

COMPLIANCE

Note: This information sheet is a general introduction for councillors to some of the compliance provisions contained in the Local Government Act 1993. Please read in conjunction with the 'Pecuniary Interest' information sheet which provides information to help councillors identify their pecuniary interests.

INFORMATION SHEET

November 2018

Pecuniary interest

Misuse of office

Misuse of information

Purpose

The purpose of the compliance provisions in the *Local Government Act 1993* (the Act) is to ensure:

- impartial decision-making
- that councillors act, and are seen to act, in the best interests of their communities
- protection of the reputation of local government
- public confidence in local government.

Complaints

Complaints are made to the Director of Local Government when it is believed a councillor, general manager or council employee may have committed an offence under the Act or failed to comply with the requirements of the Act.

Anyone may make a complaint to the Director of Local Government.

After receiving a complaint the Director gathers information and evidence about the allegations.

If sufficient evidence of an offence exists, the matter is referred to the Director of Public Prosecutions.

Provisions of the Act most often investigated by the Director of Local Government include:

- pecuniary interest
- disclosure of confidential information
- improper use of information
- misuse of office

Principles of procedural fairness

Procedural fairness refers to a legal doctrine in administrative law with which public authorities must comply when making decisions.

The rules of procedural fairness are mostly about impartiality and giving people whose interests are likely to be affected, the right to be heard.

During an investigation the Director of Local Government must have regard to the principles of procedural fairness.

Limitation period to investigate complaints

Proceedings for an offence must be instituted within two years.

Major offences

1) Failure to Declare a Pecuniary Interest s48

It is an offence for a councillor to participate at any meeting or vote on any matter where the councillor has a pecuniary interest or is aware or ought to be aware that a close associate has a pecuniary interest.

Meetings include any discussion or vote, as well as meetings of a:

- council
- council committee
- special committee
- controlling authority
- single authority
- joint authority

What is a pecuniary interest? s49

The term 'interest' in Part 5 of the Act refers to a financial benefit or loss. Sections 48 and 49 detail matters that must be considered in respect to pecuniary interest.

Questions that may help determine whether there is a pecuniary interest include:

- Is it possible the decision may impact me directly?
- Is it possible the decision may impact me indirectly?
- Is there a realistic expectation of any financial gain or loss?
- Is the expectation based on reasonable grounds?
- Is it possible that while it does not impact directly or indirectly on me, it may impact on people or organisations in 'close association' with me?

Close associates s51

Section 51 of the Act sets out relationships that, for the purposes of the pecuniary interest provisions, are deemed to be 'close associates'.

Because the list of people/organisations deemed to be close associations for the purposes of Part 5 of the Act is extensive, councillors must familiarise themselves with the provision.

The list includes:

- family members
- business partners
- employers and employees
- those from whom the councillor may expect to receive a fee.

Lack of knowledge of the details of a close associate's activities will not be a defence. A list of exceptions to the close associate status is in section 52 of the Act (see appendix).

Notification of interest s48

If a councillor identifies that a pecuniary interest exists in relation to a matter, the following steps should be taken:

- Declare the interest to the meeting before any discussion of that matter commences.
- Leave the room before the start of any discussion or vote on the matter.
- Do not re-enter the room until advised the matter is no longer being considered.
- Give written notice of the details of the interest declared to the general manager within seven days of the declaration.

The onus of determining whether a pecuniary interest exists rests with the councillor. If difficulties arise, legal advice should be obtained. So, **'if in doubt step out.'**

Registering the interest s53

When a councillor declares a pecuniary interest it must be recorded in the minutes of the meeting at which it was made. The general manager must keep the details of any declared interest in a register of interests.

2) Council Arms s336

It is an offence for a person, including a candidate for a local government election or a councillor, to use or display the arms of a council without the council's approval.

3) Disclosure of confidential information s338A

It is an offence for a councillor to disclose information seen or heard at a council or committee meeting that is closed to the public, unless the council or the committee authorises the disclosure.

It is an offence for a councillor to disclose information received in confidence from the mayor, deputy mayor, chairperson of a council or council committee meeting or the general manager.

4) Improper use of information s339

Councillors and council members come in contact with information that, if not dealt with ethically, could benefit them and damage the interests of other parties.

Under section 339 of the Act it is an offence to use information obtained as a councillor, or council employee, to directly or indirectly advantage oneself, family members or close associates. Using information to avoid disadvantage is also an offence.

It is an offence to use information obtained as a councillor, or council employee, to cause any loss or damage to any council, authority or person.

