interests could result in that person acting contrary to their public duty”*.²

This is a broad definition that will require a relevant person to consider how an impartial, fair-minded observer may view the person’s circumstances and whether that observer would consider the person’s private interest capable of influencing the way they perform their council duties.

General conflict of interest should be seen as an overarching category, compared to material conflicts of interest.

The best way to identify a possible general conflict of interest is to look at the three components:

- the public duty,
- private interest, and
- the impartial, fair-minded person.

Public duty

A person can only have a conflict of interest if they have a public duty to perform as a “relevant person” in relation to a “matter” (as defined).

For a councillor, their public duty is to perform the role of a councillor³. This includes participating in council decision making, representing the interests

of the municipal community and contributing to the strategic direction of the council. This must be done in accordance with the Act and particularly with the overarching governance principles⁴.

For council staff, their public duty is to perform their role as a member of council staff, acting in the public interest in accordance with the Act, the overarching governance principles and the policies of the council.

For an external member of a delegated committee, their public duty is to act in the public interest as a committee member in the same way as a councillor.

Private interest

A general conflict of interest can only arise when a person has a private interest in the matter.

A “private interest” is any interest a person has that does not derive from their public duties as a councillor, staff member or delegated committee member. It can include any direct or indirect connection that the person has with the matter under consideration.

Private interests are broad. They include anything that will affect a person’s rights, advantages, duties, titles or liabilities. Private interests are not limited to matters that may involve a simple gain or loss to the person.

A private interest may relate to the relevant person themselves, such as

- a financial gain or loss to the person, either directly or indirectly
- an impact on their reputation or responsibilities, such as an award or promotion
- a change to their personal circumstances, such as a change to their residential amenity.

² Section 127 of the Act.

³ Section 28 of the Act.

⁴ Section 9 of the Act.

A private interest may be indirect, relating to an impact on a person associated with the relevant person, such as:

- a matter affecting the interests of a relative, friend or work colleague.
- a cost or benefit to an organisation that financially supported a councillor's election campaign, or
- a cost or benefit for a staff member's immediately past employer.

Private interests do not include things that are only matters of opinion or belief of the relevant person.

Impartial, fair-minded person

The final component concerns the connection between the public duty and the private interest. It is basically a judgement of how an impartial, fair-minded person would perceive the likelihood of the person's private interests affecting their public duty.

The Act uses the words "*an impartial, fair-minded person*" to describe the fictional person whose judgement determines whether there is a conflict of interest.

It should be assumed that this impartial, fair-minded person is in possession of the facts of the matter. This is important. If independent advice is being sought from someone, the value of their advice is diminished if they are not told all the facts.

For a private interest to give rise to a general conflict of interest, the impartial, fair-minded observer must consider that the relevant person's private interest could result in them acting contrary to their public duty. This means a weighing up of the significance of the private interests and how they may affect the relevant person's performance of their public duty.

It is not always the case that a private interest gives rise to a general conflict of interest. For example, an interest that is held in common or the same as

everyone else, such as a right to vote in a general election, would not be considered a conflict of interest. Also, a remote or insignificant interest, such as a very distant association, might be considered too insubstantial to be capable of influencing a person's actions.

Despite these limitations, there is a longstanding saying in local government circles that, "If in doubt, get out". This remains good advice. Unless a person can be confident that their private interests would not be perceived as being capable of influencing their actions, they should act as if they have a conflict of interest.

Material conflict of interest

Material conflicts of interest involve more specific and direct types of interests than general conflicts of interest.

A relevant person has a material conflict of interest when, "*an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.*"⁵

There are two elements to a material conflict of interest:

- Who is an "affected person"?
- What is a "benefit" or "loss"?

Affected persons

The Act includes a list of "affected persons" whose interests, if affected, can create a material conflict of interest for a relevant person.

Affected persons include the relevant person (councillor, staff member or delegated committee member), as well as:

- a member of their family,
- a body corporate where the relevant person or their spouse or domestic partner is a director or is on the governing body,

⁵ Section 128 of the Act.

- the relevant person’s employer, unless it is a public body,
- the relevant person’s business partner,
- a person for whom the relevant person is a consultant, contractor or agent,
- a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee, or
- a person from whom the relevant person has received a disclosable gift.

Person

Any reference to a “person” in these provisions includes a natural person or a body corporate unless stated otherwise.

Body corporate

A body corporate includes a company whether incorporated in Victoria or elsewhere and an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose⁶ and any incorporated associations.⁷

A community association that is not incorporated is essentially a grouping of its individual members. A decision that affects such an association should be treated as if each of the members is individually affected.⁸

Public body

A public body is a government department, a municipal council or any other body established for a public purpose by an Act of Parliament.

Family member

A family member is a person who is the relevant person’s:

- spouse or domestic partner,

- parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner, or
- other relative that regularly resides with the relevant person.

Note that a conflict of interest can arise if another relative stands to gain or lose and if the criteria for a general conflict of interest are satisfied.

Disclosable gift

A gift includes any good or service (other than volunteer labour) that is provided for free or that is provided for less than its normal selling price. It includes the payment of an amount in respect of a guarantee, and a payment or contribution at a fundraising function.

A disclosable gift means one or more gifts valued at or above \$500 that a relevant person received in the preceding five years if:

- the relevant person was a councillor, member of a delegated committee or a member of council staff at the time the gift was received, or
- the gift was an election campaign donation.

If multiple gifts are received from a person, they must be treated as a single gift with an aggregate value.

Notes:

- This \$500 threshold is higher than the gift disclosure threshold of \$500 for election campaign donations.
- A gift with a value of less than \$500 might give rise to a general conflict of interest if it satisfies the relevant criteria.

⁶ Section 3 of the Act; section 57A *Corporations Act 2001*.

⁷ *Associations Incorporation Reform Act 2012*.

⁸

https://www.nfplaw.org.au/sites/default/files/media/Unincorporated_groups_0.pdf

Benefit or loss

The Act states that a benefit or loss, for material conflicts of interest, includes benefits or losses that are:

- direct or indirect, and
- pecuniary or non-pecuniary.

Direct or indirect

A direct benefit or loss includes where the affected person is the immediate recipient or suffers the loss themselves. An indirect benefit or loss includes where the affected person would gain a benefit or suffer a loss because of the impact on another person or body, or as an indirect effect of a process.

For example:

- a decision to grant a councillor a planning permit is a direct benefit for them,
- a decision to grant a planning permit to a councillor's mother may be an indirect benefit or loss for the councillor.

