

# In the Public Interest

*A conflict of interest guide for councillors, delegated  
committee members and council staff*

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## Part 1 – Introduction

Conflict of interest laws are prescribed under the *Local Government Act 2020* (the Act) and in the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations). Managing conflicts of interest is about ensuring the integrity and transparency of decision-making.

The conflict of interest provisions in the Act apply to a ‘relevant person’. A relevant person is:

- a councillor,
- a member of a delegated committee who is not a councillor
- a member of council staff (who is a member of a delegated or community asset committee; is providing advice to the council, a delegated or community asset committee, a staff member exercising a delegation; or exercising a delegated function or statutory power).

These guidelines have been prepared to assist relevant persons to understand and meet their statutory obligations in relation to conflicts of interest.

As a ‘relevant person’ under the Act, it must be clear that your private interests are not affecting your public duties and that you are not using your position for personal benefit.

The conflict of interest provisions under the Act have been simplified so that they are more easily understood and more easily applied. The new conflict of interest provisions are designed to ensure relevant persons proactively consider a broader range of interests and consider those interests from the viewpoint of an impartial, fair-minded person. The intent is to move from a compliance approach to a principles-based approach with personal integrity and transparency in public office as the foundations. The shift away from prescribing every type of conflict of interest will enable a broader range of interests to be considered, especially those that are difficult to define, such as those that arise due to a friendship.

A relevant person with a conflict of interest must disclose the interest and not participate in the decision-making process on the matter. This means the relevant person must exclude themselves from any discussion or vote on the matter at any Council meeting, delegated committee meeting, community asset committee meeting, or if a councillor, any other meeting conducted under the auspices of the council. The relevant person must also exclude themselves from any action in relation to the matter, including an action taken to implement a council decision, for example, issuing a planning permit.

While this guide can assist with conflict of interest matters, the definitive statement of a relevant person's obligations is the Act and Regulations, and particularly sections 126 to 131 of the Act.

## Importance of conflict of interest

Councillors are elected by their communities to make decisions on behalf of those communities. This is both a privilege and a duty.

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.

All of these roles have significant responsibilities and must be performed in the public interest and not in the interest of someone or something with whom you have a private association.

To ensure that the public interest is served at all times all relevant persons are required to separate their private interests from their public duties. This may mean stepping aside from a public duty if you have a conflict of interest. It is also good practice for relevant persons to avoid situations that may give rise to conflicts of interest, for example, in relation to planning decisions that may come before the council.

It is not enough to just have good intentions. Members of the public cannot read your mind and cannot be certain what motivates your actions on a matter.

A failure to disclose and avoid a conflict of interest is widely perceived as an indicator of corruption.

People in many other roles also have to avoid conflicts of interest. This includes directors of companies, members of statutory bodies and members of certain professions, such as lawyers.

## A personal responsibility

The obligation to disclose a conflict of interest is a personal responsibility. Each relevant person must monitor their own circumstances and identify their conflicts of interests.

If you have a conflict of interest, you must disclose it and exclude yourself from the decision-making process.

This guide is not the only source of advice. Where appropriate, relevant persons may also seek assistance from:

- the council's Chief Executive Officer or staff authorised by the CEO,
- a lawyer or other suitably qualified person,
- the Municipal Association of Victoria,
- the Victorian Local Governance Association.

Local Government Victoria can also provide information about the disclosure of conflicts of interest and general guidance but cannot provide legal advice.

Irrespective of what advice is provided, it is ultimately the responsibility of each relevant person to accurately identify their interests and disclose any conflicts of interest. Assistance from other people may be limited to helping you to understand the requirements of the Act, rather than advising you about a specific conflict of interest. This is particularly true for assistance provided by Council officers.

Failing to disclose a conflict of interest in accordance with the Act can result in criminal prosecution in a court, and/or a hearing by a Councillor Conduct Panel (for councillors) and/or disciplinary action under the code of conduct (for council staff).

