

**THE
PECUNIARY INTEREST
HAND BOOK
1998**

**A GUIDE FOR COUNCILLORS
AND COUNCIL OFFICERS**

Local Government Act 1989

**Office of Local Government
Department of Infrastructure**

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MINISTER'S FOREWORD

By its very nature local government is close to the community. Councillors and senior officers are readily accessible to ratepayers and residents and are often closely involved in a range of activities within their area.

With this closeness and accessibility, Councillors, members of Special Committees of Councils, senior and nominated officers of Councils, members of Regional Library Corporations and their senior and nominated officers can come under intense and detailed scrutiny by the community.

To protect both the Councillors and the community, pecuniary interest provisions are included in the *Local Government Act 1989*.

It is essential that a Councillor acts, and is seen to act independently, openly and with integrity without any potential for personal profit or loss.

Councillors have the right to protect themselves against malicious rumour or gossip.

The pecuniary interest provisions, including the Register of Councillors' and Senior Officers' interests, provide the necessary protection for all parties.

Allegations of breaches of the pecuniary interest provisions are treated very seriously. Alleged breaches will be investigated and, where a prima facie case is established, appropriate action will be taken.

This booklet outlines the provisions of the *Local Government Act 1989* and explains the requirements for Councillors and senior and nominated officers of Councils to declare pecuniary interests.

I trust that it will assist in ensuring the protection of the good name of local government in general, and the integrity of every individual.

Robert Maclellan
Minister for Planning and Local Government

SUMMARY

The pecuniary interest provisions of the *Local Government Act 1989* are designed to ensure that Councillors, Commissioners, members of Special Committees of Councils, senior and nominated officers, members of Regional Library Corporations and their Chief Executive Officers consider all matters before them in a fair and unbiased manner, unaffected by considerations of self interest or personal gain.

The Act sets out the requirements which are incumbent on a Councillor if he or she decides that a pecuniary interest does exist in regard to any matter to be considered by the Council. (Throughout the paper the word "Councillor" should be read as including an elected Councillor, Commissioner, member of a Regional Library Corporation or a member of any Special Committee established by the Council). Unless otherwise stated, all references to the Act refer to the *Local Government Act 1989* and all references to the Regulations refer to the *Local Government Regulations 1990*.

However, the Act does not provide a simple, concise or absolute definition of what constitutes a pecuniary interest - direct or indirect. In these circumstances it must be stressed that at all times the onus is on each Councillor to determine whether a pecuniary interest exists.

In making the decision on any matter it is advisable that the Councillor err on the side of caution and declare an interest rather than risk allegations of pecuniary interest or possible prosecution under the legislation.

If Councillors or members of Special Committees decide that they have an interest in regard to a matter before Council the Act requires that they:

- (i) must disclose that they have an interest and the nature of the interest prior to the consideration of the matter by Council even if they do not intend to be at the meeting;
- (ii) may remain in the Chamber during discussions on the matter;
- (iii) cannot move or second any motion on any question relating to the matter;
- (iv) must leave the Chamber before the vote is taken;
- (v) must notify the Mayor that they are leaving the Chamber; and
- (vi) must remain outside the Chamber, and any gallery or other area in view or hearing of the Chamber until notice is sent that they can return.

While officers of the Council and of the Office of Local Government can provide assistance as to what constitutes an interest to a Councillor, the ultimate decision is the Councillor's alone. Notwithstanding that such assistance may be available, Councillors should seek advice from their personal solicitor to obtain a considered, formal opinion. It is not the function of the officers of the Council or the Office of Local Government to provide legal advice to Councillors regarding these matters.

The onus is on each Councillor to determine their course of action, but it is better to err on the side of caution.

PART 1

PECUNIARY INTERESTS (SECTIONS 78, 79, 80 and 81)

Introduction

It is widely recognised and accepted that there is a need for pecuniary interest legislation in local government to ensure and maintain public confidence in Councils and Councillors.

The community expects and has a right to expect their elected representatives to consider all matters before them in a fair and unbiased manner, unaffected by considerations of self interest or personal gain.

Pecuniary interest provisions have been enshrined in local government legislation in Victoria since 1972. Sections 78, 79, 80 and 81 of the *Local Government Act 1989* represent the evolution and development of that legislation over the years. These sections clarify the role of and requirements for Councillors, establish procedures for declaring a pecuniary interest, establish provisions for exemptions and exceptions, provide for penalties for breaches and require a declaration of the interests of Councillors and certain senior officers of the Council.

It must also be realised that the provisions of the Act apply equally to Councillors and members of Special Committees established by the Council.

Under section 86 of the *Local Government Act 1989* Councils may establish Special Committees:

"86. (1) In addition to any advisory committees that a Council may establish, a Council may establish one or more special committees of the following-

- (a) Councillors;*
- (b) Council staff;*
- (c) other persons;*
- (d) any combination of persons referred to in paragraphs (a), (b) and (c). "*

The pecuniary interest provisions also apply to nominated officers of the Council, including senior officers and other relevant officers, including those employed in Regional Library Corporations. A senior officer is defined in section 3 of the Act as:

*"senior officer" means a member of Council staff who is entitled to total remuneration in any 12 month period of at least \$60 000 (or any other amount that might be prescribed from time to time);"**

and a nominated officer is defined as:

“*“nominated officer” means the senior officers of the Council and any other member of the Council staff nominated by the Council;*” (section 81(1))

*The prescribed amount for a senior officer is contained in Regulation 102 of the *Local Government Regulations 1990* and is currently \$70,000.

Objectives

The main objectives of the pecuniary interest provisions are:

- to ensure that Councillors, as representatives of their communities, and Council Officers, act - and are seen to act - in the best interests of those communities; and
- to protect the institution of local government and thereby maintain the standing of local government in the eyes of the public.