Pecuniary or non-pecuniary

A pecuniary benefit or loss is one that can be measured in money. However, a benefit or loss does not have to be pecuniary.

Examples of non-pecuniary benefits or losses might include:

- an impact on a person's residential amenity (such as a proposed change in use of a nearby property that will impact on their enjoyment of their home or a change to parking arrangements in their street), or
- a permit allowing a person to conduct an activity.

Conflict of interest exemptions

The Act defines several general exemptions⁹ and provides for Regulations to prescribe additional specific exemptions¹⁰.

General exemptions

The Act specifies certain interests that are taken to not give rise to conflicts of interest. These exemptions apply to both material and general conflicts of interest.

The exemptions can be easily misunderstood and should not be relied on without proper consideration and care.

Remoteness

A relevant person does not have a conflict of interest if their only interest is so remote or insignificant that a reasonable person would consider it incapable of influencing the person's actions or decisions.

Interest in common

A relevant person does not have a conflict of interest if their only interest in the matter:

- is held in common with a substantial proportion of residents, ratepayers or electors, and
- the interest does not exceed the interests held by those residents, ratepayers or electors.

This exemption should not be relied on except where a very large proportion of the residents, ratepayers or electors of the municipality are affected in the same way and to a similar extent.

No knowledge

A conflict of interest does not arise if both the following apply:

⁹ Section 129 of the Act.

¹⁰ Section 129 of the Act.

- the relevant person does not know of the circumstances that create the conflict of interest, and
- the relevant person would not be reasonably expected to know of those circumstances.

Note that it may not be enough for a person to say they didn't know about an interest. A court or councillor conduct panel may also consider if they would have been reasonably expected to know.

Council representative

A conflict of interest does not exist because of a relevant person's connection with an organisation if:

- the person is only a council representative on the organisation,
- the organisation is a not-for-profit organisation, and
- the person receives no personal advantage from the organisation.

A not-for-profit organisation is a body that operates exclusively for a charitable, civil, sporting or other social purpose and which does not share or allocate funds or profits to owners, shareholders or executives.¹¹

Family memberships

A relevant person may not have a conflict of interest only because a member of their family is a member of a not-for-profit organisation, such as a sporting club or community association.

This exemption may not apply:

- if the family member is an office holder of the not-for-profit organisation, or
- if the relevant person themselves is a member of the not-for-profit organisation.

Community advocacy organisations

A relevant person may not have a conflict of interest only because they are a member of a not-for-profit organisation that has advocated for or expressed an opinion on a matter before the council.

This exemption may not apply if the not-for-profit organisation has another interest, such as when it is applying for funding.

Specific exemptions

Some specific exemptions are prescribed in Regulations. These may apply to some types of council decisions and positions and are discussed in Part 4.

¹¹ Section 126 of the Act.

Part 4 – Disclosing a conflict of interest

This part examines the process of disclosing a conflict of interest, as well as arrangements that need to be put in place by councils and CEOs to manage conflicts of interest.

Conflicts of interest should be disclosed whenever a relevant person is called on to perform a public duty that can affect their private interests.

At its core, the conflict of interest process involves two steps:

- making the conflict of interest transparent, and
- ensuring a separation between the private interests and the public action.

The precise process required varies depending on a number of factors. Many of the detailed processes will be prescribed in a council's Governance Rules.

Councillors and delegated committee members

Act requirements

In council and delegated committee meetings, the Act requires that a councillor or committee member with a conflict of interest must:

- disclose the conflict of interest in the manner required by the Governance Rules, and
- exclude themselves from the decision-making process; including any discussion or vote on the matter.

These requirements

- apply to both councillors and delegated committee members,
- are not affected by whether or not the final decision is being taken at the time,
- are not altered by closing a meeting to the public,
- must be recorded in the minutes.

Governance rules

Each council must have Governance Rules in place that set the procedures for council meetings and delegated committee meetings. This includes procedures for the declaration of conflicts of interest that give effect to the requirements of the Act.

Disclosure process

The Governance Rules should describe how and when a disclosure must be made.

It is recommended that Governance Rules include the following:

- A requirement for councillors and delegated committee members to give notice at the start of the meeting about the matters for which they will be declaring a conflict of interest. This is not the actual disclosure. It is to assist the chair to manage the meeting by ensuring conflicted members have an opportunity make their declarations when required.
- Specify that a councillor or a delegated committee member with a conflict of interest makes a formal disclosure immediately before the matter is considered. This ensures that it is transparent for people attending the meeting for that item.
- Require councillors or delegated committee members to describe the nature and circumstances of the conflict of interest as part of their formal disclosure. This provides transparency for decision makers and observers as well as helping prevent false disclosures, intended to avoid participation in a decision.

- Allow a councillor or delegated committee member to provide a written disclosure to the CEO before the meeting instead of publicly describing the nature and circumstances in the formal disclosure. This should only be allowable if the public description would require disclosure of another person’s private information.
- Require written disclosures to be kept secure and confidential.

Exclude from decision process

The Governance Rules should also set out procedures for excluding conflicted councillors and delegated committee members from the decision-making process.

It should be clear that councillor or delegated committee member who has a conflict of interest is not participating in any discussion or vote on the matter.

It is recommended that the Governance Rules include:

- A requirement that a councillor or delegated committee member with a conflict of interest must leave the meeting before the matter is considered and immediately after making their formal disclosure. They must not return until the matter is concluded or deferred.
- The conflicted councillor or delegated committee member must be in a separate location where they cannot participate in or influence the discussion or the vote on the matter. This means they cannot be seen or heard by the meeting participants. This does not prevent them from observing the meeting by electronic means, if available.

- The conflicted councillor or delegated committee member must not communicate with any participants in the meeting while the decision is being made.

While councillors have rights to have their concerns considered in the same way as other members of the community, they also occupy positions with special access. The Governance Rules should include procedures addressing how councillors must disclose conflicts of interest in circumstances where they wish to make a submission in relation to the matter as a member of the community.

Councillors must not participate in the part of any council, delegated committee meeting, community asset committee meeting or meeting conducted under the auspices of the council where there will be discussion of a matter for which they have a conflict of interest. For example, a councillor must leave a councillor briefing when there is discussion of an upcoming council decision for which they have a conflict of interest. They may return to the briefing to participate in discussion for other matters where they do not have a conflict of interest.

