

Disclosures and Conflicts of Interest

How to understand and manage conflicts and disclosures

Councillors must ensure there is no conflict or incompatibility between their personal interests and the impartial fulfillment of their public duties.

The Local Government Act requires councillors to differentiate between an 'interest', 'conflict of interest' and 'pecuniary interest'. The procedure to be followed and obligations on a councillor will depend on which 'interest' they are deemed to have. The procedure for identifying and disclosing the different types of 'interest' is provided below.

An **Interest** arises if a councillor, special committee member or close associate receives (or has a reasonable expectation of receiving) a direct or indirect pecuniary or non-pecuniary benefit; or suffers a direct or indirect pecuniary or non-pecuniary detriment.

A councillor must disclose the nature of their interest before a matter is considered or discussed and the interest must be recorded in the minutes of the council or special committee meeting.

A **conflict of interest** applies only in respect to a contract or proposed contract or other matter if there is either a 'direct or indirect pecuniary interest or the councillor/special committee member forms an opinion that their interest may conflict with the proper performance of their public duties'.

When a councillor has a conflict of interest, they must follow certain procedures if they intend to be present at the meeting where the conflict is to be discussed. These procedures include disclosing the nature of the conflict immediately before consideration or discussion and not taking part in a motion relating to the contract or matter and leaving the room while a vote is taken. The disclosure must be recorded in the minutes of the meeting. Penalties apply for non-compliance with these procedures.

If a councillor is not to be present at the meeting they must still disclose the nature of their conflict of interest to the CEO, mayor or chairperson.

The Local Government Act does not set out a simple, definition of what constitutes a **pecuniary interest**. Whether something is, or is not, a pecuniary interest or indirect pecuniary interest will depend on the facts in each particular case.

Basically, a pecuniary interest is any interest capable of being measured in terms of money. Such interests need not involve an advantage to councillors and may even be to their detriment. An indirect pecuniary interest can also result from a councillor's domestic partner or spouse having a pecuniary interest in a contract or matter.

When a particular matter in which a councillor has an interest comes before a council meeting, the councillor must declare that interest. The councillor can remain in the council chamber for debate on the matter but must leave the chamber before any vote is taken, including any procedural motion.

In addition to any disclosure at a meeting, on taking office a councillor is required under the Local Government Act to complete a form disclosing any pecuniary interests. This information is recorded in a register of interests that can be inspected by the public in certain circumstances. This information in the register of interest needs to be updated each year.

Penalties apply for non-compliance with these procedures.

Councillors are given access to all information held by the council that is necessary for them to properly perform their duties and meet their responsibilities. However, a councillor must not use council information to gain advantage for themselves or any other person or body, which is inconsistent with their responsibility to be impartial.

New requirements in the Local Government Act outline Rules of Conduct that require councillors and members of committees to act honestly; exercise reasonable care and diligence; not make improper use of their position; and not make improper use of information.

Councillors must also be careful not to disclose any confidential information obtained from council.

There are three specific circumstances where information can be deemed confidential:

- if it is provided at a closed meeting;
- designated by resolution of a council/special committee;
- designated by the CEO.

If a councillor releases information that they know, or should reasonably have known was confidential that councillor could be disqualified from continuing as a councillor for a period of seven years. Monetary penalties also apply to these provisions.

The Freedom of Information Act and the Privacy Act also apply to local governments.