

Conflict of Interest – Compliance, Process and Guidance Policy - 2019

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Introduction

What is a conflict of interest?

Objective of this document

Local Government Act 1989

Penalties

1. Making Disclosures

Declaring a conflict of interest

Outside Employment

Process flow chart – Councillors

Process flow chart – Officers and personnel acting on behalf of council

2. Roles and Responsibilities

3. Compliance

Audit and Reporting

Training and Development

Privacy

4. Appendix

Related Documents

Conflict of Interest Guide for Councillors (*LGV document to be added*)

Conflict of Interest Guide for Staff (*LGV document to be added*)

Introduction

What is a conflict of interest?

A conflict of interest occurs where there is a conflict between the public duty and the private interests of a public official. A person is considered to have a conflict of interest if they have a direct or indirect interest in a matter. Personal or financial interests or that of a close associate or family member should not influence or cannot be reasonably perceived to influence the performance of role or duties.

Policy Objective

Council is committed to governing in the best interests of the community and delivering services in a fair, transparent and accountable manner. This Policy deals with situations in which Councillors, officers and personnel acting on behalf of Council have an actual, perceived or potential conflict of interest between their public role and their personal interests.

This document details how conflicts of interest are managed at Council and is to be read in conjunction with the Local Government Victoria, Conflict of Interest Guide for Councillors or the Conflict of Interest Guide for Council staff.

This Policy forms part of Council's good governance practices and links to the fraud and corruption control framework.

Local Government Act

The Local Government Act 1989 ('the Act') requires conflicts of interest to be declared and specific steps to be taken when a conflict occurs.

The Act describes seven classes of interests. This includes direct interests and the following six indirect interests:

- close association
- indirect financial interest
- conflicting duty
- applicable gift
- party to the matter
- residential amenity.

In addition, the Act includes a further interest known as "conflicting personal interest" which applies when a person considers that they have a personal interest that is in conflict with their public duty AND they do not have a conflict of interest as defined by the other categories of the Act.

The meanings of the categories of conflict of interest and useful scenarios to consider when making a decision about whether a conflict of interest applies to a certain matter is set out in the Conflict of Interest Guides which have been prepared by Local Government Victoria for Councillors and Staff. These Guides are attached to this Policy.

Penalties

A failure to disclose a conflict of interest is a breach of the Act. The penalties which apply are:

Councillor	Council staff
<p>A Councillor who fails to disclose a conflict of interest may be prosecuted in court and fined. If this results in the person being convicted, he or she is liable to be disqualified from being a Councillor for eight years.</p> <p>A Councillor who fails to comply with section 79 of the Act and is found guilty of an offence may incur a fine not exceeding 120 penalty units or \$19,342.80 (2019/20)</p>	<p>An officer who fails to disclose a conflict of interest may be prosecuted in court, convicted and fined and may be disciplined or dismissed from his or her position.</p> <p>An Officer who fails to comply with section 80B of the Act and is found guilty of an offence may incur a fine not exceeding 120 penalty units or \$19,342.80 (2019/20)</p>

1. Making Disclosures

Declaring a Conflict of Interest

Council has processes in place for Councillors, Officers and personnel acting on behalf of Council in relation to the declaration of conflicts of interest. These processes are detailed below under specific categories.

Council Meetings and Assembly of Councillors

Category	Councillors	Officers or personnel acting on behalf of Council
Council Meeting	<p>Councillors advise that they have a conflict of interest at start of the Council Meeting and again immediately before the matter is considered.</p> <p>When making the disclosure the Councillor states the class of interest and describes the nature of the interest.</p> <p>However, if this would mean disclosing information that is confidential or private, particularly if it is about another person the Councillor can make a full disclosure to the CEO in writing before the meeting and then just disclose the class of interest in the meeting.</p> <p>The Councillor leaves the Council Chamber and any area where they can see or hear the meeting until the matter has been concluded.</p> <p>The Councillor completes a conflict of interest declaration form and the conflict is recorded in the Council minutes.</p> <p>If a Councillor considers that he or she has a personal interest (separate from a direct or indirect interest as defined in the Act) in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may,</p>	<p>Each Council report specifies that the Officers involved in preparing the report did not have a conflict of interest in the matter.</p> <p>This ensures that the Council does not unknowingly act on advice from a person with a conflict of interest.</p> <p>Officers must disclose a conflict of interest if they:</p> <ul style="list-style-type: none"> • prepare a report for the Council; • provide information to be included in a report; and • approve a report to Council.