Community asset committees (CACs)

CACs are administrative, rather than policy, committees and they are subject to the terms and conditions set out by the CEO when delegating functions to the committee¹².

These terms and conditions must include compliance with specified governance requirements to ensure appropriate standards of probity are met. This may include the requirement to and procedures for disclosing conflicts of interest.

Councillors who are CAC members must disclose conflicts of interest and comply with the Governance Rules.

¹² Section 46 of the Act.

Exempted decisions and circumstances

In addition to the general exemptions for conflicts of interest under the Act and described in Part 3 of this Manual, some council decisions are exempted from conflict of interest. These are mostly decisions with limited scope for pursuing personal interests, where participation by all councillors is important or where councillors necessarily have a personal interest.

Exempted decisions and circumstances include the following¹³:

- Nominating or appointing a councillor by the council to a position for which the councillor will not be remunerated;
- Nominating or appointing a councillor by the council to a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of councils;
- Making a submission to an electoral structure review;
- Nominating and electing a mayor or deputy mayor;
- Appointing an acting mayor;
- A decision in relation to the payment of mayoral and councillor allowances under section 39(6) of the Act, including a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2) of the *Local Government Act 1989*;
- Adopting a councillor expenses policy;
- A decision to deal with a matter in an alternative manner or to appoint a delegated committee under section 67 of the Act in order to manage a loss of quorum;
- Establishing a delegated committee and appointing a councillor as a member or chairperson;
- Adopting, reviewing or amending the councillor code of conduct;
- Making an application for an internal arbitration process;
- Making an application for a councillor conduct panel or a VCAT review of a panel decision;
- Declaring rates and charges under section 158(1) of the Act;
- Dealing with councillors' eligibility for the superannuation guarantee;
- Dealing with a matter related to preparing or adopting a budget or a revised budget if the budget or revised budget includes funding for that matter, it was previously approved by the council and a councillor who had a conflict of interest in respect of that matter disclosed the conflict when the council previously considered and made the decision in respect of that matter and the proposed funding;
- Dealing with a matter related to preparing or adopting a Community Vision, Council Plan, Financial Plan, Asset Plan or Revenue and Rating Plan if the relevant document includes that matter, it was previously approved by the council and a councillor who had a conflict of interest in respect of that matter disclosed the conflict when the council previously determined the matter;
- Dealing with a matter determined in an alternative manner by the council under section 67 of the Act if any component part of the matter in which a councillor had a conflict of interest has been resolved and the councillor disclosed the conflict of interest when the council previously considered that component part;

¹³ Local Government (Governance and Integrity) Regulations 2020.

- The councillor is a representative of the council to a Local Government Waste Forum established under the *Environment Protection Act 1970*;
- The councillor is a director of a Waste and Resource Recovery Group established under the *Environment Protection Act 1970*;
- The councillor is a member of the Country Fire Authority appointed under section 7 of the *Country Fire Authority Act 1958*;
- The councillor is a member of the governing body of a referral authority considering an application under section 56 of the *Planning and Environment Act 1987*;
- The councillor is a representative of the council, or councils, to the Municipal Association of Victoria or in another body that has a purpose of representing the interests of a council or councils;
- The councillor is an employee of the Crown or of a body established by or under any Act for a public purpose, if the councillor has no current or expected future responsibilities as that employee that relate to a matter;
- The councillor is a representative of the council (with the council's approval) to an organisation, if the councillor receives no remuneration as that representative;
- The councillor is a member of a Planning Application Committee established under the *Planning and Environment Act 1987* or as a member or co-opted member of a subcommittee of that Committee.

In addition, some special exemptions apply for the purpose of dealing with the loss of a quorum. These are discussed below.

Quorum problems

Occasionally, an issue of maintaining a quorum may arise, where a majority of the councillors or committee members have conflicts of interest.

There are several ways to address this issue and get decisions made.¹⁴ It is important to note that no-one has the capacity to exempt a councillor or delegated committee member from their conflict of interest. The 1989 Act enabled the Minister for Local Government to exempt a councillor from a conflict of interest. Under the 2020 Act, the Minister no longer has this power.

Utilise existing authority

The first way to resolve a quorum problem arising from conflicts of interest is to utilise existing authorities and delegations.

This can include:

- Leaving a matter for the council to determine when a delegated committee can't maintain a quorum.
- Allowing a council decision to be made by a delegated committee or an officer when there is a pre-existing delegated authority and the council can't maintain a quorum. (Note that the council cannot direct its delegate in making the decision).

Split the decision

In some cases, a council can split a decision into separate parts to be considered and voted upon. This can allow matters to proceed if councillors have conflicts with different parts of the original decision.

This approach will only work where:

¹⁴ Section 67 of the Act and regulation 7 of the Local Government (Governance and Integrity) Regulations 2020.

- there is a logical separation of the matter into components that will allow each part to be considered as a stand-alone matter, and
- there are enough councillors without conflicts of interest to decide each separate matter.

An example where a decision might be split could be where several community grants are under consideration.

A councillor may not have a conflict of interest in relation to a decision to split a matter for this purpose.

Make prior decisions

A second method that may avoid quorum problems is where parts of a decision can be dealt with in prior motions.

For example, a council’s budget may include components in which several councillors have conflicts of interest. If each of those components is separately considered beforehand at a meeting at which a quorum can be maintained and the councillors disclose their conflicts of interest at those times, thereafter the overall budget may be voted on at a meeting at which a quorum can be maintained.

Establish a delegated committee

If the council is unable to use any of these alternative approaches it must establish a delegated committee to consider and decide the matter.

The delegated committee:

- must include all the councillors who do not have a conflict of interest,
- should not include councillors with conflicts of interest, and
- may include non-councillors.

A councillor may not have a conflict of interest in relation to a decision to establish a delegated committee for this purpose.

It should be noted that decisions about planning scheme amendments may not be capable of delegation under section 188 of the *Planning and Environment Act 1978*.

Other meetings conducted under the auspices of the council

Conflicts of interest should be transparent in other meetings conducted by or on behalf of the council. This particularly applies to councillors, and the Act includes some requirements for this.

Act requirements

Councillors must disclose conflicts of interest in meetings organised under the auspices of the council¹⁵. Any meeting that is organised, sponsored or otherwise facilitated by the council should be treated as an ‘auspiced’ meeting.

Council auspiced meetings may include, but are not limited to:

- regular councillor briefings or forums,
- other briefing meetings,
- committees other than a delegated or community asset committee (such as advisory committees),
- public consultations, and
- site meetings.

