

# PECUNIARY INTEREST

INFORMATION SHEET

May 2008

## Role of councillor and conflict of interest

Councillors must act in the best interests of the community. However, there may be times when a councillor's personal interests are not the same, or do not appear to be the same, as those of the community.

In these situations it is important you do not allow personal interests to interfere, or appear to interfere, with your ability to act in the best interests of the community.

## Legislative Requirements for Pecuniary Interests

Under the *Local Government Act 1993* (the Act), if you have a "pecuniary interest" in a matter before council or any other committee certain requirements must be complied with.

If you fail to comply with these requirements, you may be guilty of an offence.

A conflict of interest may be:

- actual - your personal interest actually affects the way you behave in your role as councillor
- perceived - it might appear to others that your personal interest could affect the way you behave in your role as councillor
- potential - your personal interest could affect the way you behave in the future.

Personal interests may be based on:

- pecuniary interest - a financial interest, or a financial benefit or disadvantage

- indirect pecuniary interest - where a person with whom you have a close relationship has a financial interest
- non-pecuniary bias - a predisposition towards a certain outcome based on some emotional or other interest.

## What is a Pecuniary Interest?

You have a pecuniary interest when, if a matter before council, or any other committee, is decided in a particular way you:

- will gain, lose or save money, gain a financial advantage, or suffer a financial disadvantage;
- could be expected to gain, lose or save money, gain a financial advantage, or suffer a financial disadvantage; or
- are reasonably likely to gain or lose money, gain a financial advantage, or suffer a financial disadvantage.

Examples of "pecuniary interests" include:

- increased or decreased sales or profits for a business - or something that might lead to this, such as a decrease in competition or an increase in the number of customers
- employment benefits (offers of paid employment, increases in salary, commissions, bonus payments, promotions)
- provision of labour or services
- loan of a vehicle
- increased or decreased value of a property
- free advertising.

You may also have a pecuniary interest because a "close associate" has a pecuniary interest in the matter before council or a council committee.

The legislation defines “close associate” to mean:

- a company or incorporated association or club of which you are a director or a member of the governing body (e.g. board member, secretary, president, treasurer)
- a company in which you are a shareholder
- a beneficiary of a trust of which you are a trustee
- your business partner
- your employer
- your employees
- a person from whom you have received, or might receive in the future, a fee, commission, or other reward for providing professional or other services
- immediate family members, including spouse or partner, parents, children, brothers and sisters, and your spouse’s or partner’s parents, children and brothers and sisters.

It does not matter whether any potential pecuniary benefit or detriment is small or large. Under the legislation, **ANY** pecuniary interest affects your ability to participate in council decision making, unless it falls within one of the exceptions.

Exceptions include where:

- the benefit or detriment is common to all or a substantial proportion of electors (at least five per cent or 1000 electors) such as an across the board rate increase
- the council is considering taking out an insurance policy that would cover you
- the matter relates to allowances or expenses payable to councillors
- you own shares that are worth less than \$10,000 or less than one per cent of the total value of all shares issued by that company. Where a pecuniary interest is too remote

It can often be difficult to determine whether or not you are “likely to receive” a pecuniary benefit or detriment as a result of a particular decision.

Interests range from those for which benefit or detriment would be purely speculative to those that are more borderline.

If you are not sure about whether or not your interest is sufficiently remote from the matter before council the best thing to do is to disclose it anyway.

If you have a pecuniary interest in a matter you must comply with the procedures set out in the legislation.

The steps in the procedure are:

Step 1. You must not participate in any discussion, or vote on any matter, if:

- you have an interest OR
- you are aware or ought to be aware that a close associate has an interest

Step 2. You must **declare** any interest in a matter **before ANY discussion** on that matter commences.

Step 3. After declaring an interest you must **leave the room** in which the meeting is being held while the matter is being discussed.

Step 4. **Within seven days** of declaring an interest you must advise the general manager in writing of the details of the interest declared.

Step 5. The general manager must then ensure the **declaration is recorded** in the **minutes** of the meeting at which it was made and must also record the details in the **register of interests**.

### **\*IMPORTANT NOTE\***

If you have a pecuniary interest, you are in breach of the legislation if you participate in voting, even if you vote against your own interest.

Your participation in the process is a breach of the legislation even if the outcome does not appear to benefit you as an individual. The purpose of the legislation is to protect the validity of the *process* of council decision-making, not the *outcome*. There is a risk you could (or it might appear that you could) influence others to decide in a particular way that favours you, even though you do not personally vote in your own interest.

It does not matter whether you *actually* acted in the best interests of the community and not your own personal interest. What is important is that there is no risk of it *appearing* as though you have acted in your own interest.

Other non-pecuniary interests or pecuniary interests not covered by the above provisions may be covered by your council's Code of Conduct or by Misuse of Office or Misuse of Information provisions in the Act.

The content of this Information Sheet was prepared by Dr Lisa Butler, Faculty of Law, University of Tasmania and Dr Samantha Hardy, Australian Centre for Peace and Conflict Studies, University of Queensland.

Disclaimer: Information on legislation contained in this Information Sheet is intended for information and general guidance only. Such information is not professional legal opinion.

## Checklist for Identifying Pecuniary Interests

It is your personal obligation to determine whether or not you have a pecuniary interest in a matter. This checklist may assist you to identify whether or not you have a pecuniary interest in a matter. However, it is only an aid and if you are in any doubt you should obtain independent legal advice.

Do you have any of the following interests?

**Tick any boxes that apply:**

**Write the details below:**

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Do you own a business?

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Are you a member of a partnership?

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Are you an employer or an employee?

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Do you own land or other property?

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Are you a landlord or tenant?

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Do you own shares?

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Are you a director of a company?

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Are you a member of a club,  
organisation or association?

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Are you an office holder of a club,  
organisation or association?

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Do you owe anyone money?

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Have you received, or could you  
receive, commission, payments, or  
discounts from someone?

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Have you received, or could you receive  
gifts, hospitality or travel from someone?

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Do you have access to confidential  
information that could be relevant to a  
decision being made by council?

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Do you own any intellectual property  
(e.g. trademarks, copyright)?

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Are you involved in any kind of  
sponsorship arrangement?

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Do you have a personal, family or  
business relationship with someone who  
might be able to tick any of the above  
boxes?

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Matter in Question: \_\_\_\_\_

For each box you have ticked, ask yourself:

- Could this interest influence the way I behave as a councillor in relation to the matter in question?
- Would an average member of the public think that my interest could influence the way I behave as a councillor in relation to the matter in question?
- **If the answer to either of these questions is YES**, you must comply with the procedures set out in the legislation.
- (**Note:** Section 52 of the Act sets out various exemptions to the pecuniary interest provisions. It is *your* responsibility to check if an exemption applies to your situation. If you are in *any doubt* you should obtain independent legal advice.)

The steps in the procedure are:

Step 1. You must not participate in any discussion or vote on any matter if:

- you have an interest OR
- you are or ought to be aware that a close associate has an interest.

Step 2. You must **declare** any interest in a matter **before ANY discussion** on that matter commences.

Step 3. After declaring an interest you must **leave the room** in which the meeting is being held while that matter is being discussed.

Step 4. **Within seven days** of declaring an interest you must advise the general manager in writing of the details of the interest declared.

Step 5. The general manager must then ensure that the **declaration is recorded** in the **minutes** of the meeting at which it was made and must also record the details on any interest in the **register of interests**.

Write any actions you need to take: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_