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Conflict of Interest

Guideline for members

February 2026

lga South Australia

Conflict of Interest Guideline

This Guideline has been prepared by LGA South Australia (LGA) with input from Norman Waterhouse Lawyers for the guidance of and use by member councils. LGA is the statutory peak body for local government in South Australia.

Provisions are correct as at publication in February 2026[1].

This guideline provides a glossary of terms, flowchart, checklist and an example form, followed by commentary around conflict of interest provisions under the *Local Government Act 1999* **(the Act)** and their application to councils, (sub) committees and subsidiaries including case study examples.

[1] Current legislation is available at the Office of Parliamentary Counsel website

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Glossary

agency or instrumentality of the Crown – includes:

(a) an administrative unit of the Public Service; and

(b) a body corporate comprised of or including, or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown;

conflict of interest – see part 2 of this Guideline;

family company – of a member means a proprietary company:

(a) in which the member or a member of the member's family is a shareholder; and

(b) in respect of which the member or a member of the member's family, or any such persons together, are in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company;

family trust – of a member means a trust (other than a testamentary trust):

(a) of which the member or a member of the member's family is a beneficiary; and

(b) which is established or administered wholly or substantially in the interests of the member or a member of the member's family, or any such persons together;

general conflict of interest – see part 4 of this Guideline;

material conflict of interest – see part 3 of this Guideline;

prescribed circumstances/prescribed matter - see Regulation 8AAA of the *Local Government (General) Regulations 2013*;

private interest – means any direct or indirect interest of a member that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief;

public duty – means the responsibilities and obligations that a member has to members of the public in their role as a member;

relative – of a person means:

(a) the spouse or domestic partner; or

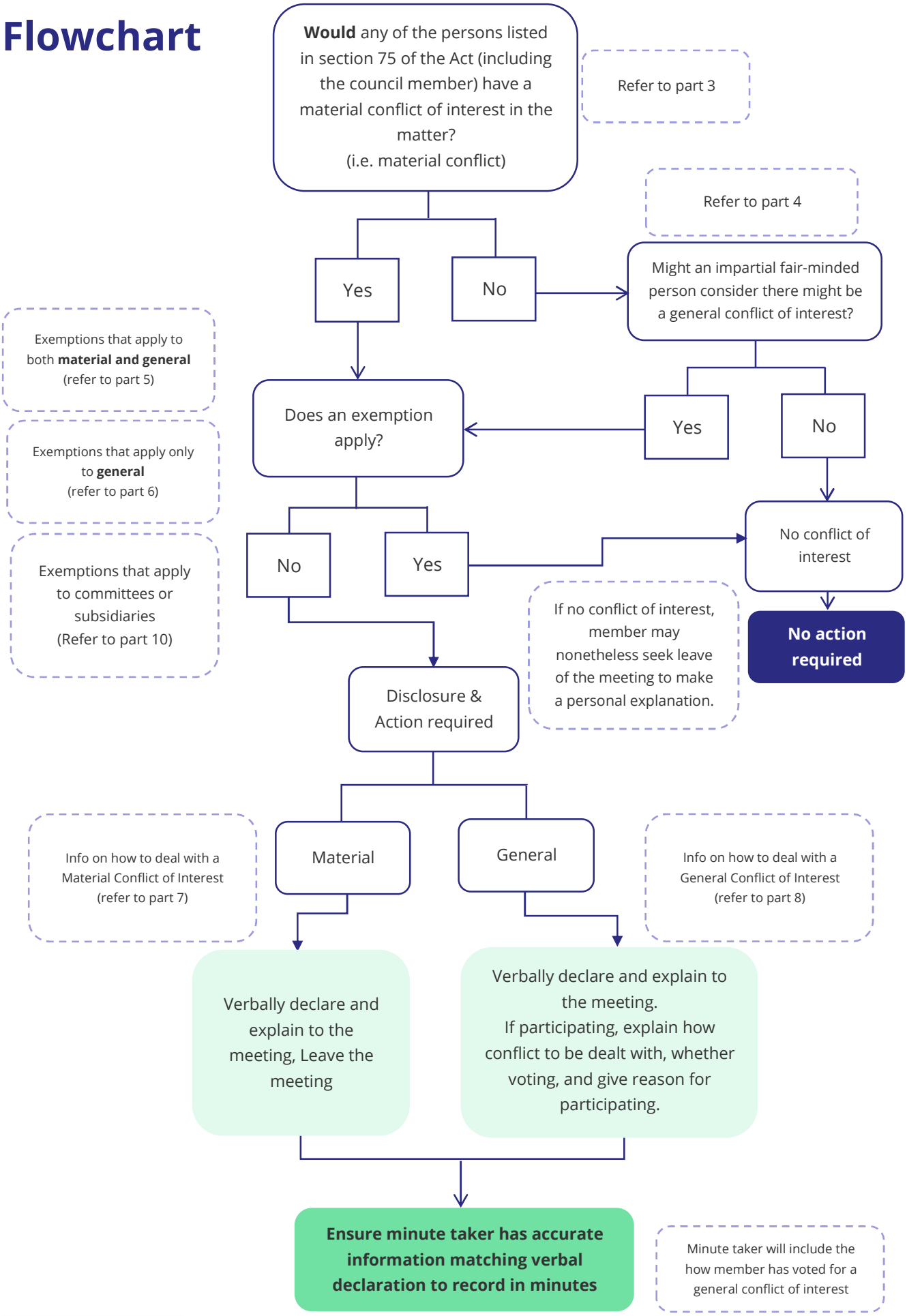
(b) a parent, step parent or remoter lineal ancestor; or

(c) a child, step child or remoter descendant; or

(d) a sibling or step sibling; or

(e) any member of the person's family who resides in the person's household.

