



# Fact sheet: Conflict of interest for councillors

A person has a conflict of interest<sup>1</sup> if they – or a person or entity they are close to – could benefit or be seen to benefit from a decision or action they could make in their official capacity.

## What is a conflict of interest and why does it matter?

Recognising and disclosing conflicts of interest is vital to ensure transparency and accountability in local government.

Identifying conflicts of interest and stepping aside from decision-making allows the public to see that councillors or council officers have represented the public interest with impartiality and integrity.

Councillors and council officers must disclose conflicts of interest to demonstrate that they are not using their public office for their own private benefit. Doing so avoids perceptions that they are not acting on behalf of the whole community as required by their oath of office or code of conduct, depending on their role.

In accordance with Part 6, Division 2 of the *Local Government Act 2020*, certain 'relevant persons' must make a statement that a conflict of interest exists and then exclude themselves from the decision-making process.<sup>2</sup>

## What are the basic principles?

A person in public office has a conflict of interest when they have a private interest that might compromise their ability to act in the public interest.

A conflict of interest can exist even if no improper action results from it.

- **First**, there must be a relevant private interest. This could be a financial interest in property or a company or a position on the board of an organisation. It could also be a relationship with a person or organisation.

- **Second**, the private interest must overlap with a person's official duty. This may involve a decision to be made in a council or committee meeting or a decision to be made by a council officer who has been delegated a council power.

Under our democratic system we expect our elected representatives to have an 'open mind' and to act fairly and without bias when making decisions which affect the rights and interests of others

## Who does it apply to?

The Act requires a 'relevant person' to disclose conflicts of interest. A relevant person includes:

- councillors
- members of delegated committees who are not councillors
- council staff who are members of or providing advice to delegated committees or asset committees
- council staff who are exercising a delegation, delegated function or statutory power.

Councillors, council staff and external members of delegated committees all have a public duty to act in the interest of the communities they serve.

## How has the Act changed?

The conflict of interest provisions under the *Local Government Act 1989* defined exactly what interests and relationships were included.

However, the new conflict of interest provisions in the 2020 Act require relevant persons to:

- consider a broader **range of interests**
- consider what an **impartial fair-minded person** would think.

For example, the old conflict of interest provisions did not cover a conflict due to friendship but the new provisions might, depending on the circumstances.

<sup>1</sup> The conflict of interest requirements outlined in this fact sheet are set out in the *Local Government Act 2020* and Local Government (Governance and Integrity) Regulations 2020.

<sup>2</sup> The Act requires a relevant person to disclose conflicts of interest. This includes councillors, council staff and members of delegated committees.

The prescriptive nature of the conflict of interest provisions in the 1989 Act encouraged a “compliance only” attitude. The shift away from defining every type of conflict of interest encourages the focus to be on transparency and accountability in public office.

## A personal responsibility

It is a personal judgement and decision to disclose a conflict of interest.

If you are a ‘relevant person’, you must identify your own conflicts of interest and exclude yourself from the decision-making process.

It is therefore important for councillors and officers to ensure they understand the requirements and seek further advice to avoid being challenged and accused of breaching their statutory obligations.

## Two types of conflict of interest

The Act sets out two different types of conflict of interest: material conflict of interest and general conflict of interest.

### 1: Material conflict of interest

*A material conflict of interest is when there may have been a benefit gained or a loss suffered.*

For a material conflict of interest, there must be a potential benefit or loss to the relevant person or someone who has a relationship with them.

Examples of relationships are:

- family members
- employers
- business partners
- where the relevant person acted as a consultant, contractor or agent
- a beneficiary of a trust
- a person who gave a disclosable gift to the relevant person.

The benefit or loss can be direct or indirect, pecuniary or non-pecuniary.

### 2: General conflict of interest

*In politics, a general conflict of interest is known as ‘the pub test’.*

The Act defines a general conflict of interest as occurring 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”.

It requires a relevant person to exercise good judgement in identifying situations in which they may have a conflict of interest.