Despite this, the pecuniary interest provisions remain some of the most vexed and vexing provisions for Councillors, Council Officers and the community alike.

This paper has been prepared to provide an overview of the legislation with examples wherever possible of case law and histories to ensure that officers and Councillors are aware of their respective roles and the requirements of the pecuniary interest provisions.

The Office of Local Government is available to provide assistance on matters relating to the legislation. However, it should be appreciated that such assistance does not constitute formal legal advice and in many cases, legal advice or indeed court action may be the only way to finally and formally resolve a matter of pecuniary interest.

It cannot be stressed too strongly that the onus is on Councillors at all times to determine whether they are affected by the pecuniary interest provisions in relation to any matter under consideration by the Council. Councillors must bear the burden of any penalty imposed if legal action is subsequently initiated. The penalty cannot be recouped from or reimbursed by the Council.

Given the above, it is better to err on the side of caution and declare an interest in any matter before the Council in which the Councillor may, or may appear to have an interest.

What is a "Pecuniary Interest" ?

While the *Local Government Act 1989* requires a Councillor to declare a pecuniary interest and sets out a clear process for declaring such an interest, it does not actually set out a simple, concise or absolute definition of what constitutes a "pecuniary interest". Indeed such a definition is difficult, if not impossible, because whether something is or is not a pecuniary interest will depend on the facts in each particular case.

The principles underlying pecuniary interest relate to a person's interest in a matter being based on the probability that the person stands to gain or lose financially from it. For the portrayal of local government as an honest institution to be legitimised, decisions should not be based upon or influenced by the private financial interests of the persons making them.

It is incumbent on those who accept the responsibility and undertake the duties of decision making in local government that they must simultaneously accept an obligation to stand aside and refrain

from participating in decisions, the outcomes of which will or may affect their personal financial interests or those of their close associates.

The overall aims of the pecuniary interest provisions in the legislation are to ensure that: Councillors, Council Officers and all those bound by the provisions of the *Local Government Act 1989* will behave morally in their roles and look beyond legislative requirements; the community's right to know is understood and accepted by both Council Officers and Councillors; and the image of local government is enhanced.

The three key aspects to the legislation relate to whether the interest is:

- direct; or
- indirect; and
- whether or not it is too remote.

Each of these points is dealt with in detail in later sections.

Under section 79 of the *Local Government Act 1989*, a Councillor is required to declare "a direct or indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter in which the Council is concerned".

However, the basic rule-of-thumb is that a pecuniary interest is any interest capable of being measured in terms of money. Such interests need not involve an advantage to Councillors but may even be to their detriment.

The benchmark legal decision in this area was the case of *Downward v. Babington* [1975] VLR 872 in which it was held by Justice Gowans (p 180) that:

"... a Councillor should be held to have a pecuniary interest in a matter before Council if that matter would, if dealt with in a particular way, give rise to an expectation which is not too remote of a gain or loss of money to him". (italics added for emphasis)

The question of "remoteness" is an important consideration which further complicates the issue and is dealt with below.

It is essential to remember that, in determining whether there is an interest, it is the matter in which the Council is concerned which must be examined not the conduct or motives of the Councillor.

Dishonesty is not a necessary element; inadvertence or carelessness may be sufficient. Nor is it necessary that the Councillor intended to obtain any advantage. It is only necessary to prove that the offence did or did not occur. It is not necessary or relevant to consider the motive of the person at the time the offence occurred.

Indeed, the onus is on the Councillor at all stages to adhere to the requirements of the legislation. Council Officers are not required to remind any Councillor of the provisions of the Act and it is suggested that such a practice NOT occur because an omission, by neglect or otherwise, could have disastrous consequences for both the officer and the Councillor(s) involved.

Direct or Indirect Pecuniary Interest

A "**direct**" pecuniary interest is one where the Councillor has an interest personally and not an interest through an intermediary.

Section 78(2) of the Act sets out the following cases in which a person has an "**indirect**" pecuniary interest in a contract or matter under consideration; they are, if:

- "(a) the Councillor or member of a special committee or a nominee of the Councillor or member of a special committee is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct or indirect pecuniary interest in the matter under consideration; or*
- (b) the Councillor or member of a special committee is a partner, agent, consultant or employee of a person with whom the contract is made or is proposed to be made or who has a direct or indirect pecuniary interest in the matter under consideration; or*
- (c) the Councillor or member of a special committee is a director, manager, employee or agent of a company which has a direct or indirect pecuniary interest in the matter under consideration; or*
- (d) the spouse or de facto spouse of the Councillor or member of a special committee has an interest of a kind referred to in paragraph (a), (b) or (c); or*
- (e) the spouse or de facto spouse of the Councillor or member of a special committee has a direct or indirect pecuniary interest in the contract, proposed contract or other matter."*

Remoteness

As mentioned above, the question of "remoteness" creates difficulties in practice. Obviously the term relates more to "indirect" pecuniary interests rather than to "direct" interests, which are relatively easily determined.

Section 78(2) (set out above) goes a long way to clarify the issue of "remoteness" by clearly defining what constitutes an indirect pecuniary interest. However, an example will probably best illustrate the extent to which such interests can be and have been taken.

In *Rands v. Ollroyd* (1958) 3 ALL ER 344 a person who was managing director and shareholder in a company which had building contracts with a Council became a Councillor. Thereafter he refrained from tendering for Council building contracts. He spoke against a proposal to authorise the Council to increase its own labour force to enable it to tender to carry out its own building work. He was held to have a pecuniary interest, since the company of which he was a director, was in a position to tender for Council work if it wished to do so.