Flowchart


Would any of the persons listed in section 75 of the Act (including the council member) have a material conflict of interest in the matter?
(i.e. material conflict)
Refer to part 3
Yes
No
Refer to part 4
Might an impartial fair-minded person consider there might be a general conflict of interest?
Yes
No
Does an exemption apply?
Exemptions that apply to both **material and general** (refer to part 5)
Exemptions that apply only to **general** (refer to part 6)
Exemptions that apply to committees or subsidiaries (Refer to part 10)
No
Yes
No conflict of interest
If no conflict of interest, member may nonetheless seek leave of the meeting to make a personal explanation.
No action required
Disclosure & Action required
Info on how to deal with a Material Conflict of Interest (refer to part 7)
Material
General
Info on how to deal with a General Conflict of Interest (refer to part 8)
Verbally declare and explain to the meeting, Leave the meeting
Verbally declare and explain to the meeting.
If participating, explain how conflict to be dealt with, whether voting, and give reason for participating.
Ensure minute taker has accurate information matching verbal declaration to record in minutes
Minute taker will include the how member has voted for a general conflict of interest

Checklist

1. Would any of the persons in section 75 of the Act (including the member) potentially have an interest (material) in the matter?

Yes	**No**
Go to Q3	*Go to Q2*

2. Might a person consider there might be a (general) conflict of interest?

Yes	**No**
Go to Q3	*Go to Outcome 1*

3. Does an exemption apply?
   a. If material

Yes	**No**
Go to Outcome 1	*Go to Outcome 2*

   Record exemption and why

   _____

   _____

   _____

   b. If general

Yes	**No**
Go to Outcome 1	*Go to Outcome 3*

   Record exemption and why

   _____

   _____

   _____

Outcome 1

No declarable interest

However, it is important to keep a record of having turned mind to why is not declarable, for future reference if necessary.

Minute taker: no action

Outcome 2 (material)

You have a material interest. You must

- declare a material conflict
- explain why you have a material interest
- leave the meeting.

Ensure minute taker has accurate information matching verbal declaration to record in minutes

Outcome 3 (general)

You have a general interest.

You must:

- Declare a general conflict
- explain why you have a general interest
- if participating in meeting , declare how you intend to deal with the interest, including whether you are voting on the matter and the reason for participating.

Ensure minute taker has accurate information matching verbal declaration to record in minutes

Conflict of Interest example form

This form provides guidance for council members when considering the agenda for an upcoming meeting. Members should be aware conflicts of interest that are not apparent on the face of the agenda may arise during discussion on a matter. A member completing this form must still verbally inform the meeting of the member's interest and take the action required under the Act.

(Complete ALL parts of form relevant to your Conflict of Interest)

I _____,
(insert name)

have reviewed the agenda for the;

○ Council

○ Special Council

○ Committee _____
(insert full name of Committee/Sub-Committee)

to be held on: _____
(insert date of meeting)

I consider that I have a:

○ **material** conflict of interest pursuant to section 75 (complete and sign below)

○ **general** conflict of interest pursuant to section 74 (complete and sign overleaf)

of the *Local Government Act 1999* ("the Act") in relation to the following agenda item:

_____
(insert details - include Agenda Item No, Report Number, Item/Report Subject Title)

Material Conflict of Interest

The nature of my **material** conflict of interest is as follows:

(ensure sufficient detail is recorded, including the reasons why you (or a person prescribed in section 75(1) of the Act) would gain a benefit or suffer a loss depending on the outcome of the consideration of the matter at the meeting of the Council in relation to the agenda item described above)

In accordance with section 75C(1)(b) I will be **leaving** the meeting room such that I cannot view or hear any discussion (including questions) or voting at the meeting.

_____ _____

Signature Date

General Conflict of Interest

The nature of my **general** conflict of interest is as follows:

(*ensure sufficient detail is recorded, including the reasons why an impartial fair-minded person might consider that your private interests might result in you acting in a manner that is contrary to your public duty)*

In accordance with section 75B(1)(b) I propose:

- ○ **not to** participate in the meeting in relation to the matter. *(sign below and leave meeting)*
- ○ **to** participate in the meeting in relation to the matter. *(complete remainder of form and sign)*

In participating in the meeting in relation to the matter, in accordance with section 75B(1)(c)(i), I intend to **deal** with my **general** conflict of interest in the following transparent and accountable way:

(ensure sufficient detail is recorded as to the manner in which you intend to deal with your general conflict of interest in the matter in a transparent and accountable way)

In participating in the meeting in relation to the matter, in accordance with section 75B(1)(c)(i), I intend:

- ○ **to** vote on the matter. *(manner in which you vote to be recorded in the minutes)*
- ○ **not to** vote on the matter and leave the meeting before the vote is taken on the matter.

