

Conflict of Interest

A guide for members of Council committees

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Introduction

This Guide is for people who are members of Council committees but who are not Councillors or members of Council staff.

Why worry about conflicts of interest?

Being a member of a Council committee is a position of trust that involves obligations to the community and to the Council. It must be clear to everyone that you are not using your position to serve your own interests or the interests of someone close to you.

For this reason, the *Local Government Act 1989* (the Act) requires members of many Council committees to disclose conflicts of interest and not participate in a decision when they have a conflict of interest.

Failure to disclose a conflict of interest may be an offence that can be prosecuted in a court. It is your responsibility to identify and disclose your conflicts of interest when required to do so.

This Guide

Part 1 - describes committee types and how to disclose conflicts of interest.

Part 2 - describes the types of interests that are conflicts of interest.

Part 3 - summarises the requirement to lodge regular interest returns.

Getting help

In addition to this Guide, assistance with conflict of interest matters may be sought from:

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

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

While this Guide summarises your obligations, the definitive statement of your legal obligations is the law itself – particularly sections 76AA to 81 of the Act. (The Act is published on the web at www.legislation.vic.gov.au).

1. Making Disclosures

Committee types

There are several types of Council committees, including:

- Special committees
- Audit committees
- Section 223 committees
- Advisory committees

Unless your committee is only an advisory committee you must disclose conflicts of interest in committee meetings. If you don't know what type of committee you are on, you should check with the Council.

Special committees

Conflicts of interest must be disclosed in special committees.

A special committee is any committee that has been delegated a power or duty by the Council. Every special committee should have an "instrument of delegation" that defines its powers and functions.

Special committees may be established to manage facilities such as:

- community halls
- recreation reserves
- saleyards
- aerodromes
- sporting facilities
- arts venues.

Special committees may also be established for special purposes such as:

- organising festivals or events
- allocating community grants
- marketing shopping areas.

Some special committees are established to make particular types of Council decisions, such as planning decisions. These are usually made up of Councillors or members of Council staff, but they can sometimes include other people.



There are three steps to take when disclosing a conflict of interest:

1. Tell the committee that you have a conflict of interest. This must be done immediately before the matter is considered.
2. Tell the Chair that you are leaving the meeting.
3. Leave the room and any area where you can see or hear the meeting until the matter has been concluded.

When telling the committee about your conflict of interest you must state the class of interest (see part 2) and describe the nature of the interest. For example, a person disclosing a conflict of interest might say, *“I have a conflict of interest in the decision to employ a caretaker because of a close association. This is because my brother is an applicant for the position.”*

If you are concerned about having to disclose confidential or private information when disclosing a conflict of interest, you should seek advice from the Council administration before the meeting. The Act provides an alternative procedure that may assist you in such cases.

Conflict of interest disclosures are recorded in the minutes of the meeting. When the minutes are considered for adoption at the next meeting, you should check that your disclosure has been correctly recorded.

(See also part 3: “Register of Interests”)

Audit committees and section 223 committees

If you are a member of the Council’s audit committee or of a committee established by the Council to hear public submissions under section 223 of the Act you must disclose conflicts of interests in the same way as in a special committee.

Advisory committees

Councils sometimes establish other committees to advise the Council about particular matters. While advisory committees are not subject to the same conflict of interest rules as special committees, the Council may still require you to disclose conflicts of interest.

Even if you are not required by the Act or by the Council to disclose conflicts of interest, it is still recommended that you disclose any private interests you have in matters being considered by the committee.

2. Direct and Indirect Interests

This part of the guide describes the different classes of interests that give rise to conflicts of interest.

Classes of interests

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

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

These are described in detail on the following pages.

(Also see “General exemptions” on page 11.)

Direct interest

A person has a “direct interest” if he or she is likely to be directly affected by a decision or action of the committee. This is not just financial interests.

Examples of direct interest include proposals that will:

- give you money or property or take it from you
- appoint you to a paid position
- approve a contract with you
- grant you a permit
- market your business
- approve your use of a facility.

You have a **conflict of interest** in a matter if you have a direct interest in a matter considered in a committee meeting.