What is the Councillor's Responsibility?

As stated earlier the **onus is on the Councillor** at all stages to adhere to the requirements of the legislation. As a result of this, the adage "when in doubt, get out" has arisen. This paper seeks to clarify and minimise any doubts about the application of the legislation and the role and responsibilities of the Councillor.

(i) When Must A Councillor Declare His or Her Interest?

If, after being informed of the matters to be considered by Council, a Councillor considers that a pecuniary interest, direct or indirect, exists, he or she must disclose the nature of such interest (section 79(1)).

If the Councillor intends to be present at the meeting, such disclosure must take place immediately prior to the consideration or discussion of the matter (section 79(1)(a)). If the Councillor does not intend to be present at the meeting, the interest and the nature of the interest must be disclosed to the Chief Executive Officer or the chairperson of the Special Committee at any time before the meeting is held (section 79(1)(b)).

It is often a Council practice to seek the declarations of interests on particular matters at the commencement of the meeting.

(ii) Can a Councillor Participate in Debate on an Issue in which an Interest has been Declared?

A Councillor may choose to remain in the Chamber during discussion on any matter in which he or she has declared an interest (section 79(2)). He or she may participate in debate on the matter under consideration but cannot move or second any motion on any question relating to that matter (section 79(3)).

(iii) When Should a Councillor Leave the Chamber?

A Councillor may leave the Chamber at any time prior to the vote being taken on the matter under consideration. He or she, as noted above, may stay for and participate in the full discussion of the matter, however, he or she must leave before the vote is taken.

When leaving the Chamber the Councillor must notify the Mayor or the chairperson of the Special Committee he or she is leaving the Chamber. The Councillor must remain outside the Chamber, and any gallery or other area in view or hearing of the Chamber, until the Mayor or the chairperson of the Special Committee causes him or her to be notified that he or she can return to the Chamber.

What is the Role of the Chief Executive Officer?

Apart from the Chief Executive Officer's role in recording and maintaining the Register of Interests, which is covered in detail elsewhere, another statutory role prescribed for the Chief Executive Officer is in the recording of a declared pecuniary interest in the Minutes of the meeting.

As outlined above, the Councillor must notify the Chief Executive Officer of an interest in any issue to be considered by the Council, either during the meeting or before the meeting if the Councillor is not intending to attend the meeting. The Chief Executive Officer or the chairperson of the Special Committee must record such a declaration in the minutes of the meeting at which the consideration or discussion took place (section 79(6)).

The Chief Executive Officer has no role in determining whether or not a pecuniary interest exists. The onus is always on the Councillor to make that decision.

While the assistance of the Chief Executive Officer may be sought and it is a common practice for Chief Executive Officers to provide such assistance, this practice is not required or suggested by the legislation.

This assistance cannot be regarded as formal legal advice and Councillors should seek a considered, formal opinion from their personal solicitor.

Exemptions

When considering whether or not an interest is relevant and declarable, Councillors should be aware of the exemptions which apply in sections 78(1), 78(3), 79(9) and 80 of the Act.

Exemptions have been included in the Act to apply in those cases where the Councillor has only a general or remote interest in the issue; for example, where an interest arises by virtue of the Councillor being a ratepayer in the Council.

Of course there can, and will, arise situations in which the whole Council has a general interest and such cases are covered in sections 78 and 80. Section 80 provides for the Council to seek an exemption from the Minister. Where the majority of the Council or of a Special Committee has a pecuniary interest then it may apply to the Minister for an exemption. The Minister may apply the exemption to any Council or member and may attach any conditions which he or she sees fit.

It is worth quoting these sections in full, as follows:

- "78. (1) Section 79 does not apply to a direct or indirect pecuniary interest in a contract, proposed contract or other matter which a Councillor or a member of a special committee has -*
- (a) only as a voter or ratepayer and in common with other voters or ratePAYERS; or*
 - (b) only because the contract, proposed contract or other matter involves expenditure from money belonging to or held by the Council and the Councillor or member of a special committee is as a ratepayer a contributor to the money; or*
 - (c) in relation to the declaration of rates and charges or the fixing of a fee by the Council; or*
 - (d) in relation to the terms and conditions on which the right to participate in the supply of goods and services is offered to members of the public; or*
 - (e) only as a person to whom goods or services are supplied in the like manner and subject to the same terms and conditions as apply to members of the public; or*
 - (f) only by reason of receiving an allowance or travelling allowances as permitted by this Act; or*
 - (g) only by reason of the Councillor or member of a special committee or his or her spouse or de facto spouse being insured by the Council; or*
 - (h) only as a member of a local community body, club, union or other organisation which is a non-profit organisation if no personal gain to the Councillor or member of a special committee or his or her spouse or de facto spouse is involved; or*
 - (i) only in planning and development matters which have a general application throughout the municipal district or a ward; or*
 - (j) in relation to the consideration of an application or request for a consent, permission, approval, authorisation, licence, permit, exemption or other right or privilege under this or any other Act, if the extent of the interest of the Councillor or member of a special committee or his or her spouse or de facto spouse is the same as other members of the public; or*
 - (k) only as an employee in the service of the Crown or of a body established by or under any Act for a public purpose; or*
 - (l) only by reason of being a candidate for election as Mayor; or*
 - (m) only as a member of a body (whether or not incorporated) who is appointed or nominated by the Council and whether or not any remuneration or allowances are received.*
- 78. (3) If a Councillor or a member of a special committee has an indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter referred to in section 79 (1) only because he or she has a beneficial interest in shares of a company or other body and the total nominal value of those shares does not exceed \$2000 or 1% of the total nominal value of the*

issued share capital of the company or body (whichever is the less), section 79 (1) does not preclude him or her from taking part in the consideration or discussion of, or voting on any question with respect to the contract, proposed contract or other matter.