My **reason** for participating (and, if relevant, voting) in relation to the matter, in accordance with section 75B(1)(c)(ii), is:

*(ensure sufficient detail is recorded as to your **reason** for participating in the meeting in relation to the matter)*

_____ _____

Signature Date

1. Introduction

Each council is established to provide for the government and management of its area at the local level and, in particular, to:

- act as a representative, informed and responsible decision-maker in the interests of its community
- provide and co-ordinate various public services and facilities and to develop its community and resources in a socially just and ecologically sustainable manner
- encourage and develop initiatives within its community for improving the quality of life of the community
- represent the interests of its community to the wider community
- exercise, perform and discharge the powers, functions and duties of local government under the *Local Government Act 1999* (**the Act**) and other Acts in relation to the area for which it is constituted.

Maintaining public confidence is pivotal for councils to deliver on these roles. Public confidence can be maintained where a council is viewed as accountable, transparent and effective.

The Act prescribes requirements relating to conflicts of interest for council members. Recognising and managing conflicts of interest is integral to the accountability, transparency and effectiveness of local government.

It is each member's personal responsibility under the Act to identify where he or she has a conflict of interest and then to act as required by the Act. To discharge this responsibility, a member needs to monitor their own circumstances and be aware of the matters which are to come before a meeting of the council or (sub) committee and consider whether he or she has an interest which may give rise to a conflict in respect of any matter. Members should consider not only their own interests, but also (for the purposes of a material conflict of interest) the interests of those persons and bodies listed in section 75(1) of the Act.

These guidelines have been prepared to provide guidance to council elected members in applying the conflict of interest provisions in the Act.

Guidance is provided in this document to help identify and deal with conflicts of interest. These guidelines are not the only source of information regarding conflicts of interest. Council members may seek other assistance including, where appropriate, from the council's chief executive officer and/or nominated delegate.

Irrespective of the assistance, guidance or advice provided it is ultimately the responsibility of each council member to accurately identify and manage their own conflicts of interest. Assistance from others, particularly council staff, is limited to helping a council member understand the requirements of the Act rather than providing advice about a specific conflict of interest.

Information is also provided on the appropriate action to be taken by a member in the event a conflict of interest exists and the potential legal consequences of failing to comply with the conflict of interest requirements.

Further resources for council members are included in these guidelines along with a glossary of key terms and case studies dealing with the application of the conflict of interest provisions.

2. What is a Conflict of Interest?

There is nothing inherently wrong with having a conflict of interest. All council members have interests outside their role as a council member, and it is almost inevitable that at some point in a council member's term a conflict of interest will arise. The mere existence of a conflict of interest is not improper or unethical. But where conflicts of interest are not identified, disclosed and managed, due process is compromised, affecting the public's confidence in the council and its elected representatives.

There are two types of conflict of interest under the Act:

- **material conflict of interest**
- **general conflict of interest.**

3. Material Conflict of Interest

Section 75 of the Act provides that a council member has a material conflict of interest in a matter to be discussed at a meeting of the council:

- if the member or specified (see below) persons or bodies **would**:
    - gain a benefit (whether directly or indirectly and whether of a personal or pecuniary nature); or
    - suffer a detriment (whether directly or indirectly and whether of a personal or pecuniary nature),

  depending on the outcome of the consideration of the matter at the meeting.

The following persons and bodies are 'specified' for the purposes of the material conflict of interest provisions:

- a relative of the member;
- a body corporate of which the member is a director or a member of the governing body;
- a proprietary company in which the member is a shareholder;
- a family company of the member (within the meaning of Schedule 3);
- a family trust of the member (within the meaning of Schedule 3);
- a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;
- a partner of the member;

- the employer or an employee of the member;
- a person with whom the member has entered into, is seeking to enter into, or is otherwise involved in a negotiation or tendering process in connection with entering into, an agreement for the provision of professional or other services for which the member would be entitled to receive a fee, commission or other reward;
- a person or body from whom the member has received a designated gift (see below); or
- a person of a prescribed class.

For the purposes of the material conflict of interest provisions:

- a 'designated gift' means a gift of $500 or more received by the member after the last election at which the member was elected required to be disclosed in a return under section 81A of the *Local Government (Elections) Act 1999* or Schedule 1 clause 24A of the *City of Adelaide Act 1998.*[2]
- 'relative' of a person means:
    - spouse or domestic partner; or
    - a parent, step parent or remoter lineal ancestor; or
    - a child, step child or remoter descendant; or
    - a sibling or step sibling; or
    - any member of the person's family who resides in the person's household.

When considering whether or not the material conflict of interest provisions in the Act apply, it is important to consider whether the specific council decision being contemplated 'may', or in fact 'will', result in the council member or a person or body specified in section 75 gaining a benefit or suffering loss of a directly or indirectly and of a personal or pecuniary nature. This is because a material conflict of interest only arises if the member or person or body specified in section 75 **would** gain a benefit or suffer a loss as opposed to it being a mere possibility.

[2] See Addendum A to these Guidelines for information regarding the application of the 'designated gift' definition for the 2022-2026 Council term.

4. General Conflict of Interest

Section 74 of the Act provides that a member of a council has a general conflict of interest in a matter to be discussed at a meeting of the council if an impartial, fair-minded person **might** consider that the member's private interests **might** result in the member acting in a manner that is contrary to their public duty.

For the purposes of the general conflict of interest provisions:

- 'private interests' means any direct or indirect interest of a member that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief;
- 'public duty' means the responsibilities and obligations that a member has to members of the public in their role as a member.

The threshold for when a general conflict of interest arises is lower than for a material conflict of interest. Much is evident by the use of the **'double might'** test within the definition of a general conflict of interest. It is also worth noting that, unlike the case with material conflicts of interest, it is not necessary that the council member would gain a benefit or suffer a loss depending on the council's consideration of the matter.