It will also include meetings the council arranges jointly with other organisations.

A councillor who has a conflict of interest in a matter being considered at a meeting conducted under the auspices of the council must disclose the conflict of interest and must comply with the requirements of the council’s Governance Rules.

¹⁵ Section 131 of the Act.

Governance Rules

A council's governance rules must include conflict of interest procedures for meetings conducted under the auspices of the council.

This presents some challenges, as the types of meetings included under this category vary significantly. Councils should consider defining processes for different meeting types.

Councillor briefings and advisory committees

Councillor briefings and advisory committees play important roles in preparing for formal decision-making processes.

However, as these are not decision-making meetings, the recommended approach may be to require a councillor to advise the meeting that they have a conflict of interest, but not make it mandatory to disclose the details of the relevant interests.

It is recommended that records be kept of these meetings including any conflict of interest disclosures. This is good practice and helps remove any doubt about compliance.

After making a disclosure in these types of meetings, a councillor should be required to leave the meeting until the discussion of the relevant matter is concluded.

Single issue briefings

Some briefings have a single purpose. This includes site meetings and some ad hoc briefings.

It is worth considering if Governance Rules could say that a councillor with a conflict of interest in the relevant matter should not attend the particular meeting.

Public consultations

The suggested rule for meetings that are solely for the purpose of public consultation is to require councillors to disclose any conflict of interest to the meeting.

Councillors need not leave these types of meetings if they have a conflict of interest. To allay any public

concerns, however, councillors may wish to advise the meeting they will not be voting on a matter in which they have a conflict of interest.

Councillors should exercise caution when considering attending any meetings that will address a matter for which they have a conflict of interest. Where councillor attendance at a meeting addressing a matter for which they have a conflict of interest may influence the decision-making process, it is better that the councillor declares the interest and removes themselves from the meeting.

Council staff

Conflict of interest rules apply to members of council staff in a number of ways:

- when exercising a council power, duty or function under delegation,
- when exercising any other statutory power, duty or function,
- when acting as a member of a delegated committee or community asset committee, and
- when providing advice to the council, a delegated committee, a community asset committee or a member of council staff exercising a delegation.

Aside from these particular requirements, staff should be conscious of their public responsibility to avoid conflicts of interest generally in whatever they do as a council officer.

Delegations and statutory functions

Whenever a member of council staff is exercising a power of delegation or a statutory power, duty or function they must disclose any conflict of interest, exclude themselves from the decision-making process and any action in relation to the matter. This includes actions an officer takes as an authorised officer.

A staff member with a conflict of interest must not:

- exercise the delegated power of the council,

- perform their function as an authorised officer, or
- perform any other function under the authority of an Act of Parliament.

A conflict of interest must be disclosed as soon as it becomes evident to the staff member and prior to any of these actions arising. This must be done in accordance with the Governance Rules.

Council staff providing advice to another staff member exercising a delegated power must disclose any conflict of interest and follow the procedures outlined in the Governance Rules.

Acting as a member of a delegated or community asset committee

If a member of staff is on a delegated or community asset committee, they must comply with the conflict of interest disclosure procedures outlined in the Governance Rules.

Note that a delegated committee includes any committee to which the council, delegates a statutory function. This includes planning committees.

Providing advice

The Act requires a council's Governance Rules to include the disclosure of conflicts of interest by council staff when providing information in respect of a matter which a council, delegated committee, community asset committee or a member of council staff is concerned and that will require:

- a power to be exercised, or a duty or function to be performed, or a decision to be made, by the council, delegated committee or community asset committee in respect of the matter; or
- a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of council staff in respect of the matter.

This is a procedural matter that should be applied whenever staff are providing advice to inform the

making of council decisions. This includes, but is not limited to:

- council meetings,
- delegated and community asset committee meetings,
- advisory committees, and
- council briefings.

Most councils already have a practice of reporting any applicable staff conflicts of interest in council reports and it is good practice to continue this process.

In addition, where a member of staff is speaking to a relevant meeting and has a conflict of interest, the Governance Rules should require an appropriate disclosure. This might be little more than the officer advising the meeting of the conflict before proceeding to give advice.

Code of conduct

A CEO must ensure that the staff code of conduct includes procedures for dealing with alleged and actual breaches of conflict of interest and provisions for the CEO to take disciplinary action against a member of council staff. See Part 5 of this Manual.

The staff code of conduct may also include disclosure of a conflict of interest by officers not covered by the disclosure requirements outlined in the Governance Rules, including contractors and consultants. It is advisable that these procedures include provision for:

- the officer to advise their manager when they have a conflict of interest – preferably in writing describing the nature of the relevant interest,
- the officer to not undertake any duty or make any decision regarding the matter in which they are conflicted,
- ensuring that alternative arrangements are made for the performance of the duty or the making of the decision,

- the relevant manager to report conflict of interest disclosures to the CEO or to a designated officer, and
- maintaining a record of conflicts of interest disclosures that includes details of the actions taken.

Retention requirements

The Act does not carry over the conflict of interest disclosure procedures in sections 79(2) and 79(5) of the *Local Government Act 1989*. Under the 1989 Act, the CEO had to:

- keep written disclosures given to them in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and
- destroy the written disclosure when the 3-year period had expired.

If provided for under the Governance Rules, it is up to the council to determine how written conflict of interest disclosures are to be treated.

Where the Governance Rules don't address the retention of written disclosures, the requirements of the *Public Records Act 1973*, and any Retention and Disposal Authorities made by the Public Records Office Victoria, apply.

Part 5 – Consequences and Penalties

The Act provides various arrangements for dealing with a failure to comply with conflict of interest requirements:

- Reporting requirements;
- Criminal penalties
- Disciplinary arrangements for councillors
- Disciplinary arrangements for staff

Statutory reporting

Section 130 of the Act describes some reporting requirements. These apply to both general and material conflict of interest breaches.

Councillors

There is no specific requirement to report a conflict of interest failure by a councillor. However, any person may report a breach of conflict of interest to the Chief Municipal Inspector (CMI) who can investigate and take appropriate action.

CEO breach

If the Chief Executive Officer fails to disclose a conflict of interest in a delegated or statutory power, duty or function and exclude themselves from the matter, the mayor must notify the Chief Municipal Inspector as soon as the mayor becomes aware of the failure.

Council staff

If any other member of council staff fails to disclose a conflict of interest in a delegated or statutory power, duty or function and exclude themselves from the matter, the CEO must notify the Chief Municipal Inspector as soon as the mayor becomes aware of the failure.

