

# Conflicts of Interest



A conflict of interest occurs when a public officer's duties conflict with their private or personal interests.

The *Local Government 2020 Act* uses the term “**relevant person**” to identify those persons who are required to determine and disclose conflicts of interest in local government, this includes Councillors, members of Council staff and external members of delegated committees. It is the personal responsibility of each individual to decide if they have an interest.

Requirements regarding conflicts of interest for councillors is covered in Division 2, Section 126 – 131 of the *Local Government Act 2020* and also covered under other sections of the Act, including:

- Section 60 (Governance Rules);
- Sections 132 -136 (Personal Interest Returns) and
- Sections 137-138 (Gifts).

## **Matters being considered by a council**

A relevant person who has a conflict of interest in a matter being considered by a council, a delegated committee or a community asset committee must disclose the conflict of interest in the manner required by the Council's Governance Rules. They must also exclude themselves from the decision-making process in relation to that matter, including any discussion or vote on the matter at any council meeting or delegated committee, and any action in relation to the matter.

Relevant persons who have a conflict of interest in a matter at a meeting conducted under the auspices of the council, for example a councillor briefing, are also required to disclose the conflict of interest in the manner required by the Council's Governance Rules and comply with the relevant procedures set out in the Rules.

## **Interests**

The *Local Government Act 2020* describes the two (2) types of interests - general conflicts of interest and material conflicts of interest. The *Local Government Act 2020* conflict provisions also apply to members of delegated committee and members of council staff.

### **General conflict of interest**

A relevant person has a general conflict of interest if an impartial, fair-minded person would consider that the person's private interests could result in the person acting contrary to their public duty.

'Private interests' means any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief.

'Public duty' means the responsibilities and obligations a relevant person has to members of the public in their role as a councillor, delegated committee member or member of council staff

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## Material conflict of interest

A relevant person has a material conflict of interest in respect of a matter if an *affected person* would gain a benefit or suffer a loss depending on the outcome of the matter.

The benefit may arise or the loss incurred:

- directly or indirectly
- in a pecuniary or non-pecuniary form

An *affected person* is:

- the relevant person
- a family member of the relevant person
- a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body
- an employer of the relevant person, unless the employer 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
- a person from whom the relevant person has received a *disclosable gift*

## Disclosable gift

A disclosable gift means one or more gifts with a value of, \$500 or more received from a person in the five years preceding the decision on the matter:

- if the relevant person held the office of councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or
- if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation— but 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.

## Conflict of interest exemptions

Section 129 of the *Local Government Act 2020* sets out various exemptions to the conflict of interest provisions where a relevant person is deemed not to have a conflict of interest despite an interest existing. A conflict of interest does not arise if any of the following applies:

- it is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the councillor in relation to the matter

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- it is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors
- the councillor does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances
- the councillor is the representative of the council on a not-for-profit organisation that has an interest in the matter and councillor receives no personal advantage from the not-for-profit organisation
- a family member of the councillor is a member but not an office-holder of a not-for-profit organisation
- the councillor is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter
- the interest arises in relation to a decision by a councillor on a matter or in a circumstance that is prescribed to be exempt by the regulations.

The Local Government Act 2020 also provides for [Local Government \(Governance and integrity\) Regulations 2020](#) for specific councillor exemptions.