Under the required approach, an impartial, fair-minded person might still consider that a council member's interest in a matter before a meeting might result in the council member acting contrary to their public duty, even if there is no benefit or loss for the council member that will or even may arise. Council members must in assessing whether or not they have general conflict of interest turn their mind to what an impartial fair-minded person might consider, even if the member themselves does not consider that they have a general conflict of interest.

The impartial, fair-minded person is a legal fiction. The person brings a rational, neutral, objective, even-handed approach to the assessment of a general conflict of interest, free from personal biases, prejudice or favouritism.

5. Exemptions – Material and General Conflict of Interest

There are exemptions that apply under the Act to the conflict of interest provisions. Some exemptions apply to both material and general conflicts of interest and some apply only to general conflicts of interest.

A member of a council will not be regarded as having a material or general conflict of interest in a matter to be discussed at a meeting of the council in the circumstances set out below.

Interest is held in Common with a Substantial Proportion of the Ratepayers, Electors or Residents of the Council Area

If the interest held by a council member in relation to a matter to be discussed at a meeting of the council is held in common with a substantial proportion of the ratepayers, electors or residents of the council area and does not materially exceed the interest held by the other ratepayers, electors or residents the member will not be regarded as having a material or general conflict of interest in relation to the matter.

The Act does not specify what constitutes a 'substantial proportion of the ratepayers, electors or residents of the council area'. In the context of Section 75A(1)(a) of the Act, what must be 'substantial' is the proportion, i.e., the ratio or percentage of ratepayers, electors or residents. The actual number of ratepayers, electoral or residents within the substantial proportion is also a relevant consideration.

Interest of Employer or Employee Interests of Which the Member is Unaware

If the interest held by a council member in relation to a matter to be discussed at a meeting of the council is that of an employer or employee of the member, and the member does not know, and could not reasonably be expected to know, of that interest, the member will not be regarded as having a material or general conflict of interest in relation to the matter.

A council member seeking to rely on this provision would need to be confident that they could demonstrate that they had no actual knowledge of the employee's or employer's interest and could not reasonably be expected to know of the interest.

Interest Arises in Relation to a Prescribed Matter or in Prescribed Circumstances

If the interest held by a council member in relation to a matter to be discussed at a meeting of the council is:

- in relation to a prescribed matter or in prescribed circumstances; and
- the member complies with the requirements of the regulations (if any) relating to dealing with the matter,

the member will **not** be regarded as having a material or general conflict of interest in relation to the matter.

Regulation 8AAA of the *Local Government (General) Regulations* 2013 (the General Regulations) provides that the following matters are prescribed for the purposes of the above exemption:

- the preparation, discussion, conduct, consideration or determination of a review under section 12 of the Act;
- the preparation, discussion, adoption or revision of a policy relating to allowances and benefits payable to members if the policy relates to allowances and benefits payable equally to each member (rather than allowances and benefits payable to particular members or particular office holders);
- the preparation, discussion, adoption or alteration of a training and development policy under section 80A of the Act;
- the preparation, discussion, adoption or amendment of a strategic management plan under section 122 of the Act;
- the adoption or revision of an annual business plan;
- the adoption or revision of a budget;
- the declaration of rates (other than a separate rate) or a charge with the character of a rate, and any preparation or discussion in relation to such a declaration;
- a discussion or decision of a matter at a meeting of a council if the matter:
    - relates to a matter that was discussed before a meeting of a subsidiary or committee of the council; and
    - the relevant interest in the matter is the interest of the council that established the committee or which appointed, or nominated for appointment, a member of the board of management of the council subsidiary or regional subsidiary.

It is important to note that whilst the declaration of rates is a prescribed matter such that the material and general conflict of interest provisions do not apply to such a matter, the declaration of a separate rate is **not** a prescribed matter. Therefore, a council member will need to consider if material and/or general conflict of interest provisions apply to them in relation to the declaration of a separate rate (for example if their property will be subject to the separate rate) discussed at a meeting of the council. The exemption relating to an interest is held in common with a substantial proportion of the ratepayers, electors or residents of the council area may be applicable, depending on the proportion of ratepayers in the council area subject to the separate rate.

A further important point to note in relation to prescribed matters relates to council subsidiaries and regional subsidiaries. Councils that are constituent councils of council or regional subsidiaries will regularly be considering matters that concern the interest of the council or regional subsidiary (and usually also concern the interest of the council).

A discussion or decision of a matter at a meeting of a council is a prescribed matter, but only if it relates to a matter that was discussed before a meeting of a subsidiary and the relevant interest in the matter is the interest of the council that appointed, or nominated for appointment, a member of the board of management of the council subsidiary or regional subsidiary.

However, where the relevant interest in the matter before the council is that of the council subsidiary or regional subsidiary, then that matter is not a prescribed matter and the exemption does not apply. This means that where the council is considering, at a council meeting, a matter concerning a subsidiary (council or regional), a council member who is a board member of the subsidiary will have a material conflict of interest in that matter if the subsidiary would obtain a benefit or suffer a detriment directly or indirectly and whether personal or pecuniary, depending on the outcome of the council's consideration of the matter.