You also have a conflict of interest if your family member, relative or housemate has a direct interest in a matter before the committee (*see the following section on “close association”*).



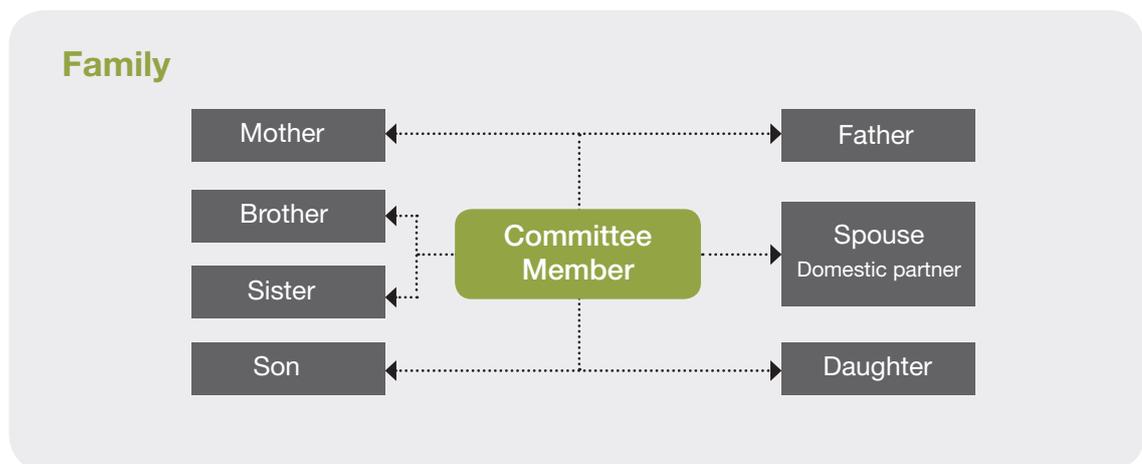
Indirect interest – Close association

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

Family members include

- your spouse or domestic partner
- your son or daughter who lives with you
- your brother or sister who lives with you
- your father or mother who lives with you.

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

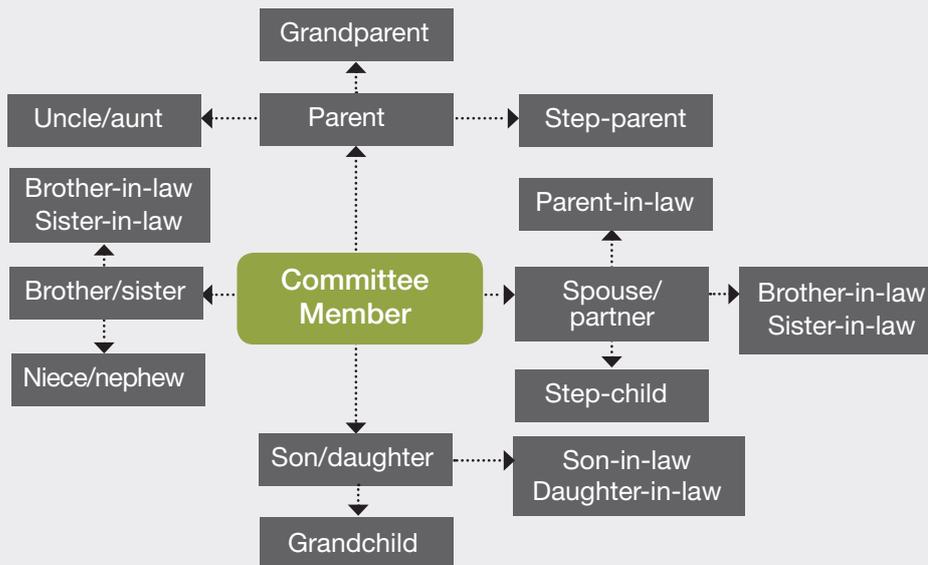


Relatives include all people who are related to you who are once or twice removed, whether they live with you or not. This includes:

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

If your relative has a **direct interest** in a matter, then you have a conflict of interest in that matter. You may not have a conflict of interest if your relative only has an indirect interest.