79. (9) *This section does not prevent any person from taking part in the consideration or discussion of, or voting on-*
- (a) any question whether the amount payable for goods or services previously supplied or provided under any contract should be paid from the municipal fund or any other money held by the Council; or*
 - (b) any question whether an application should be made to the Minister for the exercise of the powers conferred by section 80.*
80. (1) *Despite section 79, if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors or members of a special committee affected by section 79, the Minister may upon application by the Council in writing exempt any Councillor or member of a special committee from any or all of the provisions of section 79 subject to any conditions the Minister thinks fit.*
- (2) An exemption may be for an unlimited or a specified period.*
 - (3) The Minister may revoke an exemption. "*

Prosecutions and Penalties

Over the past nine years the Office of Local Government has instituted eleven prosecutions, resulting in fines ranging from \$200 to \$1500.

As has been pointed out above, the benchmark legal decision is that of Justice Gowans who stated-

"... a Councillor should be held to have a pecuniary interest in a matter before Council if that matter would, if dealt with in a particular way, give rise to an expectation which is not too remote of a gain or loss of money to him."

The main considerations are whether a matter before the Council, if dealt with in a particular way, would result in the payment of money to or by the Councillor or in a benefit, which could be measured in terms of money, to or from the Councillor. It must be stressed that an interest need not involve an advantage to the Councillor but may even be to his or her detriment.

Also, as stated earlier, it is essential to remember that, in determining whether there is an interest, it is the matter under consideration which must be examined not the conduct or motives of the Councillor. That is, it is the Councillor's interest in the matter not the reasons for that interest which must be examined. The motives of the Councillor should not be imputed or inferred.

Section 79(7) of the Act sets out the penalty for failing to comply with the pecuniary interest provisions of the legislation, unless specifically exempted. The maximum penalty is "100 penalty units". One penalty unit is \$100.

Section 79(8) sets out a provision for defence as follows:

- "79. (8) It is a defence to a prosecution if the Councillor or member of the special committee proves that he or she did not know -*

- (a) *that he or she had a direct or indirect pecuniary interest in the contract, proposed contract or other matter; or*
- (b) *that a contract, proposed contract or other matter in which he or she had a direct or indirect interest was considered or discussed at the meeting."*

Under the Act "the Director-General, a Council or a person authorised by the Council either generally or in a particular case" can initiate proceedings against a Councillor for breach of the pecuniary interest provisions of the Act. The usual practice has been for a formal (written) complaint to be lodged with the Office of Local Government which is then investigated by an Inspector of Municipal Administration.

Under the provisions of S232(3) of the *Local Government Act 1989* a charge must be laid at a Magistrates' Court within three years of the commission of the alleged breach of the pecuniary interest provisions.

The task of assessing a complaint for breach of the pecuniary interest provisions is a complex and time consuming process. Of course, before any matter proceeds to the institution of a prosecution, it is necessary to be certain that there is a sufficient case against the Councillor to warrant such action.

As indicated above prosecutions can be initiated by the Director-General, a Council or a person authorised by the Council either generally or in a particular case in the corporate name of the Council (section 232(1) of the Act).

PART 2

REGISTER OF INTERESTS

Introduction

The *Local Government Act 1989* requires a Register of Interests of Councillors, senior officers and nominated Council Officers to be maintained.

Pursuant to section 81 of the Act all Councillors, members of Special Committees of Council, senior officers and nominated officers are required to complete a statement of their Interests. Such a statement must be in the prescribed form and lodged with the Chief Executive Officer. Copies of the prescribed forms, as detailed in Schedule 2 of the *Local Government Regulations 1990* are attached as Appendix A.

Under sections 81(1) and (4) senior officers and any Council staff member which Council nominates must prepare and submit a return. It is reasonably expected that all officers who have statutory responsibilities would be required to prepare a return.

Primary and Ordinary Returns

Two types of return are established under section 81: a "Primary" return and an "Ordinary" return. Appendix C outlines in a number of diagrams the timetable for lodging Primary and Ordinary returns.

A Primary return is the first return lodged by a Councillor or officer and must be lodged within 30 days of making the declaration of office in the case of a Councillor or submitted within 30 days of becoming a nominated officer. Again, the term Councillor should be read as including members of Special Committees of Council.

Each return must be on the prescribed form and, pursuant to section 81(6) must include the following information in the Primary return, as at the date of the Primary return:

The Primary Return, Section 81 of the Local Government Act 1989 and Regulation 64 and Form 26 of the Local Government Regulations 1990.

"(6) A Councillor, a member of a special committee or a nominated officer must disclose the following information in the primary return as at the date of the primary return -

- (a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;*
- (b) the name or description of any company, partnership, association or other body in which he or she holds a beneficial interest which exceeds in value \$2000;*

- (c) *the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she has any beneficial interest other than by way of security for any debt;*
- (d) *a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest;*
- (e) *any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a special committee or nominated officer.”*

The Ordinary Return, Section 81 of the Local Government Act 1989 and Regulation 65 and Form 27 of the Local Government Regulations 1990.

An Ordinary return must be lodged on 30 June or within 30 days of 30 June each year by each person who has previously lodged a return. Section 81 (7) outlines the information to be disclosed in each Ordinary return.

