

Summary:

Personal interests returns: Encouraging disclosure and increasing transparency

Introduction

The Local Government Act requires that councillors, members of delegated committees and key council staff submit a record of their personal interests to council. An initial personal interests return must be completed 30 days after election or appointment and biannually afterwards.

The personal interests returns scheme was introduced in the *Local Government Act 1989* (1989 Act) and was expanded in the *Local Government Act 2020* (2020 Act). The 1989 scheme compelled councils to maintain a register of interests which were available for public inspection. The 2020 Act requires councils to publish a summary of personal interests on their website.

Declaring personal interests and conflicts of interest ensures decision makers perform their duty in an impartial way and gives the public greater trust in the integrity of the decision-making process.

“Councillors and their decision making needs to be open, transparent and accountable.”

– council officer, responding to our survey on personal interests returns

The Local Government Inspectorate and other integrity agencies previously identified non-compliant personal interests returns as an ongoing issue affecting the local government sector.

In mid-2020, we initiated a review of all councillor interests returns for the 2016–20 council term under the 1989 Act to measure the level of compliance and identify possible improvements across the sector. We then contacted council officers from all 79 councils, and councillors with returns that were non-compliant, seeking feedback on levels of understanding of the interests returns process and any issues or challenges with compliance.

The review and survey responses helped us make recommendations for the new personal interests returns provisions in the 2020 Act and the *Local Government (Governance and Integrity) Regulations 2020*.

The Chief Municipal Inspector leads the Local Government Inspectorate and has powers under the Local Government Act to examine, investigate and prosecute any matter relating to council operations or breaches of the Act.

Recommendations

1. The *Local Government Act 2020* should be amended to:
 - include a deadline for the publication of the summary on the council website after the end of the prescribed period
 - require councils to have personal interests summaries available online for the duration of the council term.
2. The *Local Government Act 2020* and *Local Government (Governance and Integrity) Regulations 2020* should be amended to make it mandatory for CEOs to use a form in a Schedule to the Regulations when creating a summary of personal interests to ensure consistency across the local government sector.
3. Local Government Victoria should provide improved guidance to councils regarding:
 - how to determine which staff should qualify as nominated officers who are required to submit a personal interests return
 - a standard approach to compiling and presenting summaries on their websites, to assist comparison across councils.

Major review of compliance under the 1989 Act

For our major review of personal interests returns, we obtained copies of primary and ordinary returns completed by all councillors between October 2016 to February 2020 at 78 Victorian councils. Primary returns are the first return submitted after a councillor is elected and ordinary returns are the subsequent returns. We excluded the City of Whittlesea, as a standalone review into councillor interests returns in that municipality had been completed a few months prior.

Our examination consisted of a high-level review of personal interests returns for 61 councils and a detailed review for 17 randomly-selected councils from across Victoria. For the high-level review, we looked at whether returns had been submitted correctly, within the required timeframe and compared disclosed property interests with rates notices. We conducted more rigorous checks in the detailed review, including internet searches, and checks of land titles and business registers.

Overall, we identified a high level of non-compliance, with 51 per cent of councillors not completing at least one interests return strictly in line with section 81 of the 1989 Act. This ranged from one-off non-disclosures of an interest to multiple non-disclosures of multiple interests, combined with issues such as returns not being signed or witnessed.

Compliance submission of returns	Number
Number of councillors	650
Number of councillors who did not complete their returns in compliance with section 81 of the 1989 Act*	332 (51%)
Number of returns reviewed	4,600

Overall, we found five percent of councillors failed to disclose a land interest in all returns and thirteen percent failed to disclose a land interest in one or more returns. We identified even higher levels of non-compliance in the detailed review.

Non-disclosure of interests	Detailed review (147 councillors)	High-level review (503 councillors)
Failure to disclose office held – all returns	17 (12%)	1 (0%)
Failure to disclose beneficial interest in company – all returns	29 (20%)	6 (1%)
Failure to disclose land interest – all returns	9 (6%)	21 (4%)
Failure to disclose trust interest – all returns	10 (7%)	1 (0%)

Where possible non-disclosures were identified, we contacted councillors to seek their explanation.¹ As a result of our review:

- Seven councillors were interviewed
- 35 councillors received a written warning
- 85 received a letter reminding them of their disclosure obligations under the 1989 Act.

Further enforcement action is being considered in relation to one councillor.

Following the review, we surveyed the councillors whose interests returns had issues, as well as council staff from all 79 councils. We have used comments from our survey throughout this report to highlight issues councillors and staff had. Of the councillor respondents, 94 per cent agreed that the available guidance on interests returns was insufficient and could be improved.

When asked about what the issues were, common themes were that:

- the legal terms used in the legislation and forms were hard to understand
- there was a lack of training and guidance
- the process was paper based rather than electronic.

Personal interests summaries

In August 2021, we tested compliance with the requirement to publish a summary of interests returns under the 2020 Act. We reviewed the websites of 79 councils and found that three councils did not have a summary published at all and a further 13 had not published the summary of the biannual personal interests returns of March 2021.

The review also revealed a vast difference in the number of council staff required to submit a personal interests return. One council had no returns from staff in its summary, including the CEO, while another council had published the personal interests of 333 staff. The vastly different ways the summaries were published online also made it difficult to find and compare information. More consistency would improve transparency for the public and integrity bodies.

Increasing compliance through guidance and education

Many councillors we surveyed did not adequately understand the purpose or importance of disclosing interests. They also did not understand the relationship between completing returns and disclosing a conflict of interest in council meetings.

“Councillors can be a little blasé about the completion of their returns and perhaps don’t take it as seriously as they should.”

– council officer

Both councillors and council officers said the legislation requiring personal interests returns and the guidance provided by Local Government Victoria (LGV) contained complex legal terms and were difficult to understand.