Interest of a Relative (Other Than the Spouse or Domestic Partner) of Which the Member is Unaware

If the interest held by a council member in relation to a matter to be discussed at a meeting of the council is that of a relative of the member, other than the member's spouse or domestic partner, and the member does not know, and could not reasonably be expected to know, of that interest the member will not be regarded as having a material or general conflict of interest in relation to the matter

A council member seeking to rely on this provision would need to be confident that they could demonstrate that they had no actual knowledge of the relative's interest and could not reasonably be expected to know of the interest. This exemption does not apply to an interest of a council member's spouse or domestic partner even if the council member did not know of their interest.

6. Exemptions – General Conflict of Interests

In addition to exemptions that apply to both material and general conflicts of interest (set out above), there are exemptions that apply under the Act to only general conflicts of interest.

A member of a council will not be regarded as having a material or general conflict of interest in a matter to be discussed at a meeting of the council in the circumstances set out below.

Engagement with a Community Group, Sporting Club or Similar Organisation

A council member will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of an engagement with a community group, sporting club or similar organisation undertaken by the member in their capacity as a member.

This exemption only applies where the council member's engagement with the community organisation is undertaken by the council member in their role as a council member. Council members whose engagement with a community organisation commenced or arose before their election to the council are unlikely to be able to rely on this exemption.

Political Party Membership

A council member will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of membership of a political party.

This exemption applies irrespective of whether the council member became a member of a political party before or after their election to the council.

Membership of a Community Group, Sporting Club or Similar Organisation

A council member will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of membership of a community group, sporting club or similar organisation (if the member is not an office holder for the group, club or organisation).

This exemption does not apply if the council member is an office holder of the organisation, for example, president, treasurer, secretary, board member or committee member. In that circumstance, the council member must also consider the application of the material conflict of interest provisions if the organisation is a body corporate. This is because a body corporate of which the council member is a director or a member of the governing body is a body specified for the purposes of section 75 of the Act.

Student of a Particular School or Parent of a Student at the School

A council member will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of the member having been a student of a particular school or their involvement with a school as parent of a student at the school.

Nomination or Appointment by a Council as a Member of a Board

A council member will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of nomination or appointment as a member of a board of a corporation or other association, if the member was nominated for appointment by a council.

This exemption does not apply to the material conflict of interest provisions. Therefore, a council member who has been nominated or appointed by a council as a member of a board of a corporation or other association including a subsidiary (single council or regional), should consider the application of the material conflict of interest provisions in relation to matters to be discussed at a meeting of the council concerning the corporation or other association. Notwithstanding this exemption from the general conflict of interest provisions, a council member may nonetheless have a material conflict of interest in matter concerning a corporation or other association to which they have been appointed or nominated for appointment by the council.

A member who does not have an interest in a matter may nonetheless seek leave of the meeting to make a personal explanation in respect of the matter. An account of that personal explanation will be recorded in the minutes of the meeting.

Agencies and Instrumentalities of the Crown

Section 75A(3) provides that a council member who is a member, officer or employee of an agency or instrumentality of the Crown, will be regarded as having a conflict of interest in a matter before the council if the matter directly concerns that agency or instrumentality but otherwise will not be regarded as having an interest in a matter by virtue of being a member, officer or employee of the agency or instrumentality.

For the purposes of the conflict of interest provisions in the Act, 'agency or instrumentality of the Crown' includes:

- an administrative unit of the Public Service; and
- a body corporate comprised of or including, or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown.

The effect of the above section is that a council member who is a member, officer or employee of an agency or instrumentality of the Crown, will have both a material and general conflict of interest in relation to a matter before the council if the matter directly concerns that agency or instrumentality. Conversely, where a matter before a meeting concerns another agency or instrumentality of the Crown to which the council member is not a member, officer or employee, there will be no material or general conflict of interest.

Council members will need to ensure they are clear as to the agency or instrumentality that they are a member, officer or employee of. For council members who are State Government employees it is the particular agency or instrumentality that employs the council member that is relevant, rather than necessarily being the State Government office or department they work at.

The concept of being a member or officer of an agency or instrumentality of the Crown extends beyond the typical employment relationship, and council members who perform voluntary or board roles for Government agencies (including the emergency services, as well as Government arts and cultural organisations) will be captured by this definition.

7. Dealing with Material Conflicts of Interest

Section 75C of the Act requires a council member who has a material conflict of interest in a matter to be discussed at a meeting of the council, to:

- inform the meeting of the material conflict of interest in the matter; and
- leave the meeting room (including any area set aside for the public) such that the member cannot view or hear any discussion or voting at the meeting and stay out of the meeting room while the matter is being discussed and voted on.

For members of councils which broadcast their meetings (for example, via the internet), the prohibition on viewing or hearing any discussion or voting at extends to watching or listening to the broadcast.

The Minister may grant an approval in writing to a council member to take part in the meeting if:

- because of the number of members subject to the obligation under this section 75C, conduct of the meeting would be obstructed if the approval were not given; **and**
- it appears to the Minister to be in the interests of the council's community and area.

Therefore, prerequisites to grant an approval are whether the Council is able to meet quorum requirements due to the number of members declaring material conflicts and whether it appears to the Minister to be in the interests of the council's community and area. Accordingly, a request for a ministerial approval should address these two elements and provide any supporting information considered necessary.

The Minister may grant an approval subject to any conditions determined by the Minister.

A council member does not contravene section 75C by taking part in the meeting if the member has been granted an approval by the Minister and complies with the conditions of the approval.