There may be times when it is not clear whether you need to disclose a conflict of interest. It is ultimately your personal responsibility to determine whether a conflict of interest exists for you in relation to a matter. If there is a lingering doubt in your mind about whether you have a conflict of interest, it is better to remove yourself to ensure the integrity of the decision-making process.

The conflict of interest provisions should not be used as a mechanism to avoid decision-making responsibilities. Attempts to avoid decisions using the conflict of interest provisions may appear obvious based on the circumstances outlined in the disclosure, which may be publicly available.

Declarations of any conflicts of interest and the procedures you follow to exclude yourself from the decision-making process must be consistent with the council's Governance Rules and the staff code of conduct where relevant.

## Relevant legislation

The conflict of interest requirements outlined in this guide are found in the:

- Local Government Act 2020
- Local Government (Governance and Integrity) Regulations 2020

## Relevant documents

A range of other documents are also relevant to conflicts of interest, including:

- Governance Rules Guidelines;
- Quick Guide on Personal Interests Returns for Local Government; and
- Committee Guidelines.



## Part 2 – What is a conflict of interest?

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

- ✓ a material conflict of interest, and
- ✓ a general conflict of interest.

### Material conflict of interest

A material conflict of interest involves specific relationships or situations that could result in a benefit or loss.

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.*”<sup>1</sup>

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 can create a conflict of interest for a relevant person.

Affected persons include:

- the relevant person,
- a family member of the relevant person,

- a body corporate where the relevant person or their spouse is a director or on the governing body,
- the relevant person’s employer, unless it is a public body,
- a business partner of the relevant person,
- 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 received a disclosable gift.

#### Family member

A family member is a:

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

#### Body corporate

A reference to “person” includes a body corporate.

<sup>1</sup> Section 128 of the Act.

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 purpose<sup>2</sup> and any incorporated associations.<sup>3</sup>

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.<sup>4</sup>

#### 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 of Victoria, any other State, or a Territory of the Commonwealth, or the Commonwealth.

#### 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 any gift valued at or above \$500 or a higher amount (if prescribed in the Regulations) that a relevant person received in the preceding five years if:

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

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

A disclosable gift does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.

A gift includes any good or service (other than volunteer labour) that is provided for free or at an inadequate price. It includes a payment or contribution at a fundraising function.

<sup>2</sup> Section 3 of the Act, see definition of Corporation; section 57A Corporations Act 2001.

<sup>3</sup> Associations Incorporation Reform Act 2012.

<sup>4</sup>

[https://www.nfplaw.org.au/sites/default/files/media/Unincorporated\\_groups\\_0.pdf](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
- in a pecuniary or non-pecuniary form.

#### 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 person is affected 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 neighbour 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 could include:

- something that affects 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.

### General conflict of interest

A general conflict of interest is less specific and direct than a material conflict of interest.

The Act says a relevant person will have a general conflict of interest in a matter if *"an impartial, fair minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty"*.<sup>5</sup>

There are three parts of a general conflict of interest which should all be considered:

- the private interest,
- the public duty, and
- what an impartial, fair-minded person would consider.

<sup>5</sup> Section 127 of the Act.

Declarable associations are captured under general conflicts of interest as they are a type of conflict of interest that can arise from a public officer's personal associations and which may compromise the public officer's duties, functions or integrity.<sup>6</sup>

### *Private interest*

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

A 'private interest' is any interest a councillor has that does not derive from their public duty. It can include any direct or indirect interest that they have.

The scope for what can be a private interest is very broad and might include:

- a change to personal circumstances that does not involve an identifiable gain or loss,
- a close friendship or association with someone who stands to benefit from a council decision,
- significant past employment with a company with an interest in a matter.

Private interests do not include an interest that is only a matter of personal opinion or belief.

### *Public duty*

A relevant person should not act in a manner that is contrary to their public duty.

Public duty means the responsibilities and obligations that the relevant person has to members of the public in their role.