## Exemptions

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

The exemptions are:

- a remote or insignificant interest
- the interest is in common with a substantial proportion of residents or electors and does not exceed the interest held by them
- there was no knowledge of the interest
- they were acting as a council representative and received no personal advantage
- a family member is a member (but not an office holder) of a not-for-profit organisation, such as a sporting club
- they belong to a not-for-profit advocacy organisation which has expressed an opinion.

In addition, some council decisions are also exempted from conflict of interest. These are generally decisions with a limited scope.

## Conflict of interest in practice

The Inspectorate receives a lot of complaints about conflict of interest. The community is concerned about conflicts of interest and are prepared to hold councillors and officers accountable. They want decisions made by councils that are transparent and impartial.

Although we may find that a conflict of interest exists, we rely upon evidence of material gain or loss and of conflicting private and public duties in order to substantiate an offence under the Act and determine whether prosecution is warranted.

Failing to disclose a conflict of interest may result in criminal or conduct proceedings. For example, the penalty for a relevant person failing to disclose a material conflict of interest is 120 penalty units (around \$22,000).

Where a councillor fails to disclose a general conflict of interest in certain circumstances, they may be subject to prosecution and financial liability of up to 120 penalty units. If a councillor fails to disclose any conflict of interest – be it material or general – an application may be made to a Councillor Conduct Panel alleging serious misconduct.

*We urge councillors to be cautious. If there is any doubt about a conflict – declare it and leave the meeting.*

A conflict may not exist but if it fails the ‘pub test’, then not declaring it will damage the trust the public has in the decisions made by the council. Declaring conflicts of interest improves transparency and trust in the impartiality of council decisions.

## What is and isn't conflict of interest

The following examples are a guide to what are potential real or perceived conflicts of interests and interests that are not in breach. However, conflict of interest can only be judged by the specific circumstances of each case. Please remember to seek advice on these or other potential conflicts.

Potential conflicts of interest	Interests that are not in breach
<ul style="list-style-type: none"><li>• A councillor fails to excuse themselves when their partner applies for a job as the CEO.</li><li>• A councillor is a part owner of a development company which submits a planning application to council.</li><li>• A councillor is a board member of a for profit sporting club which has applied for a council grant.</li><li>• A councillor works as a consultant for an arts organisation which has applied for a council grant.</li><li>• A councillor does not leave a delegated committee or council meeting where there is a discussion or decision about a planning permit for a development next door to the councillor's property.</li><li>• A councillor does not leave a meeting where council makes a decision on a planning permit for a property belonging to the councillor's mother-in-law.</li><li>• A councillor makes a decision on a proposal to change the parking arrangements in their street.</li><li>• A councillor's friend applies for a community grant and does not leave the meeting when the grants are considered and approved by council.</li></ul>	<ul style="list-style-type: none"><li>• A councillor's daughter is a coach (and not an office holder) at a not-for-profit community soccer club and the councillor considered an application for funding by the club.</li><li>• A councillor's husband is the editor of a local newspaper which reports on the council.</li><li>• A councillor is a member of a charity aimed at minimising harm from gambling. She voted on an application by a hotel to extend liquor license hours which affect the hours the gaming machines can be used.</li><li>• A councillor is a member (not a board member) of a local sporting club and took part in a decision to redevelop the sporting ground. The councillor's interests do not exceed others as a substantial proportion of local residents belong to sporting clubs.</li><li>• A councillor works in alcohol research for a university and voted on the council's strategic plan, which includes an objective to reduce harm associated with alcohol. The council plan is a very general so the conflict is considered remote or insignificant.</li></ul>

## Be alert for connections

Be aware of connections as these will indicate that there is a conflict of interest. For example:

- You have a personal concern about the impact of a matter on yourself or someone close to you
- Someone with whom you have a personal association has asked you to vote a particular way
- You have information about the matter as a result of your personal affairs.

## Where to go for advice

Local Government Victoria has [more information about conflict of interest](#) on its website.

Relevant persons can also seek assistance from:

- the council's Chief Executive Officer
- a lawyer
- the Municipal Association of Victoria
- the Victorian Local Governance Association.
-