It is recommended that if a member of a council is seeking an approval from the Minister to participate, they first discuss the matter with the council’s chief executive officer.

The following details must be recorded in the minutes of the meeting at which a council member has disclosed a material conflict of interest:

- the member's name;
- the nature of the interest, as described by the member;
- if the member took part in the meeting under an approval from the Minister, the fact that the member took part in the meeting.

It is essential that council members clearly state the required information to the meeting. Some councils may provide a form to assist a member disclosing a conflict of interest and the

preparation of accurate minutes. However, it is the disclosure made to the meeting that must be recorded in the minutes.

8. Dealing with General Conflicts of Interest

Section 75B of the Act requires a council member who has a general conflict of interest in relation to a matter to be discussed at a meeting of the council, to deal with the interest in a transparent and accountable way and, in particular, to inform the meeting of:

- the member's interest in the matter; and
- whether or not the member proposes to participate in the meeting in relation to the matter; and
- if the member proposes to participate in the meeting in relation to the matter:
    - how the member intends to deal with the general conflict of interest, including whether the member intends to vote on the matter; and
    - the member's reasons for participating (and, if relevant, voting) in relation to the matter.

The Act makes it clear that non-participation in a meeting of a council is not the only way in which a member of the council may appropriately deal in a transparent and accountable way with a general conflict of interest of the member in a matter to be discussed at the meeting.

It is a matter for the council member to determine the appropriate level of participation (or non-participation) taking into account the nature of the interest and the circumstances of the council's consideration of the matter. If a member determines that they will participate in the debate on the matter, but not vote on the matter, they must leave the council chamber before the vote is taken. Under the Act and its associated regulations, there is no ability for a member to abstain from voting if the member is present in the chamber when the vote is taken.

If a quorum at a meeting cannot be formed because a council member proposes to exclude themselves from the meeting in order to comply with section 75B, the member will not be taken to have contravened that section by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the member, together with any other required number of members, forms a quorum for the meeting.

The following details must be recorded in the minutes of the meeting at which a council member has disclosed a general conflict of interest:

- the member's name;
- the nature of the interest, as described by the member;
- the manner in which the member dealt with the general conflict of interest;
- if the member voted on the matter, the manner in which the member voted;
- the manner in which the majority of persons who were entitled to vote at the meeting voted on the matter.

It is essential that council members clearly state the required information to the meeting. Some councils may provide a form to assist a member disclosing a conflict of interest and the preparation of accurate minutes. However, it is the disclosure made to the meeting when a conflict of interest arises that must be recorded in the minutes.

9. Application to Committees

The conflict of interest provisions apply at committee meetings to members of committees established by councils as if:

- a committee were a council; and
- a member of a committee were a member of a council.

A member of a council committee, who is also a council member or employee will not be regarded as having a material or general conflict of interest in a matter to be discussed at a meeting of the committee by reason only of the fact that the member is a council member or employee.

10. Application to Subsidiaries

The conflict of interest provisions apply at board meetings of subsidiaries established by councils to board members of subsidiaries as if:

- a subsidiary were a council; and
- a board member of a subsidiary were a member of a council.

A board member of a:

- council subsidiary, who is also a council member or employee will not be regarded as having a conflict of interest in a matter to be discussed at a meeting of the subsidiary by reason only of the fact that the member is a council member or employee of the council or constituent council; or
- regional subsidiary who is also a council member or employee of a constituent council will not be regarded as having a conflict of interest in a matter to be discussed at a meeting of the regional subsidiary if the relevant benefit or loss would be enjoyed or suffered in common with all or a substantial proportion of the constituent councils.

For council members (and employees) who are board members of regional subsidiaries a material and/or general conflict of interest may arise if the council member's (or employee's) council would gain a benefit or suffer a loss depending on the outcome of the subsidiary's consideration of the matter unless the benefit or loss (directly or indirectly and pecuniary or non-pecuniary) would be shared in common with all or a substantial proportion of the constituent councils.

Case Studies

Case Study 1

A council member's sister owns and lives in a property adjacent to land containing derelict, vacant apartments. The council will consider at its next meeting purchasing the land with the intention of remediating it and developing it into a new community park and associated buildings and structures subject to the availability of funding from the State Government and all approvals being obtained.

The council member's sister is a relative of the member for the purposes of the material conflict of interest provisions in the Act. The member's sister would gain a benefit if the council creates a new community park. However, the present matter before the council is merely the purchase of the land. There are additional decisions that need to be made by the council and approvals required from other bodies before the council can proceed with redeveloping the land. Therefore, the council member's sister would not gain a benefit merely from the decision to purchase the land and therefore the council member does not have a material conflict of interest.

However, the council member does have a private interest in the purchase of the land (that it be redeveloped by the council, which would be of benefit to the council member's sister). An impartial, fair-minded person might consider that the member's private interest might result in the member acting in a manner that is contrary to their public duty. Therefore, the council member has a general conflict of interest.

Case Study 2

A council member is an employee of the Department for Environment and Water. The council is lobbying the Department for Education to reverse a decision to close a school in the council area. The council member has been a member of the State government inter-departmental working party which recommended the closure of the school due to persistent low enrolments.

The closure of the school does not directly concern the council member's employer - the Department for Environment and Water. Therefore, neither a material nor general conflict of interest arises for the council member on the basis of their employment with the Department for Environment and Water.