The role of a councillor is to participate in council decision making, represent the interests of the municipal community in the decision making and contribute to the strategic direction of the Council<sup>7</sup>. The role of a council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community, which includes giving effect to the overarching governance principles described in the Act. A councillor must also abide by the standards of conduct prescribed by the regulations.

The role of a delegated committee is to exercise any power, duty or function of the council delegated to the committee.<sup>8</sup>

<sup>6</sup> *Managing corruption risks associated with conflicts of interest in the Victorian Public Sector*, Independent Broad-based Anti-corruption Commission, October 2019.

<sup>7</sup> See section 28 of the Act.

<sup>8</sup> See section 11 of the Act.

The CEO supports the mayor and the councillors to perform their roles and ensures the effective and efficient management of the day to day operations of the council<sup>9</sup>. The role of council staff is to enable the functions of the council to be performed<sup>10</sup>. The role of the CEO and council staff includes the exercise of statutory powers and delegated functions and the provision of advice to the council, delegated committees and community asset committees.

A general conflict of interest arises if a relevant person's private interests *could* result in them acting in a manner contrary to their public duty. A relevant person should therefore consider whether their private interest/s may be perceived to affect the performance of their public duty.

### *Impartial, fair-minded person*

Whether a relevant person's private interests *could* result in them acting in a manner contrary to their public duty is determined by whether an "impartial, fair-minded person" could reach that conclusion.

It assumes the impartial, fair-minded person is in full possession of the facts (fair-minded) and does not have any personal interest in or bias in relation to the outcome of the matter (impartial).

<sup>9</sup> See section 46 of the Act.

## Exemptions

A conflict of interest does not arise in some defined situations. These exemptions apply to both material and general conflicts of interest:

- Remoteness / insignificance;
- Interest in common;
- No knowledge;
- Council representative;
- Family memberships;
- Advocacy organisations; and
- Prescribed exempted council decisions and circumstances.

It is important to note that these exemptions should not be relied on without proper consideration and care. Further detail on each exemption is included below.

### *Remoteness*

A relevant person does not have a conflict of interest if their interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the relevant person's actions or decisions.

### *Interest in common*

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

- is held in common with a substantial proportion of residents, ratepayers or electors, and

<sup>10</sup> See section 48 of the Act.

- the interest does not exceed the interest held by those residents, ratepayers or electors.

When considering this exemption, a relevant person should consider if a particularly large proportion of residents, ratepayers or electors are affected in the same way and to a similar extent.

### *No knowledge*

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

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

### *Council representative*

A conflict of interest does not arise because of a relevant person's connection to a not-for profit organisation if:

- the relevant person is the council representative on the organisation, and
- the relevant 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 purposes and which does not share or allocate funds or profits to owners, shareholders or executives.<sup>11</sup>

### *Family memberships*

A relevant person may not have a conflict of interest if it only arises because a family member is a member, but not an office holder, of a not-for-profit organisation, such as a sporting club or community association.

### *Advocacy organisations*

A relevant person may not have a conflict of interest if the interest only arises because they are a member of a not-for-profit organisation that has advocated for or expressed an opinion in regard to the matter.

A relevant person should consider if the organisation has another interest, such as applying for funding.

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<sup>11</sup> Section 126 of the Act.

### Exempted Council decisions and circumstances

In addition to the general exemptions for conflicts of interest under the Act and described in this Guide, 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 following<sup>12</sup>:

- 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;

<sup>12</sup> Local Government (Governance and Integrity) Regulations 2020.

- 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;
  - 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.



## Part 3 – Disclosure requirements

### Disclosure requirements

Relevant persons are required to disclose conflicts of interest in particular situations, including where a matter:

- is to be considered at a council meeting, or
- is to be considered at a meeting of a delegated committee, or
- is to be considered at a meeting of a community asset committee, or
- that arises in the course of the exercise of a power of delegation by a member of council staff, or
- that arises in the course of the exercise of a statutory function.

Councillors are also required to disclose conflicts of interest at other meetings conducted under the auspices of Council.

In most cases, disclosure requires:

- disclosing the conflict of interest, and
- removing yourself from the decision-making process.

