

Key councillor offences

INFORMATION SHEET
March 2020

PURPOSE

This information sheet provides guidance for councillors on the key offence provisions contained in the *Local Government Act 1993* (the Act) that relate to councillors. The Act includes offence provisions against councillors which are designed 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; and
- public confidence in local government.

The main offence provisions that apply to councillors relate to:

- pecuniary interest;
- disclosure of confidential information;
- improper use of information;
- misuse of office; and
- gifts and donations.

KEY OFFENCES

1) FAILURE TO DECLARE A PECUNIARY INTEREST (SECTION 48)

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 discussions or vote, as well as meeting of a:

- council;
- council committee;
- special committee;
- controlling authority;
- single authority; or
- joint authority.

A fine of up to 20 penalty units applies.

WHAT IS A PECUNIARY INTEREST? (SECTION 49)

A councillor has an interest in a matter if they, or a close associate, would receive, have an expectation of receiving or be likely to receive a financial benefit or loss if a matter was decided in a certain way.

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

- is it possible the decision may impact me directly or 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?

WHO IS A CLOSE ASSOCIATE? (SECTION 51)

The Act sets out the relationships that, for the purposes of the pecuniary interest test, are deemed to be 'close associates'. Councillors must familiarise themselves with the list of people/organisations deemed to be close associates under the Act which is extensive and is included in the Appendix. Some examples from the list include:

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

A lack of knowledge of the details of a close associate's activities will not be a valid defence.

WHAT IS NOT A PECUNIARY INTEREST? (SECTION 52)

There are exceptions to the close associate rule and these are detailed in the Appendix. Some examples from the list include (but are not limited to):

- if the benefit or detriment will apply to all people or a greater amount of people in the council area;
- if the matter relates to an insurance or indemnity policy related to the council; and
- the matter relates to allowances or expenses payable to all councillors.

HOW TO MANAGE AN INTEREST (SECTION 48)

If a councillor identifies that a pecuniary interest exists in relation to a matter, the Act requires the councillor to:

- declare the interest at the meeting before any discussion of the matter begins;
- leave the room before the start of any discussion or vote on the matter (the councillor should not re-enter the room until advised the matter is no longer being considered); and
- give written notice of the details of the declared interest to the general manager within seven days of the declaration.

A fine of up to 50 penalty units applies to failing to declare an interest and up to 20 penalty units for failing to comply with the other obligations.

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.'

HOW IS THE INTEREST REGISTERED? (SECTIONS 48 AND 54)

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 (SECTION 336)

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. A fine of up to 10 penalty units applies to breaches of this provision.

3) DISCLOSURE OF CONFIDENTIAL INFORMATION (SECTION 338A)

It is an offence for a councillor to disclose information:

- seen or heard at a council or council committee meeting that is closed to the public, unless the council or the committee authorises the disclosure. A fine of up to 50 penalty units applies to breaches of this provision; or
- received in confidence from the mayor, deputy mayor, chairperson of a council or council committee meeting or the general manager. A fine of up to 50 penalty units applies to breaches of this provision.

4) IMPROPER USE OF INFORMATION (SECTION 339)

Councillors are privy to 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 a former councillor, to directly or indirectly advantage oneself, family members or close associates. Using information to avoid a disadvantage is also an offence. A fine of up to 50 penalty units applies to breaches of this provision.
(Note similar provisions apply to employees, former employees of a council, single and joint authorities and members and former members of audit panels).
- improperly use information from a Code of Conduct investigation. A fine of up to 50 penalty units applies to breaches of this provision; or
- use information obtained as a councillor, or council employee, to cause any loss or damage to any council, authority or person. A fine of up to 50 penalty units applies to breaches of this provision.

5) MISUSE OF OFFICE (SECTION 339A)

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. A fine of up to 50 penalty units applies to breaches of this provision.

6) GIFTS AND DONATIONS

Specific guidelines have been developed to assist local government with the application of the gifts and donations requirements in the *Local Government (General) Regulations 2015*. Please see the [Gifts and Donations Guideline](#) on the Local Government Division (the Division)'s website for further information.

7) Complaints

Complaints are made to the Director of Local Government (the Director) 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, including the offence provisions documented in this information sheet. Anyone can make a complaint to the Director. For more information please see the [Making a Complaint to the Local Government Division – general information](#) which is available on the Division's website.

LIMITATION PERIOD FOR OFFENCES (SECTION 252A)

Proceedings for an offence under these provisions must be started within two years after the offence was committed.

APPENDIX

CLOSE ASSOCIATE (SECTION 51)

Under section 51 of the Act 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; or
- the son, daughter, brother, sister, mother or father, of the councillor or member or of their spouse or partner.

EXCLUSIONS FOR DECLARING A PECUNIARY INTEREST (SECTION 52)

Under section 52 of the Act a councillor, member or close associate who has a pecuniary interest in any matter is not required to declare a pecuniary interest if:

- the benefit or detriment is received in common with all, or a substantial proportion of, the electors of the municipal area (this means at least five per cent or 1,000 electors, whichever is the lesser);
- 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, 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;
- 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 all councillors or members; or
- a beneficial interest in shares of a company or other body does not exceed whichever is the lesser:
 - i) \$10,000 or
 - ii) one per cent of the total nominal value of the issued share capital of the company or body.

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; or
 - 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,
- 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; or
- the councillor, member or close associate is a member of a body established by a council.

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.