Case Study 3

A council member is a member of the local tennis club, an incorporated association. There have been a number of complaints from nearby retail businesses to the council about parking for their customers when tennis competitions are held. The council member does not park at the tennis courts for tennis competitions – her teenage daughter drops her there. The parking issue will be considered by the council at its next meeting.

The tennis club is a body corporate but the council member is not a director or on the governing body of the tennis club. Therefore, the tennis club is not a specified body in section 75(1) for the purposes of the material conflict of interest provisions. Accordingly, it is not necessary to consider if the tennis club would gain a benefit or suffer a loss depending on the council's consideration of the parking matter.

The council member would not gain a benefit or suffer a loss depending on the council's consideration of the parking issue as she does not park at the tennis courts and therefore the council member does not have a material conflict of interest in the matter of parking and the tennis club.

The council member is not regarded as having a general conflict of interest in the parking matter by reason only of her membership of the tennis club pursuant to the exemption in section 75A(2)(c) which provides that a member of a council will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of membership of a community group, sporting club or similar organisation (if the member is not an office holder for the group, club or organisation).

Case Study 4

The Mayor is the patron of a local community soup kitchen that has a funding application before the council. The Mayor's role is an honorary role and she has no administrative or management role in the organisation. The Mayor was asked to be the patron for the soup kitchen prior to her election to the council. The amount of funding being sought is less than $1,000.

Neither the Mayor nor a person or body specified in section 75(1) of the Act would gain a benefit or suffer a loss depending on the council's consideration of the funding application. Therefore, the Mayor does not have a material conflict of interest.

The Mayor has a personal interest in the funding application, namely that the organisation that she is a patron for secures the funding. An impartial, fair-minded person might consider that the member's private interest might result in the member acting in a manner that is contrary to their public duty. Therefore, the Mayor has a general conflict of interest.

However if the Mayor was asked to be the patron after her election to council and in her capacity as the Mayor, the Mayor would not be regarded as having a general conflict of interest pursuant to the exemption in Section 75A(2)(a) of the Act which provides that a member of a council will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of an engagement with a community group, sporting club or similar organisation undertaken by the member in their capacity as a council member.

Case Study 5

A local community run childcare centre, Kids R Us, has applied to the council for a discretionary rebate of council rates. In support of its application, the childcare centre states that the rebate of council rates will assist it to maintain its childcare fees at the current level as otherwise it would be required to increase its fees to cover increasing costs.

The Deputy Mayor's granddaughter (his son's daughter) attends Kids R Us and the centre's fees are paid by his son.

The Deputy Mayor's son is a relative of the Deputy Mayor for the purposes of the material conflict of interest provisions in the Act. The Deputy Mayor's son would suffer a loss if the council does not grant the rebate as he will be required to pay increased childcare fees. Therefore, the Deputy Mayor has a material conflict of interest in relation to the matter concerning the rebate application by Kids R Us.

Case Study 6

A council member was a student of Standbourne College, a private school in the council's area and is an active member of Standbourne Old Scholars. The council is considering making a road process order to close part of a road adjacent to Standbourne College and transferring the closed road to the College, which it intends to use to build a new sports and swimming centre.

The council member would not gain a benefit or suffer a loss depending on the Council's consideration of the road closure and transfer. Therefore, the council member does not have a material conflict of interest.

The council member has a private interest in the College building a new sports and swimming centre by virtue of their connection with the school, as an old scholar. The council member however will not be regarded as having a general conflict of interest in the matter concerning the road closure and transfer to the College by reason only of the member having been a student of the College pursuant to the exemption in section 75A(2)(d) which provides that a member of a council will not be regarded as having a general conflict of interest in a matter to be discussed at a meeting of the council by reason only of the member having been a student of a particular school or their involvement with a school as parent of a student at the school. Therefore, the member does not have a general conflict of interest.

Case Study 7

The council is considering applications for its Local Young and Emerging Artists award. The recipient of the award will be engaged by the council to produce a piece of artwork to be installed in the foyer of the council's civic centre. A council member owns an interior design company and one of the shortlisted artists is an interior design student who works on a casual basis at the council member's interior design studio.

One of the shortlisted artists is an employee of the council member and will gain benefit if she wins the council award. An employee of a council member is a specified person pursuant to section 75(1) for the purposes of the material conflict of interest provisions. Therefore, the council member has a material conflict of interest.

Case Study 8

The council is a constituent council of ABC Regional Subsidiary (ABCRS). A council member is a board member of ABCRS and receives an allowance for this position. The council is considering the following matters:

(a) ABCRS has resolved to request the council (and only the council) make a financial contribution to ABCRS of $50,000;

(b) The council member's reappointment to the Board of ABCRS following the expiry of their term of office;

ABCRS is a body corporate and the council member is a board member of ABCRS i.e. on the governing body. Therefore, ABCRS is a body specified in section 75(1) for the purposes of the material conflict of interest provisions.

Section 75A(1)(d) provides that a council member will not be regarded as having a material or general conflict of interest in a matter to be discussed at a meeting of the council if the interest arises in relation to a prescribed matter. The following matter is prescribed in Regulation 8AAA(1)(h) of the General Regulations:

> *(h) a discussion or decision of a matter at a meeting of a council if the matter:*
>
> *(i) relates to a matter that was discussed before a meeting of a subsidiary … of the council; and*
>
> *(ii) the relevant interest in the matter is the interest of the council … which appointed, or nominated for appointment, a member of the board of management of the council subsidiary or regional subsidiary.*

(a) Re the financial contribution

This matter was discussed before a meeting of ABCRS. The ABCRS would gain a benefit if the Council agrees to make a financial contribution to ABCRS as requested. The relevant interest in this matter is the interest of ABCRS. Therefore, the above exemption does not apply and the council member has a material conflict of interest.