### *Council and delegated committees*

Council meetings are the central decision-making forum for a local council and are expected to be attended by all the councillors.

Delegated committees are committees established by the council which may be delegated a power, duty or function of a council.

In council meetings or a meeting of a delegated committee, a councillor or delegated committee member (including a member of council staff) must:

- disclose any conflict of interest (as required by council's Governance Rules<sup>13</sup>),
- exclude themselves from the decision-making process (e.g. leave the meeting while the matter is considered),
- not participate in any discussion or vote on the matter, and
- not participate in any action in relation to the matter.

A council's Governance Rules will include detailed conflict of interest procedures.

It is not sufficient to simply leave the room or be absent for the item without disclosing the conflict. Any conflicts of interest must be disclosed.

<sup>13</sup> See Governance Rules Guidelines.

Council staff providing information in relation to a matter to be considered at a council or delegated committee meeting must disclose the conflict of interest and follow the procedures outlined in the Governance Rules.

### *Community asset committees (CACs)*

Community asset committees are established by council for the purpose of managing a community asset in the municipal district, which may be delegated a power, duty or function of the CEO.

CACs are administrative, rather than policy, committees and they are subject to the administrative procedures set out by the CEO when delegating functions to the committee.<sup>14</sup> This may include procedures for disclosing conflicts of interest.

CAC members who are not councillors or members of council staff must disclose conflicts of interest and comply with the procedures set out for the committee by the CEO.

Councillors or council staff members who are CAC members must:

- disclose any conflict of interest (as required by council's Governance Rules),
- exclude themselves from the decision-making process (e.g. leave the meeting while the matter is considered),

- not participate in any discussion or vote on the matter, and
- not participate in any action in relation to the matter.

Council staff providing information in relation to a matter to be considered at a community asset committee meeting must disclose the conflict of interest and follow the procedures outlined in the Governance Rules.

### *Other meetings conducted under the auspices of the council*

Councillors must disclose conflicts of interest in other meetings that are conducted under the auspices of the council. This may mean a meeting organised by the council, resourced by the council or arranged with council support, such as:

- 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.

<sup>14</sup> See s.47 of the Act

A councillor must disclose any conflict of interest that arises in one of these meetings. The councillor must comply with the procedures specified in council's Governance Rules. The requirements may vary depending on the nature of the meeting.

A councillor must not participate in a portion of a meeting where there is discussion of a matter for which they have a conflict of interest. For example, a councillor should 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.

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 may not need to 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 involved in the decision-making process or 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.

### *Exercising a power of delegation or a statutory function*

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, or
- 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.

## Consequences of failure

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

If the Chief Executive Officer (CEO) fails to meet the disclosure requirements, the Mayor must notify the Chief Municipal Inspector (CMI) as soon as practicable after the Mayor becomes aware that the CEO has failed to comply with the disclosure requirements.

If a member of council staff fails to meet the disclosure requirements, the CEO must notify the CMI as soon as practicable after the CEO becomes aware of the failure and must deal with the failure in accordance with the code of conduct for members of council staff.

If the person who fails to comply with the disclosure requirements is a person other than a councillor or a member of council staff, the CEO must notify the council and make a recommendation as to the action that is to be taken.

The CMI has powers to investigate allegations of failing to disclose a conflict of interest and to initiate proceedings in a court or a hearing by a councillor conduct panel.

### *Criminal proceedings*

A councillor may be charged with a criminal offence if:

- the conflict of interest is a material conflict of interest
- the councillor failed to disclose the conflict of interest as required by section 130(2)
- they have a previous finding against them of a breach of conflict of interest.

If found guilty, a councillor may be fined up to 120 penalty units.<sup>15,16</sup>

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.

A Councillor, delegated committee member or member of council staff may be charged with a criminal offence if the conflict of interest is a material conflict of interest and they fail to disclose it according to the requirements of the Act. If found guilty, they may be fined up to 120 penalty units.

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<sup>15</sup> Section 130 of the Act.