	<p>immediately before the matter is considered at the relevant meeting, apply to the Council to be exempted from voting on the matter. If a Councillor or member of a special committee makes an application, he or she must give reasons in support of the application. A Council may consent to an application and must not unreasonably withhold consent.</p> <p>The Councillor leaves the Council Chamber and any area where they can see or hear the meeting until the matter has been concluded.</p> <p>The Councillor completes a conflict of interest declaration form and the conflict is recorded in the Council minutes.</p>	
<p>Assembly of Councillors (including Portfolio Committees, District Advisory Committees and other Advisory Committees which are established by Council.)</p>	<p>Councillors must disclose a conflict of interest if they are present at an Assembly of Councillors meeting where an item is discussed in which they have a conflict.</p> <p>The Councillor will leave the room when the item is being discussed.</p> <p>Details of the conflict is recorded in the Assembly of Councillors Report to Council which is considered at an Ordinary Council Meeting.</p>	<p>Officers must disclose a conflict of interest if they are present at a meeting where an item is discussed in which they have a conflict.</p> <p>The Officer leaves the meeting room and any area where they can see or hear the meeting until the matter has been concluded.</p> <p>The Officer completes a conflict of interest declaration form and the conflict is recorded in the minutes of the meeting.</p>

Officers and personnel acting on behalf of Council

Category	Officers or personnel acting on behalf of Council
Acting under delegation	<p>This includes the power to approve a permit, enter into a contract, or employ a person, and extends to all financial delegations or other duties, functions and powers delegated to a Council employee.</p> <p>If a staff member has a conflict of interest in a matter where they have a delegated responsibility, they must do the following two things:</p> <ul style="list-style-type: none"> not exercise the relevant power, duty or function of the delegation, and;

	<ul style="list-style-type: none"> complete a conflict of interest declaration form and submit to Governance. <p>If staff members or personnel acting on behalf of Council have a delegation to deal with permits of any kind, including planning permits, they must be alert for possible conflicts of interest.</p> <ul style="list-style-type: none"> All staff dealing with permits are required to complete a no conflict declaration at the start of each application process and are to amend this declaration if necessary throughout the process. If a conflict is identified and declared at any stage the staff member must complete the declaration form and take no further part in the matter.
Procurement	<p>Staff members must be particularly alert for possible conflicts of interest if involved in Council purchasing processes in any way. This includes being on a tender evaluation panel, being authorised to make purchases for the Council or being able to approve Council contracts or contract payments.</p> <p>Members of tender panels are to make a written declaration with regard to conflicts of interest/no conflict:</p> <ul style="list-style-type: none"> before and after tenders are opened; and after the evaluation process but before the recommendation is made. <p>If a staff member has a conflict of interest in relation to procurement of goods or services by the Council, they must:</p> <ul style="list-style-type: none"> not proceed with the procurement; and remove themselves from the procurement process; and complete and submit a conflict of interest declaration form to Governance.
Recruitment	<p>Members of recruitment panels are required to make a written declaration to confirm whether they have a conflict of interest at the start of the recruitment process. Panel members are required to withdraw from a recruitment panel where a conflict of interest exists and complete and submit a conflict of interest declaration form to Governance.</p>
Community grants	<p>Conflicts of interest are most likely to be raised at the assessment phase of applications. Members of community grant panels are required to make a written declaration to confirm whether they have a conflict of interest at the start of the grants process. Panel members are required to withdraw from a panel where a conflict of interest exists and submit a conflict of interest declaration form to Governance.</p>
Infringement review	<p>Staff undertaking a review of an infringement are to do so in accordance with the <i>Infringements Act 2006</i> and council's Internal Review Policy. The reviewing officer must declare any conflicts of interest prior to</p>