Delegated committee member

If a member of a delegated committee, other than a councillor or staff member, fails to disclose a conflict of interest in a matter and exclude

themselves from the matter, the CEO must notify the council and recommend appropriate action.

It is recommended that a similar process be followed if a member of a community asset committee was required to disclose a conflict of interest and failed to do so.

Criminal penalties

A failure to properly disclose a conflict of interest may result in criminal or disciplinary proceedings.

The Chief Municipal Inspector has powers to investigate alleged breaches of conflict of interest requirements and to initiate proceedings in a court or through a councillor conduct panel.

Conflict of interest

A relevant person may only be charged with a criminal offence if the failure to disclose a conflict of interest relates to a material conflict of interest, or if a councillor, for a general conflict of interest after a previous finding of a breach of the conflict of interest provisions by a councillor conduct panel or a court.

For a councillor or delegated committee member, the failure must be:

- in a council meeting, or
- in a relevant committee meeting.

For a member of council staff, the failure must be:

- in the exercise of a delegated council power;
- in the exercise of a statutory function; or
- in a relevant committee meeting.

If found guilty of this offence, a person may be:

- fined up to 120 penalty units¹⁶;
- convicted¹⁷; and / or
- required to pay the costs of the prosecution.

A councillor convicted of a conflict of interest offence is not qualified to be a councillor for eight years, meaning the councillor will be dismissed from office and disqualified from being a councillor for eight years.¹⁸

A member of council staff found guilty of a conflict of interest breach should expect to be dismissed.

Misuse of position

Under some circumstances a person who is, or has been, a councillor or a member of a delegated committee may be charged with misuse of position if they fail to disclose a conflict of interest.

This would generally only apply if the failure was intentional, serious and was designed to gain, or attempt to gain, an advantage or to cause, or attempt to cause, detriment to the council or another person¹⁹.

Misuse of position is an indictable offence that may be heard in a higher court and may be heard before a judge and jury.

If a person is found guilty of misuse of position, the court may impose the following:

- a fine of up to 600 penalty units, or
- a prison term of up to five years.

If a person who is, or has been, a councillor or member of a delegated committee intentionally breaches conflict of interest for their personal benefit, they may be charged with “misuse of

position”. This is a very serious offence that may include a prison sentence.

Disciplinary proceedings - councillors

A councillor may be required to attend a councillor conduct panel to answer an allegation of serious misconduct if they fail to disclose any conflict of interest in any meeting where they are required to make a disclosure.

A councillor cannot be subject to both a court prosecution and councillor conduct panel hearing for the same offence.

A finding of serious misconduct may be made against a councillor in the following circumstances:

- There has been a failure to disclose a general conflict of interest or a material conflict of interest, and
- The failure occurred in a council meeting, a delegated committee meeting or in another meeting conducted under the auspices of the council.

If a councillor conduct panel makes a finding of serious misconduct it may:

- Determine that the councillor is ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the council's term (unless the panel specifies otherwise);
- reprimand the councillor;
- direct the councillor to make an apology;
- suspend the councillor for up to twelve months; and
- direct that the councillor is ineligible to chair a delegated committee of the council for the remainder of the council's term.

¹⁶ <https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values> .

¹⁷ A person can be found guilty without having a conviction entered against their name. The court may impose a fine if the person is guilty, with or without a conviction.

¹⁸ Section 34 of the Act.

¹⁹ Section 123 of the Act.

A suspended councillor does not receive an allowance for the period of suspension.

Disciplinary action- council staff

The staff code of conduct must include:

- procedures for dealing with alleged and actual breaches of conflict of interest, and
- provisions for the CEO to take disciplinary action against a member of staff.

Disciplinary procedures in a staff code of conduct would be expected to be compatible with other employment arrangements, including any applicable industrial awards. They should also take account of natural justice requirements.

Part 6 – Gifts

The Act brings increased formality to the management of gifts.

What is a Gift

The Act defines a gift to be “*any disposition of property otherwise than by will made by a person to another person without consideration in money or money’s worth or with inadequate consideration*”²⁰

The Act includes more detail in this definition, and also defines “disposition of property” in the same section.

For practical purposes, a transfer of any type of property, or property entitlement, from one person to another that isn’t paid for (in whatever way) at its full monetary value is a gift. This includes gifts as services, gifts in kind and donations at fundraisers.

Gift disclosure threshold

The act defines a “gift disclosure threshold” for several purposes. As at the date of publication of this manual, the threshold is \$500.

Gifts to councillors

Prohibited gifts

Councillors are prohibited from accepting gifts that equal or exceed the gift disclosure threshold unless they know the name and address of the person making the gift.

A failure to comply is an offence that can be prosecuted in court. If found guilty a fine of up to 60 penalty units may be imposed, the value of the gift must be paid to the council and the councillor

may be required to pay the costs of the prosecution.

If for any reason a councillor finds themselves in possession of a gift when they don’t know the name and address of the person who gave the gift, the councillor can give the gift to the council within 30 days to avoid committing an offence.

Disclosure requirements

There are various disclosure requirements for gift applying to councillors:

- A councillor must disclose any gift valued at \$500 or more in their biannual personal interest return unless the gift is from a family member²¹.
- A councillor or delegated committee member who has a conflict of interest as a result of receiving a gift or gifts from a person must disclose the conflict of interest in accordance with the procedures outlined in the Governance Rules²².
- Gifts above the gift disclosure threshold that are election campaign donations must be disclosed in an election campaign donation return (described below).
- Gifts must also be disclosed in the councillor gift register.

Councillor gift policy and register

The Act requires a council to adopt a councillor gift policy which includes provision for maintaining a gift register²³.

²⁰ Section 3 of the Act.

²¹ Part 7 of this Manual.

²² Parts 3 and 4 of this Manual.

²³ Section 138 of the Act.

A number of councils already have well developed gift policies that may be used as models and adapted for use.

The councillor gift register is a key document prepared under the gift policy. Its purpose is to provide a suitable level of transparency.

Issues to be determined by a council for its gift register may include:

- What gifts must be disclosed?
- What information should be provided about each gift?
- How is the register maintained?
- What level of transparency is required?

What gifts?

For the purpose of the gift policy and the gift register, gifts must include:

- Monetary gifts
- Gifts in kind (goods or services)
- Hospitality
- Subsidised travel

As a rule, any gifts above a specified value should be disclosed. While some councils have different thresholds, the important issue is to set a threshold that only excludes token gifts from having to be listed in the register. A useful starting point may be a threshold of \$50.