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

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 intentionally misuse their position directly or indirectly to gain an advantage for themselves or for any other person or cause or attempt to cause detriment to council or another person.

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.

### *Conduct proceedings*

If a councillor fails to disclose any conflict of interest, an application for serious misconduct may be made to a Councillor Conduct Panel by the Council following a resolution, a Councillor or a group of Councillors or Chief Municipal Inspector.

If a Councillor Conduct Panel makes a finding of serious misconduct it may:

- reprimand the councillor,
- direct the councillor to make an apology,
- impose a suspension of up to 12 months,
- direct that the councillor is ineligible to chair a delegated committee for up to the remainder of the council's term,
- direct that the councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term.

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

Unless the panel specifies otherwise, a finding of serious misconduct means the councillor is ineligible to be Mayor or Deputy Mayor for the remainder of the council term.

## Part 4 – 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*”<sup>17</sup>

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 member<sup>18</sup>.

<sup>17</sup> Section 3 of the Act.

<sup>18</sup> Part 7 of this Manual.

- 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 Rules<sup>19</sup>.
- 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 register<sup>20</sup>.

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.

## Election Campaign Donations

The Act continues requirements for candidates in council elections to disclose election campaign donations.<sup>21</sup>

### *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 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.

<sup>19</sup> Parts 3 and 4 of this Manual.

<sup>20</sup> Section 138 of the Act.

<sup>21</sup> Sections 306 to 310 and the definitions in s3(1) of the Act.

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

Returns should be lodged using the prescribed form.

### *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.



## Part 5 – Personal interests returns

The Act and the Regulations substantially update arrangements for the lodgement and management of personal interest returns<sup>22</sup>.

The changes include:

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

### Lodgement of returns

#### *What is a personal interests 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 by placing on the record interests, pecuniary and non-pecuniary, which may conflict or may be seen to conflict with a specified person's duties.

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".

#### *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 return

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

<sup>22</sup> Sections 132 to 136 of the Act.

- 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.
- 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

All specified persons must lodge initial personal interests returns under the new legislation 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 with this requirement.

### 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 September.<sup>23</sup>

### *Matters to disclose*

The matters to be disclosed in personal interests returns have been updated under the new 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 matters:<sup>24</sup>

<sup>23</sup> Local Government (Governance and Integrity) Regulations.

<sup>24</sup> Local Government (Governance and Integrity) Regulations

- 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);
- 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 Local Government (Governance and Integrity) Regulations 2020 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 or disclosed in an election campaign donation return).

#### Forms

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

No form can capture all circumstances. You should bear in mind the purpose and spirit of your return in deciding which matters should be disclosed. In deciding which interests to declare (and whether they should be retained), you should carefully consider the extent of your responsibilities and your duties. Generally speaking, it is better to disclose more rather than less.

### 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.

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

The Act and the Regulations prescribe what must and must not be included in a summary of personal interests return.

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

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

New provisions have been made to ensure confidentiality of personal interests 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 interests 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.

## Part 6 – Conflict of Interest and Effective Decision-Making

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### 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 considered<sup>25</sup>.

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.

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<sup>25</sup> Section 60(2) of the Act.

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 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)*<sup>26</sup> 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](https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0021/47451/2013-Ensuring-Unbiased-Democratic-Council-Decision-Making-April-2013.pdf)

## Part 7 – A checklist and some examples

This part of the guide includes a checklist as a useful way to identify a possible conflict of interest and gives some examples of situations where conflicts of interest need to be considered.

### Checklist

A common mistake made when assessing conflicts of interest is to seek advice 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, the relevant person should ask questions about all their possible connections with the matter.

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.



## Examples

These examples are for illustration only. No two situations are exactly alike, and you must consider what the law requires on each occasion when you have a possible conflict of interest.

While these examples seek to reflect issues that can arise in local government, they do not describe actual situations, refer to real people or reflect the expected outcomes of a consideration of a conflict of interest by an integrity body or a court.