As the owner of the legislation, LGV has a responsibility to publish guidance material that helps councillors and council staff to comply with the legislation and regulations. The guidance must be able to be understood by councillors from a range of educational and linguistic backgrounds.

“The language used needs to be simplified or examples given.”

– council officer

¹ We did not contact all councillors with non-compliance issues, only those with recent or more serious failures.

Councillors were also concerned that there was no way to seek guidance in relation to their personal circumstances, apart from engaging a lawyer or accountant at their own cost.

Councillors and council staff wanted LGV to improve its written guidance on personal interests returns by:

- seeking input from councillors and council staff
- using plain English and explaining legal terms
- using real-life examples.

They also suggested to include more information about the relationship between conflict-of-interest provisions and the personal interests returns.

“Obviously, conflict of interest is an important issue and where donations/gifts occur that may influence a councillor’s decision-making it is equally important that these be made known.”

– councillor

Councillors and council staff also asked for training to improve their understanding of the obligations for submitting personal interests returns. They believed training should be mandatory, consistent across the sector and delivered as induction and refresher courses.

Nominated officers who also submit returns would also benefit from training in their obligations.

LGV could also provide other support to councillors to complete their interests returns, including:

- creating a ‘help desk’ for councillors and council staff to direct queries about their personal interests returns
- providing best-practice examples
- giving updates to remind councillors of their obligations
- mandating the use of a prescribed form
- creating online submission software.

“I failed to include my residence in one return. A year later I copied from that return and didn’t realise the mistake.”

– councillor

Our review revealed large variations in the support and guidance councils provided to their councillors. We believe councils and the peak bodies would be open to working with LGV to improve current guidance.

In a bid to provide some guidance to the sector, this report includes a check list and template emails kindly provided by Melbourne City Council to help councils with compliance with personal interests returns under the 2020 Act.

Recommendations

4. The *Local Government Act 2020* and *Local Government (Governance and Integrity) Regulations 2020* should be amended to make it mandatory for people required to submit personal interests returns to use a form in a Schedule to the Regulations to ensure consistency of personal interests return submissions across the local government sector.
5. LGV should finalise its draft guidance material, which is currently in draft form on the Engage Victoria website. The final guidance material should:
 - be written in plain English with all legal terms explained
 - include information about how the accurate completion of their interests returns can assist them to identify possible conflicts of interest
 - include real-life examples of interests to be disclosed
 - be easily accessible on the LGV website
 - be promoted through its communication channels.
6. LGV should communicate to councils and councillors:
 - the importance of their obligation of completing accurate, complete, and timely personal interests returns for the integrity of local government processes that the personal interests returns will be relied upon by IBAC and other integrity bodies in the event of an investigation.
7. The *Local Government (Governance and Integrity) Regulations 2020* be amended to include the topic of personal interests returns in the induction training for councillors.
8. The *Local Government (Governance and Integrity) Regulations 2020* be amended to introduce annual refresher training in personal interests returns for councillors.
9. Councils should introduce annual training for their nominated officers and delegated committee members to increase their knowledge of the personal interests returns process.
10. LGV should provide regular updates to councillors to remind them of their obligations and to keep them informed about legislative amendments in relation to personal interests returns.

Increasing compliance through legislative change and oversight

There are several ways to increase compliance, transparency and improve public trust.

Automating the personal interests returns process would make it easier for councillors and council staff to comply with the requirements of the 2020 Act, replacing outdated hard-copy forms.

Non-compliance could be deterred through the introduction of a range of proportional and scalable measures, such as non-monetary sanctions and replacing prosecutions with infringements for all but the most serious cases. The only option currently available for the Inspectorate to address non-compliance – apart from initial warnings – is through the criminal justice system, which is resource-intensive and does not act as an effective deterrent. Fines could be applied and increased depending on the severity of the infringement.

Another option to promote compliance is to enhance scrutiny and reporting. There are currently no requirements for councils to report breaches, however, mandatory reporting could alleviate staff concerns about repercussions for reporting non-compliance.

The legislation does not specifically require any entity, including councils and the Inspectorate, to oversee the interests return scheme or scrutinise the accuracy and completeness of the interests disclosed in the returns.

Structured oversight in the form of an external review program could improve compliance.

Recommendations

11. LGV should investigate the feasibility of creating a common electronic form that provides a standardised personal interests returns template that councils can incorporate into their IT platforms.
12. The *Local Government Act 2020* should be amended to give the Inspectorate specific power to issue infringement notices for strict liability offences.
13. LGV should consider amending the *Local Government Act 2020* to introduce non-monetary sanctions (such as temporary suspension or disqualification from civic office) to provide a more appropriate, proportional, and scalable sanction for persons who consistently flout the personal interests returns provisions of the Act.
14. The *Local Government Act 2020* should be amended to require CEOs to report suspected breaches of the personal interests' returns provisions to the Inspectorate, including failure to submit returns or submitting inaccurate or late returns.

Conclusion

Our major review of personal interests returns under the 1989 Act revealed a concerning level of non-compliance due to a lack of guidance and education. The scheme also had a lack of oversight with no entity given responsibility to audit responses.

The implementation of the 2020 Act provided an opportunity to reassess personal interests returns and improve the transparency and accountability of the 2020 scheme.

However, our review of personal interest summaries under the 2020 Act showed there was still a lack of transparency and work remains to be done to improve compliance.

This report provides 14 recommendations to improve the scheme, in turn, increasing public confidence in the impartial decision-making of the local government sector. We hope that this report is a first step on a journey to improving the functioning of the scheme.

We also commit to working with LGV, the peak bodies and councils to improve the understanding of the importance of the scheme and supporting those who must comply with it.