What information?

Information to be disclosed in the gift register should include:

- A description of the gift and its estimated value
- The name of the gift giver
- What was done with the gift (was it retained by the councillor, handed to the council, etc.)

Register maintenance

The gift policy should include information about how the register is maintained, including:

- What timeframes apply to the register,
- When do councillors update the register, and
- Who maintains the register?

Transparency

A council gift policy should also provide for a suitable level of transparency. Some councils already publish their gift register on their web site, and this is good practice.

Note that the council's gift policy should be consistent with the council's public transparency policy.

Election Campaign Donations

The Act continues requirements for candidates in council elections to disclose election campaign donations.²⁴

Donation disclosures

Gift threshold

The gift disclosure threshold is \$500 for all council elections, including the City of Melbourne elections.

Higher thresholds may be prescribed in the Regulations at later dates.

These thresholds continue to apply to gifts in the same way as under the 1989 Act. They include gifts in money, as goods or services and payments at fundraisers.

Gifts also include where a good or services is provided at a price that is below the market price.

Where multiple gifts are given from the same person, they must be treated as one gift and

²⁴ Sections 306 to 310 and the definitions in s3(1) of the Act.

disclosed if they are equal to or exceed the gift disclosure threshold.

A candidate does not need to disclose a gift if it was made in a private capacity for the candidate's personal use and not used solely or substantially for a purpose related to the election.

Timing of disclosures

Within 40 days after election day, a person who was a candidate in the election must give an election campaign donation return to the Chief Executive Officer.

A candidate who does not receive any disclosable donations must still lodge a return no later than 40 days after the election day.

Lodgement

Under the Act, all election campaign donation returns must be lodged with the Chief Executive Officer.

Returns should be lodged using the prescribed form.

Responsibilities of the Chief Executive Officer

The CEO has a number of responsibilities regarding election campaign donation returns:

- Within 14 days of the period 40 days after election day, provide a written report to the Minister for Local Government specifying the names of candidates and those who submitted an election campaign donation return;
- Within 14 days of the period 40 days after election day, publish a summary of the returns on the council's website until the close of the roll for the next general election;
- Publish a summary of any returns received after the required period on the council's website until the close of the roll for the next general election; and

- Ensure that a copy of an election campaign donation return is available for inspection at the council office for a period of 4 years from the date that it is given.

Prohibited donations

The Act continues the previous prohibition on candidates accepting gifts unless they know the name and address of the gift giver. This applies to gifts that have a value of equal to or more than the gift disclosure threshold.

A candidate must not accept a donation unless they know the name and address of the donor. A gift given on behalf of another person or body must also not be accepted unless the source is known.

Penalties

It is unlawful to accept prohibited donations and penalties apply for the acceptance of such donations.

In addition, an amount equal to twice the amount or value of the gift is forfeited to the State and may be recovered from the person who received the gift.

Gifts to council staff

Council staff should also be careful in accepting and properly disclosing gifts.

CEOs are required to have codes of conduct for council staff. This must include provision for a gift register and the disclosure of gifts above a specified value.

CEOs should consider the matters described above for the councillors' gifts register when preparing the staff code of conduct.

Consideration should also be given to the circumstances of the gift. A gift given to a staff member in connection with their duties as a member of council staff may be a matter of greater concern than a gift given privately.

Consideration might be given to setting different thresholds:

- Gifts given to a staff member in connection with their council role, or as a result of that role, should all be disclosed in the register (i.e. a disclosure threshold of \$0)
- Gift given privately to a staff member may have a higher disclosure threshold.

Note that this should be a separate gift register from that applying to councillors, reflecting the different accountabilities.

It is not necessary to make the staff gift register available to the public.

Part 7 – Personal Interests Returns

The Act and the Regulations substantially update arrangements for the lodgement and management of personal interest returns²⁵.

The changes include:

- New terminology;
- Additional disclosure requirements;
- Better transparency; and
- Privacy arrangements.

Lodgement of returns

What is a personal interest return?

A personal interest return is a record of the private interests of a person in public office that assists in improving probity. It helps to ensure transparency and reduce conflicts of interest.

Under new rules in the Act, people required to lodge returns must lodge:

- An “initial personal interests return” when they take office, and
- Regular “biannual personal interests returns”.

Note that these replace the previously named “primary returns” and “ordinary returns” under the 1989 Act.

Who is a specified person?

People who must lodge personal interest returns are:

- councillors,
- members of delegated committees,
- the CEO, and
- nominated officers.

Nominated officers are staff who are nominated by the CEO to lodge personal interests returns. The CEO can only nominate staff who have a statutory or delegated power, duty or function.

Community asset committees

External persons appointed to community asset committees may, in some cases be required to lodge interest returns as a matter of good practice.

This is a matter for the CEO to determine when setting out the procedures for the committee. As a rule, personal interest returns could be required if a committee is given substantial delegated powers, such as a large financial delegation.

Lodgement times

Initial personal interests returns

An initial return must be lodged within 30 days of becoming a specified person:

- For councillors, this means within 30 days of taking the oath or affirmation of office as councillor. A councillor who is re-elected at the end of their term of office does not need to lodge a new initial return, but if there is a gap between terms of office, they must lodge a new initial return.
- For members of delegated committees, lodgement must be within 30 days of being appointed to a delegated committee. A committee member does not have to lodge a new return if reappointed at the end of their term.

²⁵ Sections 132 to 136 of the Act.

- For the CEO, lodgement must be within 30 days of becoming the CEO. If a CEO has been reappointed at the end of their contract or is appointed from within the council and has already lodged an initial return, then a new initial return is not required.
- For an officer, lodgement must be within 30 days of becoming a nominated officer. An officer becomes a nominated officer either when they take up a position that has been nominated or when the CEO makes the nomination. Officers employed under contract do not have to lodge new initial returns if reappointed at the end of their contract.

Transitional

Note that all specified persons must lodge initial personal interests returns under the Act within 30 days of the provisions coming into effect, which is 24 October 2020. The previous lodgement of a “primary return” does not constitute compliance.

Biannual personal interests returns

Biannual personal interests returns must be lodged twice yearly with the CEO on the dates prescribed in the Regulations. This applies to all specified persons.

A specified person must lodge their biannual return with the Chief Executive Officer by the end of the following periods in each year:

- 1 March to 31 March; and
- 1 September to 30 September²⁶.