### *Planning permit*

#### Background

The council is considering a planning permit that seeks approval to construct a multi-unit dwelling.

#### Councillor A

The application for the permit has been lodged by Councillor A, who owns the land. Councillor A is an affected person.

Councillor A may have a material conflict of interest because she appears to stand to gain a benefit if the permit is approved. Approval to construct a multi-unit dwelling is a direct, non-pecuniary benefit as it may result in an improved lifestyle for Councillor A. If the value of the land increases because of the approval, Councillor A may gain a direct pecuniary benefit. She must disclose a conflict of interest.

#### Councillor B

Councillor B is a Council-appointed director of the regional water catchment authority which, as a referral authority, requires additional works as a condition of the planning permit.

The regional water catchment authority is an affected person because it is a body corporate of which Councillor B is a director.

A conflict of interest may not arise if Councillor B is the representative of the council and does not receive a personal advantage, such as remuneration (this is an exemption under section 129).

#### Councillor C

Councillor C, who does not live near the proposed multi-unit dwelling, is a member of a resident action group that is opposed to multi-unit developments in the area. Councillor C is the affected person.

A conflict of interest may not arise for Councillor C if the resident action group is a not-for-profit organisation that has expressed an opinion or advocated for an outcome in the matter (this is an exemption under section 129).

Councillor C appears not to have a general conflict of interest because her private interest (opposition to multi-unit developments) is a personal belief or opinion.

It is important to note that councillors may have opinions on issues that come before them during their deliberations. However, it is expected that when considering matters that might adversely affect a person's rights and interests, councillors will bring an open mind to those matters, free from bias and open to persuasion.<sup>27</sup>

### *Planning scheme amendment*

#### Background

The council will consider a planning scheme amendment that, if approved, will rezone a substantial area of farmland for residential use.

#### Councillor D

Councillor D is a farmer and part of his farm is within the proposed area to be rezoned for residential. Councillor D appears to be an affected person.

The proposed rezoning may increase the value of Councillor D's land (a direct pecuniary benefit). Councillor D should consider whether he may suffer a loss if he is no longer able to farm the land. Councillor D appears to have a material conflict of interest in the planning scheme amendment.

#### Councillor E

Councillor E received an election campaign donation before the last election from a company that owns land in the proposed rezoning area. The donation has a value of over \$500.

The company is an affected person because they are a person (which includes body corporates) from whom Councillor E received a disclosable gift.

Because he received a disclosable gift from the affected person, Councillor E appears to have an indirect material interest in respect of the planning scheme amendment. The company has a direct pecuniary interest because they may gain a benefit or suffer a loss depending on the outcome of the matter.

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<sup>27</sup> In *Winky Pop Pty Ltd v Hobsons Bay City Council* (2007), the Supreme Court found that a councillor's involvement in a council decision about a proposed planning scheme amendment was sufficient to invalidate the decision. By making an individual submission through the process, the councillor demonstrated that he had prejudged the matter in that he had made up his mind in advance of the formal council decision-making processes and therefore had not been open to persuasion through council's formal consideration of the matter.

Councillor F

Councillor F is a member of a community action group that opposes the rezoning and advocates maintaining a “village atmosphere”. Opposition to the development was also a significant focus of her campaign for election to the council.

Councillor F appears not to have a conflict of interest just because she is a member of an organisation that has advocated a position on the rezoning. Neither do her campaign commitments appear to create a conflict of interest. However, Councillor F may want to consider whether she can bring an open mind to the matter, free from bias and open to persuasion.

*Major contract*Background

The council needs to approve a new contract for the municipality’s waste collection.

Councillor G

Councillor G owns \$5000 of shares in a company that is a short-listed tenderer for the contract. Councillor G is an affected person.

As the company is very large, with a total share capital exceeding \$100M, it appears Councillor G would not gain an indirect pecuniary benefit because of the council decision. This is because Councillor G’s interest is

insignificant in terms of the size of the company so that that it could not be reasonably regarded as capable of influencing the actions or decisions of Councillor G.