“(7) A Councillor, a member of a special committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period -

- (a) *if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate - the name of the company or body;*
- (b) *the name or description of any company, partnership, association or other body in which he or she held a beneficial interest which exceeded in value \$2000;*
- (c) *the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;*
- (d) *a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;*
- (e) *particulars of any gift of or above the amount or value of \$2000 received by him or her from a person other than a person related to him or her by blood or marriage; and*
- (f) *any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, member of a special committee or nominated officer.”*

“Return period” is defined in S81(1) of the Local Government Act 1989 as:

“ “return period” in relation to the ordinary return of a Councillor, member of a special committee or nominated officer means-

- (a) if the last return of the Councillor, member of a special committee or nominated officer was a primary return, the period between the date of the primary return and 30 June next following; or

- (b) if the last return of the Councillor, member of a special committee or nominated officer was an ordinary return, the period between the date of that return and 30 June next following.”

Register

Under section 81(9) of the Act, the Chief Executive Officer of each Council is required to maintain a Register of the Interests of all Councillors, members of Special Committees and nominated officers. The Register consists of the last three returns of interest which are required to be submitted by all Councillors, members and officers. It is to be kept up-to-date and all returns must be retained in the Register.

As soon as practicable after a person ceases to be a Councillor, member of a Special Committee or a nominated officer of the Council who has been required to complete a return, that person's returns must be removed from the Register. However, the Chief Executive Officer is required to retain, in a safe place, the returns of any person for a period of 3 years after the person has ceased to hold office (section 81(15) and (16)). The returns must then be destroyed.

Access

The Register of Interests is available for public scrutiny under a process established in section 81 of the Act.

Any person must be allowed to inspect the Register at the office of the Council during normal office hours providing they have made an appropriate written application to the Chief Executive Officer (section 81(10) and (11)). The application must be in accordance with Form 28 of the *Local Government Regulations 1990*.

When the Register is being provided for inspection only the person who has formally made the application is entitled to view the documents. The Chief Executive Officer must take "all reasonable steps" to ensure that this is the case (section 81(12)).

Information recorded in the Register can be published providing that it is "a fair and accurate summary or copy" of the information held on the Register (section 81(13)).

Section 240 of the Act provides for a maximum penalty of 20 penalty units (\$2,000) to be imposed for the publication of information which is not accurate.

The Act also imposes a penalty on employees of the Council using information gained during the period of their employment by the Council. If an officer uses any information gained as part of their official duties, in a manner not related to those duties there is a maximum penalty of 50 penalty units (\$5,000) (section 81(14)).

PART 3

IMPROPER USE OF INFORMATION

As well as protecting the integrity of the institution of local government by prescribing certain actions and requirements in regard to a Councillor's pecuniary interests, the Act also explicitly debars the improper use of any information obtained as a Councillor for gain or profit.

This section also applies to members of Special Committees of a Council.

The aim of the legislation in this case is to guard against abuse, arising from a conflict between duty and interest.

The Councillor must not be allowed to be in a position which is inconsistent with his or her obligation of impartial judgement and action as an elected representative of the community.

Section 77 of the *Local Government Act 1989* is very clear. It states:

"77. Improper use of information

(1) A person who is, or has been, a Councillor or a member of a Council committee must not make improper use of any information acquired as a Councillor or member -

- (a) to gain, or to attempt to gain, directly or indirectly, a pecuniary advantage for himself or herself or for any other person; or*
- (b) to harm, or to attempt to harm, the Council.*

*Penalty: For a first offence: 20 penalty units;
For a second or subsequent offence: imprisonment for 3 months.*

(2) A person who is, or has been, a Councillor or a member of a Council committee must not release information that the person knows, or should reasonably know, is information -

- (a) that is confidential to the Council; and*
- (b) that the Council wishes to keep confidential.*

*Penalty: For a first offence: 20 penalty units;
For a second or subsequent offence: imprisonment for 3 months."*

The wording of the section is deliberately very broad and all encompassing. The use of words such as "any information", reference to both direct and indirect pecuniary advantage and "any other person" are used to act as the strongest deterrents to the abuse of the Councillor's privileged position.

It must be stressed that the prohibition operates even if the "advantage" concerned is merely one of prospective advantage and even if that prospective advantage is remote and contingent. Also the fact that the advantage concerned may only be small is immaterial.

The advantage gained does not have to be to the advantage of the Councillor. The phrase "or for any other person" is obviously deliberately very broad and it is considered that it would not be confined only to members of the Councillor's family, friends or business associates.

A Councillor who arranges for a nominee to enter into a contract on his or her behalf does not thereby avoid potential prosecution under the Act. The section will apply whether or not a person remains a Councillor providing the information used was gained during the period he or she was a Councillor.

Also, there cannot be any retrospective relinquishing or surrendering of any advantage to avoid the operation of this section.

The seriousness of the offence and seriousness with which the Parliament considers this matter is reflected in the maximum penalties which can be imposed - a fine of \$2000 for a first offence and imprisonment for subsequent offences.

PART 4

APPENDICES

APPENDIX A

FORM 26
REGISTER OF INTERESTS
Local Government Act 1989, Section 81
Local Government Regulations 1990, Regulation 64

Primary Return

Notes - Please Read:

- (1) Interests which you are required to register are prescribed in section 81(6) of the *Local Government Act 1989*.
- (2) If there is not sufficient space on this form for all of the information you are required to register, you may attach additional papers for that purpose. Each paper is to be signed, dated and witnessed in the same manner as this return.
- (3) Please Complete This Form by Typewriter or Block Capitals.

(Surname) (Christian or other Names)

Council:

Ward: (if applicable)

Details of Registrable Interests:

1. The name of any company or other body in which you hold any office whether as director or otherwise at the date of this return.
2. The name or description of any company, partnership, association or other body in which you hold a beneficial interest exceeding \$2000 in value.
3. The address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which you hold any beneficial interest (other than by way of security for any debt).
4. A concise description of any trust in which you hold a beneficial interest or of which you are a trustee and a member of your family * holds a beneficial interest.
5. Any other substantial interest (whether of a pecuniary nature or not) held by you or a member of your family of which you are aware and which you consider might appear to raise a material conflict between your private interest and your public duty as a councillor, member of a special committee or nominated officer (as the case may be).