(b) Re the council member's reappointment to the Board of ABCRS

If the council member is reappointed to the Board of ABCS they would gain a benefit in the form of remuneration. The relevant interest in this matter is the interest of the council member. Therefore, the above exemption does not apply and the council member has a material conflict of interest.

Case Study 9

The council is considering a report from an investigator in relation to a complaint that a council member has breached the Behavioural Standards for council members. The investigator has found that the council member did breach the Behavioural Standards and is recommending that the council require the council member to make a public apology.

The council member would gain a benefit or suffer a loss depending on the council's consideration of the investigator's report and the proposal to impose a sanction. The benefit or loss is in relation to the council member's reputation and the sanction that the council could impose. Therefore, the council member has a material conflict of interest.

Case Study 10

The council is considering the following motion:

> *Cr Burns is removed as Deputy Mayor effective immediately and Cr Crafter is appointed Deputy Mayor effective immediately.*

Cr Burns receives an additional allowance for undertaking the role of Deputy Mayor. If the council were to remove Cr Burns from the office of Deputy Mayor he will suffer a loss by way of a reduced allowance. Therefore, Cr Burns has a material conflict of interest in relation to the above motion.

Cr Crafter will also have a material conflict of interest in the above motion as she will receive an additional allowance for undertaking the role of Deputy Mayor, if appointed.

However, if the council was to use an election process to choose the Deputy Mayor which did not involve a formal vote on a motion naming a specific council member, the conflict of interest provisions would not apply and all members including those nominated could vote in the election process.[3]

[3] See LGA Guidelines for Choosing a Chairperson or Deputy Mayor or Deputy Chairperson.

Case Study 11

The council is considering the setting of dog registration fees. The council member owns a dog.

The council member will gain a benefit or suffer a detriment depending on the dog registration fees set by the council. However, the council member's interest is held in common with all dog owners in the council's area (which would likely constitute a substantial proportion of residents) and the member's interest would be the same as all other dog owners. Therefore the exemption in section 75A(1) would apply which provides that a council member will not be regarded as having a conflict of interest in a matter to be discussed at a meeting of the council if the interest is held in common with a substantial proportion of the ratepayers, electors or residents of the council area and does not materially exceed the interest held by the other ratepayers, electors or residents. Therefore, the council member does not have a material or general conflict of interest.

Case Study 12

The Council is considering a motion to endorse sending three council members, including the Mayor, to a national local government conference, to be held interstate.

Endorsement of the council members' attendance would result in Council covering the council members' costs for travel and attendance at the conference. Under the Council's policy, the Council will cover economy air travel, accommodation and all reasonable meal expenses.

If the Council endorses the council members' attendance at the national local government conference, this will result in a benefit of a pecuniary nature accruing to each of the members. This is the case, even though the members are attending the conference in their role as members of the Council and not for personal reasons.

The effect of the decision is that the members' costs for attending the conference, together with accommodation and meal expenses, will be covered by the Council, rather than being out-of-pocket expenses for the members themselves.

Therefore, the council members each have a material conflict of interest in the matter for discussion.

Addendum A

Designated Gift definition for 2022-2026 Council Term

A council member will have a material conflict of interest in a matter to be discussed at a meeting of the council if a person or body from whom the member has received a designated gift would gain a benefit (whether directly or indirectly and whether of a personal or pecuniary nature) or suffer a detriment (whether directly or indirectly and whether of a personal or pecuniary nature) depending on the outcome of the consideration of the matter at the meeting.

Pursuant to section 75(2) a 'designated gift' means a gift of $500 or more received by the member after the last election at which the member was elected required to be disclosed in a return under section 81A of the *Local Government (Elections) Act 1999* (the Elections Act) or Schedule 1 clause 24A of the *City of Adelaide Act 1998.*

Amendments to sections 81A of the Elections Act commenced on 1 January 2026. Prior to the amendments to section 81A of the Elections Act candidates were required to submit a large gifts returns relating to gifts of more than $2,500. For the 2026 periodic elections candidates will instead be required, pursuant to section 81A of the Elections Act, to submit a return in relation to gifts of $500 or more.

In addition, amendments to the definition of designated gift in section of 75(2) of the Act commenced on 1 January 2026. Prior to the amendments to the definition of designated gift, a designed gift included not just a gift required to be disclosed in a large gifts return but also gift or benefit of an amount greater than $2,500 received by the member after the last election at which the member was elected, whether or not the gift or benefit was required to be disclosed in a return under Part 14 of the Elections Act.

The effect of the above is that for the period up to the conclusion of the 2026 periodic elections, a council member will have a material conflict of interest in a matter to be discussed at a meeting of the council if a person or body from whom the member has received a gift or benefit of more than $2,500 after the last election at which the member was elected (and which was required to be disclosed in a large gifts return under section 81A of the Elections Act or Schedule 1 clause 24A of the *City of Adelaide Act 1998*) would gain a benefit (whether directly or indirectly and whether of a personal or pecuniary nature) or suffer a detriment (whether directly or indirectly and whether of a personal or pecuniary nature) depending on the outcome of the consideration of the matter at the meeting.

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