Councillor G therefore appears not to have a material conflict of interest because of the shares.

It should be noted that a higher proportion or value of a shareholding, especially for a company with a smaller total share capital, may result in a conflict of interest.

Councillor H

Councillor H held a senior position with the company for many years and maintains close personal friendships within the company. An impartial, fair-minded person may consider that Councillor H’s previous employment could result in him acting in a manner that is contrary to his public duty (e.g. influencing his decision-making).

Councillor H appears to have a general conflict of interest in terms of the decision regarding the contract.

Councillor I

Councillor I is a non-remunerated council representative on a waste coordination body that deals with municipal waste management matters at a regional level.

Councillor I may not have a conflict of interest because they are the council representative on a body that has an interest in the matter, so long as they receive no personal advantage from the waste coordination body.

### *Construction contract*

A delegated committee is considering reconstruction of a local bridge and is finalising what type of bridge will be required.

#### Delegated committee member A

Delegated committee member A is employed by a company that may tender for the bridge construction contract.

Delegated committee member A is the relevant person and the employer is the affected person.

Delegated committee member A appears to have a general conflict of interest regarding the bridge reconstruction. An impartial, fair-minded person may consider that Delegated committee member A's employment could result in him acting in a manner that is contrary to his public duty.

As the company is not guaranteed work until contracts are let, there may be no definite benefit. It appears unclear whether delegated committee member A would have a material conflict of interest in this case.

However, the delegated committee member's employment with the company may create an interest that might reasonably influence the way he votes on bridge related matters, such as the consideration of different types of bridges. He therefore may have a general conflict of interest.

If the company does tender for the bridge construction contract, delegated committee member A's employer may be an affected person and appears likely to gain a benefit or suffer a loss depending on the outcome of the matter, which could potentially lead to a material conflict for delegated committee member A.

### *Car park*

#### Background

A delegated committee is considering construction of a large new car parking area behind a shopping strip. It is proposed that the parking be free.

#### Delegated committee member B

Delegated committee member B leases premises and conducts a retail business in the shopping strip. Delegated committee member B appears to be an affected person.

As the car park is likely to increase the amount of retail trade in the area, the delegated committee member may have a direct pecuniary interest in the proposal. She appears to have a material conflict of interest.

Delegated committee member C

Delegated committee member C owns and runs a commercial car parking business which services the shopping strip. Delegated committee member C appears to be an affected person.

Delegated committee member C may have a material conflict of interest because she may suffer a direct pecuniary loss if the car park was constructed. This is because the proposed new car park may reduce overall demand for commercial parking, either by reduced patronage in delegated committee member C's car park or by a downward pressure on car parking prices.

*Lease of property*Background

A delegated committee is considering the renewal of a lease of a council property that is currently used as a private childcare centre.

Delegated committee member D

A close personal friend of delegated committee member D is the lessee and operator of the childcare centre.

Delegated committee member D appears not to have a material conflict of interest because the friend is unlikely to fall under the definition of affected person under the Act.

A close friendship may create a private interest for delegated committee member D. An impartial, fair-minded person may consider that delegated committee member D's close friendship could result in him acting in a manner that is contrary to his public duty. It appears that delegated committee member D may have a general conflict of interest.

*Wind farm planning permit*Background

The council is required to assess the proposal for a new wind farm for the purposes of a planning permit. The manager with responsibility for the assessment will be discussing the matter with councillors in a briefing.

Councillor J

Councillor J owns a farm near the facility and his home is within sight of some turbines. He formally opposed the wind farm proposal because he is concerned that it will damage his family's health.

Whether or not there are health problems associated with wind farms may be a contested issue. If the councillor is right, and there are demonstrated health problems associated with living near a wind farm, then he may have a material conflict of interest.

However, the value of his property may decline as a result of the wind farm and Councillor J may suffer a direct pecuniary loss. He therefore may be considered to have a material conflict of interest.

Councillor J also appears to have a general conflict of interest because his personal interests in the matter may influence the way he performs his duty as a councillor.