Signature of person making return:

Signature of witness:

Date:

* A reference to a member of the family of a person making a return is a reference to-

- (a) a spouse of the person; or
- (b) any child of that person under the age of 18 years who normally resides with that person.

FORM 27
REGISTER OF INTERESTS
Local Government Act 1989, Section 81(5)
Local Government Regulations 1990, Regulation 65

Ordinary Return

Notes - Please Read:

- (1) Interests which you are required to register are prescribed in section 81 of the *Local Government Act 1989*.
- (2) If there is not sufficient space on this form for all of the information you are required to register, you may attach additional papers for that purpose. Each paper is to be signed, dated and witnessed in the same manner as this return.
- (3) Please complete this form by typewriter or block capitals

(Surname) (Given or other names)

Council:

Ward: (if applicable)

Details of Registrable Interests:

1. The name of any company or other body corporate or unincorporate in which you held an office as a director or otherwise.
2. The name or description of any company, partnership, association or other body in which you hold a beneficial interest exceeding \$2000 in value.
3. The address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which you hold any beneficial interest (other than by way of security for any debt).
4. A concise description of any trust in which you hold a beneficial interest or of which you are trustee and in which a member of your family* holds a beneficial interest.
5. Any gift of or above the amount or value of \$2000 received by you from a person other than a relative by blood or marriage during the return period. **
6. Any other substantial interest (whether of a pecuniary nature or not) held by you or a member of your family of which you are aware and which you consider might appear to raise a material conflict between your private interest and your public duty as a councillor, member of a special committee or nominated officer (as the case may be).

Signature of person making return:

Signature of witness:

Date:

*A reference to a member of the family of a person making a return is a reference to-

- (a) a spouse of the person; or
- (b) any child of that person under the age of 18 years who normally resides with that person.

****"return period"** in relation to the ordinary return of a councillor, member of a special committee or nominated officer means-

- (a) in the case of a councillor, member of a special committee or nominated officer whose last return was a primary return, the period between the date of that primary return and 30 June next following; and
- (b) in the case of a councillor, member of a special committee or nominated officer whose last return was an ordinary return, the period between the date of that ordinary return and 30 June next following.

APPENDIX B

VICTORIA
No. 11 of 1989
Local Government Act 1989
(Assented to 9 May 1989)

S.77
substituted by
No.34/1996
s.3.

77. *Improper use of information*

(1) A person who is, or has been, a Councillor or a member of a Council committee must not make improper use of any information acquired as a Councillor or member—

- (a) to gain, or to attempt to gain, directly or indirectly, a pecuniary advantage for himself or herself or for any other person; or
- (b) to harm, or to attempt to harm, the Council.

Penalty: For a first offence: 20 penalty units;

For a second or subsequent offence: imprisonment for 3 months.

(2) A person who is, or has been, a Councillor or a member of a Council committee must not release information that the person knows, or should reasonably know, is information—

- (a) that is confidential to the Council; and
- (b) that the Council wishes to keep confidential.

Penalty: For a first offence: 20 penalty units;

For a second or subsequent offence: imprisonment for 3 months.

78. *Pecuniary interests*

(1) Section 79 does not apply to a direct or indirect pecuniary interest in a contract, proposed contract or other matter which a Councillor or a member of a special committee has—

- (a) only as a voter or ratepayer and in common with other voters or ratepayers;
or
- (b) only because the contract, proposed contract or other matter involves expenditure from money belonging to or held by the Council and the Councillor or member of a special committee is as a ratepayer a contributor to the money; or
- (c) in relation to the declaration of rates and charges or the fixing of a fee by the Council; or
- (d) in relation to the terms and conditions on which the right to participate in the

Please note this extract of the Act was correct at the time of publication.
Verification should be made against a current version of the Act.

s.78

- supply of goods and services is offered to members of the public; or
- (e) only as a person to whom goods or services are supplied in the like manner and subject to the same terms and conditions as apply to members of the public; or
- (f) only by reason of receiving an allowance or travelling allowances as permitted by this Act; or
- (g) only by reason of the Councillor or member of a special committee or his or her spouse or de facto spouse being insured by the Council; or
- (h) only as a member of a local community body, club, union or other organisation which is a non-profit organisation if no personal gain to the Councillor or member of a special committee or his or her spouse or de facto spouse is involved; or
- (i) only in planning and development matters which have a general application throughout the municipal district or a ward; or
- (j) in relation to the consideration of an application or request for a consent, permission, approval, authorisation, licence, permit, exemption or other right or privilege under this or any other Act, if the extent of the interest of the Councillor or member of a special committee or his or her spouse or de facto spouse is the same as other members of the public; or
- (k) only as an employee in the service of the Crown or of a body established by or under any Act for a public purpose; or
- (l) only by reason of being a candidate for election as Mayor; or
- (m) only as a member of a body (whether or not incorporated) who is appointed or nominated by the Council and whether or not any remuneration or allowances are received.

S.78(1)(l)
amended by
No. 76/1995
s. 10(5).