Relatives



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

Indirect financial interest

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

For example, you have an indirect financial interest if:

- the committee is considering awarding a contract to a company in which you hold substantial shares
- the committee is considering employing someone who owes you money
- the committee is considering a marketing strategy that will publicise the company that employs you
- the committee is setting or changing fees that you are likely to have to pay.



You have an indirect financial interest if you or a member of your family holds **shares** in a company that has a direct interest. The only exception is when **both** of the following conditions apply:

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

There is no exemption for shares held in a small company that has a total share value of less than \$10 million, no matter how few shares you have.

When working out if your shares give you a conflict of interest you should take account of the value the shares on the date of your last ordinary return, if applicable (*See Part 4*), or on 30 June or 31 December – whichever is latest.

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

You have a **conflict of interest** in a matter if you or a member of your family has an indirect financial interest.

Indirect interest – Conflicting duty

You have a **conflict of interest** in a matter if you, or a member of your family, has a conflicting duty. A “conflicting duty” is where a person has a duty to a person or organisation that may conflict with your committee duty.

A conflicting duty is defined to exist if a person is:

- a manager or a member of the board/committee of an organisation that has a direct interest
- a partner, consultant, contractor, agent or employee of a person or organisation that has a direct interest
- a trustee for a person who has a direct interest.

For example, you have a conflicting duty if:

- the committee is considering a contract or agreement with a company you work for
- the committee is considering a permit request from a person and you are the person’s agent or consultant
- your husband is on the committee of a club that is applying for funding from the committee.



Special arrangements apply if the Council has appointed you to the special committee to represent a not-for-profit organisation. In this situation, you do not have a conflicting duty just because a decision will affect the organisation you represent.

For example: if the council specifically appointed you to the hall committee to represent the CWA, you do not have a conflict of interest in a decision to allow the CWA to book the hall for a function.

Indirect interest – Applicable gift

Sometimes you can have a conflict of interest because of a gift or gifts you have received.

An “applicable gift” includes any gift with a value of at least \$500 received in the past five years from a person who has a direct interest, including:

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

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

- a friend, who has allowed you to use her holiday house on a regular basis, has applied for a permit from the committee and the value of the free accommodation would be over \$500
- a sporting club, that has subsidised personal training for your daughter to a value of \$500, has applied to the committee for a grant.
- a local paper, that has given your business free advertising worth more than \$500, is applying for a contract

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

You have a **conflict of interest** if you or a member of your family has received an applicable gift or gifts from someone with a direct interest in the matter.



Indirect interest – Party to the matter

If you or a member of your family is, or has been, a party to civil proceedings relating to a matter, you will have a **conflict of interest** in that particular matter. This includes having been an applicant or respondent in a related matter before either a court or a tribunal (such as VCAT).

Indirect interest – Residential amenity

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

For example, you are likely to have a conflict of interest if you are on a committee that is organising a festival, and the committee is considering conducting late night events in the street where you live.

General exemptions

The Act provides three types of general exemptions to a conflict of interest.

Remoteness

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

In common

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

No knowledge

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

Always seek advice about exemptions

It is recommended that you seek advice from someone who is familiar with the conflict of interest rules before relying on any of these exemptions (See “Getting help” on page 3).



3. Register of Interests

The Act requires members of Council special committees and audit committees to lodge primary and ordinary returns.

However, the Council can determine that the members of a special committee do not need to lodge returns. This is usually only done after considering what powers have been delegated to that committee.

The Council may also exercise its discretion to require members of other committees, such as advisory committees, to lodge interest returns.

If you are in any doubt about whether or not you should lodge interest returns, you should seek advice from the Council administration.

Primary returns

If you are required to lodge interest returns, you must lodge a primary return within 30 days after becoming a member of the committee.

Information that needs to be included in a primary return includes information about offices you hold in companies or organisations, shares and land you own and trusts you are involved in.

Ordinary returns

If you are required to lodge interest returns, you must lodge an ordinary return twice each year.

- Within 40 days after 30 June, and
- Within 40 days after 31 December.

An ordinary return includes similar information to a primary return, plus information about gifts valued at \$500 or more.

Guidelines and forms

Standard forms and detailed guidance material is available for people who have to lodge interest returns. These can be obtained from your Council administration.

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