### *Special purpose charge*

#### Background

The council will consider whether to declare a special purpose charge to reconstruct a road and replace drainage.

#### Councillor K

Councillor K's parents live on the affected road and would be required to pay the special purpose charge. A family member may be an affected person.

Councillor K may have a material conflict of interest because members of her family may gain an indirect non-pecuniary benefit (access to their property on a reconstructed road with improved drainage) and incur a direct pecuniary loss.

#### Councillor L

Councillor L lives near the affected road and suffers from drainage problems that will be fixed under the proposed scheme. Councillor L may be an affected person.

Councillor L appears to have a material conflict of interest because he may gain a non-pecuniary benefit from replacement of the drainage. This may not be altered by the fact that he is not being required to pay the special charge.

### *Community grants*

#### Background

A delegated committee is scheduled to vote on community grants.

#### Staff member A

Staff member A is a member of the delegated committee and an ordinary member of the tennis club, which has applied for funding to refurbish its rooms.

Staff member A may have a general conflict of interest because an impartial, fair-minded person may consider that staff member A's membership could result in her acting in a manner that may be contrary to her public duty.

#### Delegated committee member E

Delegated committee member E's daughter is a member of a cricket club, which has applied for funding for wicket upgrades.

It may not be a conflict of interest (exemption) if delegated committee member E's interest only arises because a family member is a member (and not an officeholder) of a not-for-profit organisation.

#### Councillor M

Councillor M's domestic partner is the secretary of a local community service organisation that has applied for funding to conduct a community event.

Councillor M may have a material conflict of interest because the community service organisation (being an affected person: a body corporate of which the relevant person's spouse is a member of the governing body) may gain a direct pecuniary benefit.

It appears that Councillor M may be unable to rely on an exemption because her domestic partner is an officeholder.

### *Recreational reserve*

#### Background

The council is preparing a masterplan for the future development of an existing recreational reserve.

#### Councillor N

Councillor N lives in a house he owns with his partner on land adjacent to the reserve.

Councillor N may have a general conflict of interest because an impartial, fair-minded person may consider that Councillor N's private interest could result in Councillor N acting in a manner that is contrary to his public duty, by influencing the content and direction of the masterplan.

If the development would alter the value of his property, he may also have a material conflict of interest.

#### Councillor O

Councillor O is a professional horticulturalist employed by the company contracted to prepare a draft masterplan for the reserve. The company appears to be an affected person as the employer of Councillor O.

Councillor O may have a material conflict of interest in relation to decisions relating to the adoption or appraisal of the masterplan because of the potential benefits or losses to his employer that may arise from council decisions.

#### Councillor P

One of the options under consideration is to purchase land adjoining the existing reserve to provide more sports facilities.

Councillor P is a real estate agent retained by the owner of the adjoining land to facilitate the sale. The landowner appears to be an affected person for whom Councillor P is a consultant, contractor or agent.

Councillor P may have a material conflict of interest because the landowner may gain a direct pecuniary benefit if the land is sold.

#### Councillor Q

Councillor Q is a Council-appointed member of the community asset committee that manages the reserve for the council. The original recommendation for development was made by this committee.

Councillor Q may not be an affected person. The councillor may not have a material or general conflict of interest. Councillor Q's interest appears to derive from her public duty.

### *Secondary employment / income*

The council is considering tenders for a road construction project with the final contract to be awarded by the council.

### Staff member B

Staff member B has been asked by her manager to be on the tender evaluation panel for the project. She is also a regular sub-contractor for a company who has tendered for the project.

Staff member B may stand to gain a benefit if the company is awarded the tender and subcontracts work to her. Were she to participate in the panel, a material conflict of interest may arise.

A general conflict of interest may also arise if she participates on the panel, as it appears that her private interests as a regular subcontractor of the company may result in her acting in a manner that is contrary to her public duty.

If she hasn't already done so and before agreeing to be on the panel, it appears that staff member B should declare a conflict of interest in relation to the company and follow the procedures outlined in the staff code of conduct.