(2) For the purposes of section 79, a person is to be treated as having an indirect

pecuniary interest in a contract, proposed contract or other matter if—

(a) the Councillor or member of a special committee or a nominee of the Councillor or member of a special committee is a member of a company or other body with which the contract is made or is proposed to be made or which has a direct or indirect pecuniary interest in the matter under consideration; or

(b) the Councillor or member of a special committee is a partner, agent, consultant or employee of a person with whom the contract is made or is proposed to be made or who has a direct or indirect pecuniary interest in the matter under consideration; or

(c) the Councillor or member of a special committee is a director, manager, employee or agent of a company which has a direct or indirect pecuniary interest in the matter under consideration; or

(d) the spouse or de facto spouse of the Councillor or member of a special committee has an interest of a kind referred to in paragraph (a), (b) or (c); or

(e) the spouse or de facto spouse of the Councillor or member of a special committee has a direct or indirect pecuniary interest in the contract, proposed contract or other matter.

S.78(2)(d)
amended by
No. 99/1994
s. 8(a).

S.78(2)(e)
inserted by
No. 99/1994
s. 8(a).

(3) If a Councillor or a member of a special committee has an indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter referred to in section 79(1) only because he or she has a beneficial interest in shares of a company or other body and the total nominal value of those shares does not exceed \$2000 or 1% of the total nominal value of the issued share capital of the company or body (whichever is the less), section 79(1) does not preclude him or her from taking part in the consideration or discussion of, or voting on any question with respect to the contract, proposed contract or other matter.

79. *Duty of Councillor or member of a special committee*

(1) If a Councillor or member of a special committee has a direct or indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter in which the Council is concerned which is to be or is likely to be considered or discussed at a meeting of the Council or a special committee, the Councillor or member of the special committee must—

(a) if he or she intends to be present at the meeting, disclose the nature of the interest immediately before the consideration or discussion; or

(b) if he or she does not intend to be present at the meeting, disclose the nature of the interest to the Chief Executive Officer or the Chairperson of the special committee at any time before the meeting is held.

S. 79(1)(b)
amended by
No. 125/1993
s. 14(h).

remain in the discussion of the (2) The Councillor or member of the special committee may choose to room in which the meeting is being held during any consideration or contract, proposed contract or other matter.

(3) The Councillor or member of the special committee may take part in the consideration or discussion but cannot move or second a motion on any question relating to the contract, proposed contract or other matter.

(4) While any vote is taken on a question relating to the contract, proposed contract or other matter the Councillor or member of the special committee must—

(a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and

(b) remain outside the room and any gallery or other area in view or hearing of the room.

(5) After the result on the vote on the question relating to the contract, proposed contract or other matter has been declared, the Mayor or the Chairperson of the special committee must cause the Councillor or member of the special committee to be notified that he or she may return to the room.

(6) If a Councillor or member of a special committee discloses an interest the Chief Executive Officer or the Chairperson of the special committee must record the declaration and the nature of the interest in the minutes of the meeting at which the consideration or discussion took place.

(7) Unless sub-section (8) or section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence.

Penalty: 100 penalty units.

(8) It is a defence to a prosecution if the Councillor or member of the special committee proves that he or she did not know—

(a) that he or she had a direct or indirect pecuniary interest in the contract, proposed contract or other matter; or

(b) that a contract, proposed contract or other matter in which he or she had a direct or indirect interest was considered or discussed at the meeting.

(9) This section does not prevent any person from taking part in the consideration or discussion of, or voting on—

(a) any question whether the amount payable for goods or services previously supplied or provided under any contract should be paid from the municipal fund or any other money held by the Council; or

(b) any question whether an application should be made to the Minister for the exercise of the powers conferred by section 80.

80. Exemption by Minister

(1) Despite section 79, if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors or members of a special committee affected by section 79, the Minister may

s. 79

S. 79(6)
amended by
Nos 125/1993
s. 14(h),
99/1994
s. 8(b).

upon application by the Council in writing exempt any Councillor or member of a special committee from any or all of the provisions of section 79 subject to any conditions the Minister thinks fit.

- (2) An exemption may be for an unlimited or a specified period.
- (3) The Minister may revoke an exemption.

81. Register of interests

(1) In this section—

"nominated officer" means the senior officers of the Council and any other member of the Council staff nominated by the Council;

S. 81(1) def. of "nominated officer" substituted by No. 99/1994 s. 9(a).

"return period" in relation to the ordinary return of a Councillor, member of a special committee or nominated officer means—

S. 81(1) def. of "return period" amended by No. 34/1996 s. 4(1)(a).

(a) if the last return of the Councillor, member of a special committee or nominated officer was a primary return, the period between the date of the primary return and 30 June next following; or

(b) if the last return of the Councillor, member of a special committee or nominated officer was an ordinary return, the period between the date of that return and 30 June next following.

(2) A person who becomes a Councillor or a member of a special committee must within 30 days of making the declaration of office of a Councillor or becoming a member of a special committee submit a primary return in the prescribed form to the Chief Executive Officer.

S.81(2) amended by No. 99/1994 s. 9(b).

(2A) A Council may exempt a member of a special committee who is not a Councillor from being required to submit a primary return or an ordinary return.

S. 81(2A) inserted by No. 13/1990 s. 10.

(3) If a person is re-elected or re-appointed or upon completion of his or her term of office as a Councillor or member of a special committee, the Councillor or member of a special committee does not have to submit a new primary return.

(4) Any person who becomes a nominated officer must within 30 days of becoming a nominated officer submit a return in the prescribed form to the Chief Executive Officer.

S.81(4) substituted by No. 99/1994 s. 9(c).

(4A) Any person who becomes a nominated officer solely because of the amendment made to this Act by section 8 of the **Local Government (Amendment) Act 1994** is deemed for the purposes of sub-section (4) to have become a nominated officer on the date section 8 of that Act came into operation.

S.81(4A) inserted by No. 99/1994 s. 9(c).