Matters to disclose

The matters to be disclosed in personal interests returns have been updated under the Regulations. This reflects modern standards of transparency and

probity and has similarities with the new legislation for Members of Parliament.

Initial personal interests return

An initial personal interests return and subsequent biannual returns must contain the following matters²⁷:

- the details of any corporation of which the specified person is a director or a member of the governing body;
- details of any unincorporated association in which the specified person is a member and performs a leadership role;
- details of any business partnership or joint venture of which the specified person is a member;
- details of any trust of which the specified person is a trustee or a beneficiary;
- details of any paid employment of the specified person (other than employment with the Council) during the preceding six months, if the income from the employment exceeds \$10,000 or the threshold determined by the Secretary (whichever is greater) (noting that this requirement does not apply to the extent that providing details of those matters would constitute a breach of a professional or legal obligation not to disclose the information);

²⁶ Local Government (Governance and Integrity) Regulations 2020.

²⁷ Local Government (Governance and Integrity) Regulations 2020.

- the details of any person or body for whom the specified person currently is, or has acted as, a consultant, contractor or agent and whose payments to the specified person exceeded \$10 000 or the threshold amount determined by the Secretary (whichever is greater) during the preceding six months (noting that this requirement does not apply to the extent that providing details of those matters would constitute a breach of a professional or legal obligation not to disclose the information);
 - the details of any land located within the municipal district of the Council or an adjoining municipal district of which the specified person is an owner or holds a beneficial interest (other than by way of security for any debt);
 - details of any shareholding or beneficial interest in a company whose total value does not exceed \$10 million or the amount specified by the Secretary (whichever is greater) and the combined total value of the specified person’s shares is more than \$10,000 or the threshold amount determined by the Secretary (whichever is greater);
 - details of any company in which the specified person, solely or jointly with members of their family, holds a controlling interest.
 - details of any personal debt exceeding \$10,000 or the threshold amount determined by the Secretary (whichever is greater) owed by the specified person;
 - details of any other interest which the specified person has decided to disclose on the basis that it may give rise to a general conflict of interest or a material conflict of interest;
 - details of the specified person submitting the return, including full name of the specified person, name of the Council and the position held by the specified person at the Council; and
 - a signed statement by the specified person that the information provided is accurate and complete.
- Under the Regulations, the Secretary may determine threshold amounts more or less than the relevant amounts specified in each of those provisions where disclosure is required and may revoke or vary them at any time through a Government Gazette notice.
- Biannual personal interests return*
- Biannual returns must contain the same information as initial returns since the specified person lodged the preceding initial or biannual personal interests return, as well as:
- the details of any gift received by the specified person, the value of which equals or exceeds \$500 or the threshold amount fixed by the Secretary (whichever is greater) including gifts in the form of goods or services and multiple gifts that together equal or exceed \$500 or the threshold amount, which was received at any time since the specified person lodged the preceding initial or biannual personal interests return (excluding gifts received from members of the specified person’s family, gifts disclosed in an election campaign donation return and any reasonable hospitality received by the specified person at an event or function that the person attended in an official capacity as a Councillor, Chief Executive Officer, member of Council staff or member of a delegated committee).

Forms

Refer to the Quick Guide on Personal Interests Returns for Local Government.

Administration and public access

The previous arrangements for people to apply for access to interest returns will no longer apply. Instead, a summary of returns must be prepared.

Summary of personal interests

The CEO must ensure that a summary of the information contained in the latest return lodged by each specified person is prepared.

The summary must not include the street address where the specified person lives. Only the town or suburb should be included.

The Regulations prescribe other matters for the summary. A separate summary of personal interests must be prepared for each specified person.

Each summary of personal interests must include the following:

- the name of the specified person;
- all positions held by the specified person as a Councillor, member of a delegated committee or member of Council staff;
- the date the preceding personal interest return was lodged; and
- a summary of the information disclosed in the specified person's preceding personal interests return, excluding certain prescribed matters.

The summary of personal interests must exclude the following:

- the monetary value or amount of any income, shares, other beneficial interests and debt;

- the street address and number of any land owned by the specified person, or in which the specified person has a beneficial interest, if the land is the principal place of residence of any person;
- information which, if released, would be reasonably likely to place the personal safety of any person at risk;
- private commercial information.

Public access

The current summary of interest for each specified person must be:

- published on the council website, and
- available for inspection at the council office.

Note that this availability should be recorded in the council's public transparency policy.

Confidentiality

New provisions have been made to ensure confidentiality of personal interest returns.

The CEO is required to ensure access to actual interest returns is limited to:

- the CEO or the officer responsible for managing interest returns, and
- the person who lodged the relevant return.

Access is also allowed for a municipal monitor, the chief municipal inspector or a commission of inquiry, as well as to any person who has a court order granting them access.

Penalties

A person who fails to lodge a personal interest return at the required time or who gives false or incomplete information may be prosecuted in court and fined.

The maximum penalty for a breach is 60 penalty units.

In addition, a person who divulges information from an interest return that they gained in the course of their official duties may be prosecuted in court and fined up to 60 penalty units. This does not apply to information required for performing an official duty before a councillor conduct panel, VCAT or a court.

Part 8 – Conflict of Interest and Effective Decision-Making

Conflict of interest and bias

Conflict of interest and avoiding bias are separate legal obligations. Either or both may apply when dealing with a matter.

If a councillor might be biased or have a conflict of interest, the councillor must assess each of these obligations separately and take the appropriate action.

Requirements under the Act

Under the Act, the Governance Rules must provide for a council to:

- Consider and make decisions on any matter being considered by the council fairly and on the merits; and
- Institute decision making processes to ensure that any person whose rights will be directly affected by a decision of the council is entitled to communicate their views and have their interests considered²⁸.

These requirements are designed to ensure community confidence in council decision-making by ensuring that it is free from bias and considers the views of people affected by those decisions.

In addition to the procedures for the disclosure of conflicts of interest, the Governance Rules should outline how these two requirements will be met.

Administrative decisions

Victorian councils are given powers under various Acts of the Victorian Parliament, including the *Local Government Act 2020* and the *Planning and Environment Act 1987*. These Acts authorise

councils to make decisions that affect the rights and interests of individuals and businesses living and operating within a council’s municipal district.

Section 61 of the Act enables a councillor to vote at council meetings. Part 6, Division 2 of the Act contains provisions to prevent councillors with a conflict of interest from participating in certain council decisions.