5) Misuse of office s339A

It is an offence for a councillor or council employee to use council services or activities to gain, directly or indirectly, an advantage for themselves, family members or close associates. It is also an offence to avoid disadvantage.

Registering concerns and complaints s339E and S339EA

Complaints alleging breaches of the Local Government Act must be made in writing, signed by the complainant and addressed to the Director of Local Government.

Section 339E of the Act states that a complaint must:

- identify the person making the complaint and the person against whom the complaint is made;
- give particulars of the grounds of the complaint;
- be in writing;
- be verified by statutory declaration; and
- be lodged with the Director of Local Government.

The Act states that the Director may also carry out an investigation without receiving a complaint made in this manner.

The Act allows the Director to carry out or continue an investigation of alleged illegal activity even when received anonymously.

The postal address for complaints is:

Director of Local Government
GPO Box 123
HOBART TAS 7001

Complaints can also be sent to lgd@dpac.tas.gov.au.

Appendix

Local Government Act 1993 Section 51. Close associate

A person is a close associate of a councillor or member if that person is:

- a member of a body corporate of which the councillor or member is a director or on the governing body
- in a proprietary company in which the councillor or member is a shareholder
- part of a public company in which the councillor or member is directly or indirectly a substantial shareholder
- a beneficiary under a trust or a discretionary trust of which the councillor or member is a trustee
- a business partner of the councillor or member
- the employer or an employee of the councillor or member
- a person from whom the councillor or member has received, or might reasonably be expected to receive, a fee, commission or other reward for providing professional or other services being dealt with or to be dealt with by the council, council committee, special committee, controlling authority, single authority or joint authority
- the spouse or partner of the councillor or member, or spouse of the councillor's or member's son or daughter
- the son, daughter, brother, sister, mother or father of the councillor or member or of their spouse or partner.

Section 52. Non-application of Part

1) This part does not apply to a councillor, member or close associate who has a pecuniary interest in any matter if:

- the benefit or detriment is received in common with all or a substantial proportion of the electors of the municipal area
- the matter relates to an insurance policy or an indemnity policy being considered or taken out by the council, single authority or joint authority to insure or indemnify councillors, members or their spouses or partners, unless the matter relates to, or is a claim made by the councillor or member
- the interest in an application or request for approval (or authorisation, licence e, permit, exemption or other right) under this or any other Act is no greater for the councillor (or member or close associate) than any other member of the public – or the matter relates to making a rate or charge under Part 9 [of the Act]
- the matter relates to any allowances or expenses payable to councillors or members
- a beneficial interest in shares of a company or other body does not exceed whichever is the lesser: \$10 000 or one per cent of the total nominal value of the issued share capital of the company or body.

(1A) For the purpose of subsection (1):

“substantial proportion of the electors” means at least five per cent or 1 000 electors, whichever is the lesser.

(2) This part does not apply to a councillor, member or close associate who has any pecuniary interest in any matter only because:

- the matter involves:
 - i) expenditure from money belonging to, or held by a council (or council committee, special committee, controlling authority, single authority or joint authority) and the councillor or member contributes to the money as a ratepayer
 - ii) fixing of fees by a council, single authority or joint authority
 - iii) terms and conditions on which the right to participate in the supply of goods and services is offered to members of the public
- the councillor, member or close associate is a person to whom goods or services are supplied in the same way as for members of the public
- the councillor, member or close associate provides services of a professional nature to another person involved in the matter
- the councillor, member or close associate is a member of a body, club, union or other non-profit organisation if:
 - i) it does not involve a personal benefit or detriment to the councillor (or the member, close associate or the spouse or partner of the councillor, member or close associate); AND
 - ii) the councillor, member or close associate is not an office-bearer of that body, club, union or other non-profit organisation; OR
 - iii) if the councillor, member or close associate is appointed or nominated as a member of a body by the council.
- the matter relates to planning and development issues that apply throughout the municipal area and do not result in any greater benefit or detriment to the councillor, member or close associate than to any member of the public
- the councillor, member or close associate is an employee in the service of the Crown or of a body established under any Act for a public purpose
- the councillor, member or close associate is a candidate for election as councillor, mayor or deputy mayor
- the councillor, member or close associate is a member of a body established by a council.

(3) At a meeting open to the public a council may decide to exempt a councillor or member from this part for a period not exceeding 12 months if the councillor or member has a potential pecuniary interest in a matter only because of being appointed or nominated as a councillor or member due to expertise arising from direct involvement in an activity that gives rise to that potential pecuniary interest.