(5) A Councillor, a member of a special committee or a nominated officer must on 30 June or within 30 days of 30 June submit an ordinary return in the prescribed form to the Chief Executive Officer.

S.81(5) amended by No. 99/1994 s. 9(b).

(6) A Councillor, a member of a special committee or a nominated officer must disclose the following information in the primary return as at the date of the primary return—

S.81(6)(a)
amended by
No. 34/1996
s. 4(1)(b).

(a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;

S.81(6)(b)
substituted by
No. 34/1996
s. 4(1)(c).

(b) the name or description of any company, partnership, association or other body in which he or she holds a beneficial interest which exceeds in value \$2000;

S.81(6)(c)
inserted by
No. 34/1996
s. 4(1)(c).

(c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she has any beneficial interest other than by way of security for any debt;

S.81(6)(d)
inserted by
No. 34/1996
s. 4(1)(c).

(d) a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest;

S.81(6)(e)
inserted by
No. 34/1996
s. 4(1)(c).

(e) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a special committee or nominated officer.

S.81(6A)
inserted by
No. 43/1993
s. 13.

(6A) A person who does not comply with sub-section (2), (4), (5) or (6) is guilty of an offence against this Act.

(7) A Councillor, a member of a special committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period—

S.81(7)(b)
amended by
No. 34/1996
s. 4(1)(d)(i)(ii).

(a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate—the name of the company or body;

S. 81(7)(c)
amended by
No. 34/1996
s. 4(1)(e).

(c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;

S.81(7)(d)
amended by
No. 34/1996
s. 4(1)(f).

(d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;

(e) particulars of any gift of or above the amount or value of \$2000 received by him or her from a person other than a person related to him or her by blood or marriage; and

(f) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a

S.81(7)(f)
amended by
No. 13/1990
s. 31(d).

Councillor, member of a special committee or nominated officer.

Penalty:50 penalty units.

* * * * *

S.81(8)
repealed by
No. 99/1994
s. 9(d).

(9) The Chief Executive Officer must maintain a register of the interests of Councillors, members of special committees and nominated officers consisting of the last 3 returns that those Councillors, members and officers were required to submit under this section.

S.81(9)
substituted by
No. 99/1994
s. 9(e).

(10) The Chief Executive Officer must allow a person to inspect the register if that person has previously made written application to the Chief Executive Officer to do so and the application meets the requirements of the regulations.

S.81(10)
amended by
No. 99/1994
s. 9(f).

(11) The register may be inspected at the office of the Council during normal office hours.

(12) The Chief Executive Officer must take all reasonable steps to ensure that no person other than a person who has made application has access to or is permitted to inspect the register or any return.

S.81(12)
amended by
No. 99/1994
s. 9(f).

(13) A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.

(14) A person employed by the Council must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the Council or make use of that information for any purpose other than the discharge of his or her official duties under this section.

Penalty:50 penalty units.

(15) The Chief Executive Officer must—

(a) retain the returns of a Councillor, a member of a special committee or a nominated officer for a period of 3 years after the person has ceased to be a Councillor, a member of a special committee or a nominated officer; and

S. 81(15)
amended by
No. 99/1994
s. 9(f).

(b) at the end of that period, cause the returns to be destroyed.

(16) As soon as practicable after a person ceases to be a Councillor or a member of a special committee or a nominated officer, the Chief Executive Officer must remove all the returns submitted by that person from the register.

S.81(16)
amended by
No. 99/1994
s. 9(f)(g).

APPENDIX C

Dates for Submission of Primary & Ordinary Returns

(a) Councillors

For a **Councillor** elected on 15 March 1997, the time to complete a Primary Return is:
within 30 days of making the declaration of office of a Councillor s81(2)

Section 81(5) requires that:
A Councillor, a member of a special committee or a nominated officer must on 30 June or within 30 days of 30 June submit an ordinary return in the prescribed form to the Chief Executive Officer.

PREPARATION AND CURRENCY OF RETURN

Prepare Primary Return 30 days.	Primary Return S81(1)(a)	Prepare Ordinary Return	Period of Ordinary Return, S81(1)(b)
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15 March 1997	14 April 1997	30 June 1997	30 July 1997		30 June 1998
Date of Declaration*	(30 days)				

RELEVANT INFORMATION TO BE CONTAINED IN FORM

Primary Return:	Ordinary Return (1 st year)	Ordinary Return (2 nd year)
Current information at time of signing		

15 March 1997	14 April 1997	30 June 1998	30 July 1998		30 June 1999
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* The date of declaration of the poll may not be the date the election was held.

Depending on date signed.

(c) Nominated Officer of Council

<p>For a nominated officer of council nominated by Council on 22 April 1997, the time to complete a Primary Return is: <i>any person who becomes a nominated officer must within 30 days of becoming a nominated officer submit a return in the prescribed form to the Chief Executive Officer s81(4)</i></p>	<p>Section 81(5) requires that: <i>A Councillor, a member of a special committee or a nominated officer must on 30 June or within 30 days of 30 June submit an ordinary return in the prescribed form to the Chief Executive Officer.</i></p>
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PREPARATION AND CURRENCY OF RETURN			
Prepare Primary Return 30 days.	Primary Return S81(1)(a)	Prepare Ordinary Return	Period of Ordinary Return, S81(1)(b)

22 April 1997	22 May 1997 (30 days)	30 June 1997	30 July 1997	30 June 1998
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RELEVANT INFORMATION TO BE CONTAINED IN FORM

Primary Return:	Ordinary Return	(1st year)	
Current information at time of signing			Ordinary Return (2 nd year)

22 April 1997	22 May 1997	30 June 1998	30 July 1998	30 June 1999
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Depending on date signed.