The provisions of the Act however also operate within a framework of common law principles that bind all governmental decision makers. For Victorian councillors as decision makers this means that in addition to the provisions of the Act they must observe common law rules.

Over many years the courts have developed rules to ensure that decision makers at all levels of government act fairly and without bias when making decisions that affect the rights and interests of others. These rules are known as the common law rules of “natural justice” or “procedural fairness”. Procedural fairness is about the fairness of the procedures used to arrive at a decision, and not the fairness of the decision itself.

When making administrative decisions, councils must ensure they apply procedural fairness. Procedural fairness involves two rules: the “hearing rule” and the “bias rule”.

1. The “hearing rule” gives a person the right to present their case.
2. The “bias rule” gives a person the right to have the decision made by a person who is not biased.

These common law rules must be observed by an individual councillor who exercises a statutory

²⁸ Section 60(2) of the Act.

power to vote. If a councillor cannot genuinely comply with those rules in relation to a particular matter, they must refrain from taking part in a council decision about that matter.

The guide *Ensuring Unbiased Democratic Council Decision Making: Principles to Guide Good Practice (2013)*²⁹ is a useful resource for councils when considering the rule that they bring an impartial and open mind to the task of making decisions that affect the rights and interests of others.

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https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0021/47451/2013-Ensuring-Unbiased-Democratic-Council-Decision-Making-April-2013.pdf

Part 9 – Providing Assistance

A council should establish procedures for assisting councillors, staff and committee members with conflict of interest matters. It is recommended that this be done as soon as practicable after the new provisions come into operation on 24 October 2020.

General support

Transitional

As a first step, councillors and staff should be advised as soon as possible about the new conflict of interest rules. This should include:

- general information about conflict of interest obligations;
- copies of guidance material, such as the conflict of interest guide for councillors;
- the contact details for people who can provide assistance.

Training

Mandatory candidate training includes information about conflicts of interest.

Councillor induction training should also include the requirements for conflict of interest, including how councillors should disclose conflicts of interest in accordance with the Governance Rules.

Consideration should also be given to the provision of training for staff, particularly staff who regularly exercise significant delegations.

Providing advice

A key issue for staff and councillors will be who to ask if they have questions. It is therefore advisable that there be at least one person at the council who can assist councillors and staff with conflict of interest matters.

CEOs may wish to nominate a suitable officer as the go-to person for conflict of interest advice. This will

help ensure support is provided from a reliable and consistent source.

Specific risks

Some specific risks that should be noted when giving advice about a possible conflict of interest include:

- addressing accountability,
- avoiding inquiries that appear to have a particular outcome in mind, and
- checking all possible interests.

Accountability

Whenever providing advice about a possible conflict of interest it is essential that the person requiring advice knows that the final responsibility rests with them. This is irrespective of what advice they obtain and from whom.

As a rule, it is best to let the person know that you can help them with information about conflicts of interest, but you cannot give a definitive answer. Ultimately, only a court can do that.

Inquiries with a particular outcome in mind

Often a person seeking advice may want a specific answer, or they may already have an expectation about what the answer will be. As a result, the person may approach the matter with a particular outcome in mind.

To avoid giving a false picture, it is important to make the person know that your advice is only as reliable as the information that they give you. You can assist by asking questions that encourage the person to see a broader picture.

Check all possible interests

A common mistake is for a person to ask about a conflict regarding one type of interest and overlook another possible conflicting interest. For example, a councillor may ask about a possible conflict of

interest because they are a member of an action group opposing a development, and not mention that they happen to own property adjoining the development.

As a matter of good practice, giving advice about a possible conflict of interest should involve questioning the person about all their possible connections with the matter.

Possible questions

A list of starting questions might include the following:

- Are you be personally involved in the matter in any way, including past involvements?
- Are any members of your family likely to be affected by the matter in any way?
- Do you or members of your family own property that may be affected?
- Do you or your family have a financial interest in a company that is likely to be affected?
- Are any of your friends or other associates likely to be affected?
- Do you or any family member hold a position in an organisation that is likely to be affected?
- Do you or any members of your family work for a person or body that is likely to be affected?
- Are you or any member of your family a contractor, consultant or agent for someone likely to be affected?
- Is the matter likely to affect your or your family's residential amenity?
- Have you or any members of your family received any gifts or favours from anyone likely to be affected?

If the answer to any of these questions is “yes” the potential connection should be examined in detail and assessed against the conflict of interest definitions in the Act.

Appendix A - Conflict of interest procedures - Overview

Relevant person	Councillor	Staff Member	Delegated Committee Member
When to disclose	In council, delegated committee and community asset committee meetings	Exercising a delegated power or statutory duty	In committee meetings
	In other meetings conducted under the auspices of the council	If a member of a delegated committee or community asset committee	
Procedural documents (e.g. what and how to disclose)	The Local Government Act 2020 - sections 126 to 131	The Local Government Act 2020 - sections 126 to 131	The Local Government Act 2020 - sections 126 to 131
	Governance Rules	Governance Rules	Governance Rules
	Local Government (Governance and Integrity) Regulations 2020	Local Government (Governance and Integrity) Regulations 2020	Local Government (Governance and Integrity) Regulations 2020
Reporting of breaches	Any person may report to CMI	Any person may report to CMI	Any person may report to CMI
		If CEO: Mayor must report to CMI If staff member: CEO must report to CMI	CEO must report to council
Disciplinary action	CMI may apply to CCP for serious misconduct finding	Subject to staff code of conduct	Subject to CEO's advice - Council may remove member
Disciplinary consequences	Councillor may be: suspended for up to 12 months; ineligible to hold the office of Mayor or Deputy Mayor or Chair of a delegated committee for the remainder of the Council's term; reprimanded; and/or required to apologise	CEO must discipline in accordance with the staff code of conduct	If delegated committee member is a councillor, see consequences for councillor
Criminal penalties	May be prosecuted for material or repeated conflict of interest breach Max penalty: 120 PU	May be prosecuted for material conflict of interest breach Max penalty: 120 PU	May be prosecuted for material conflict of interest breach Max penalty: 120 PU
	If intentional – may be prosecuted for misuse of position Max. penalty: 600 PU or 5 years imprisonment		If intentional – may be prosecuted for misuse of position Max penalty: 600 PU or 5 years imprisonment

– CMI – Chief Municipal Inspector; CCP – Councillor conduct panel; PU – Penalty unit