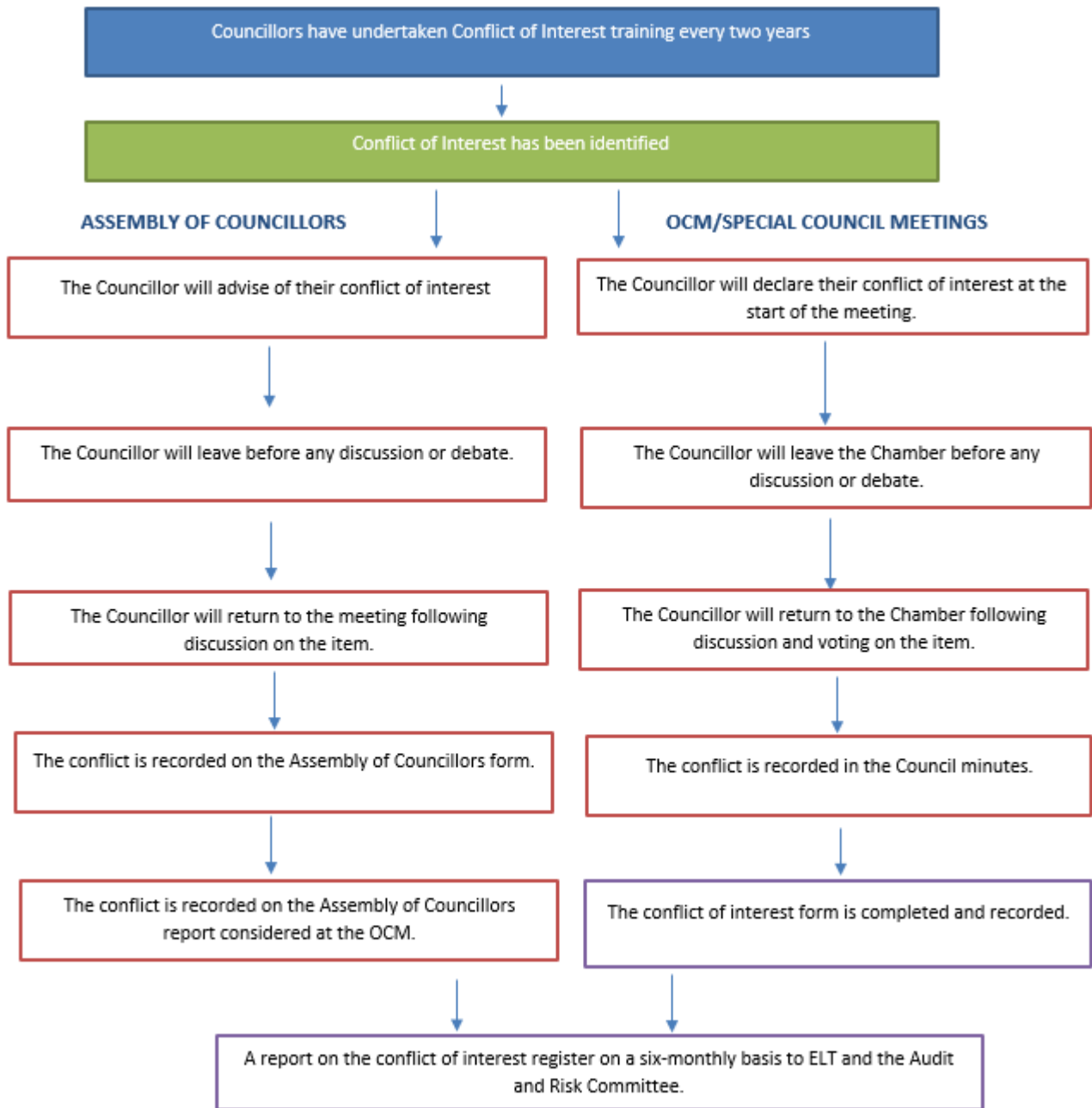
	undertaking the review and withdraw from the process if a conflict is identified. If a conflict is identified the staff member must complete and submit a conflict of interest declaration form to Governance.
Gifts, benefits and hospitality	<p>No gift, benefit or hospitality may be accepted that could influence, or be perceived to influence a Councillor, staff member or other personnel acting on behalf of Council.</p> <p>In accordance with the Act, one or more gifts from a person or persons with a total value of \$500 received by a Councillor, Officer or personnel acting on behalf of Council, in the preceding 5 years means that the Councillor or staff member has a conflict of interest in relation to the person or organisation who offered the gift(s). The gift(s) must be declared in the next Ordinary Interest Return.</p>

Outside Employment

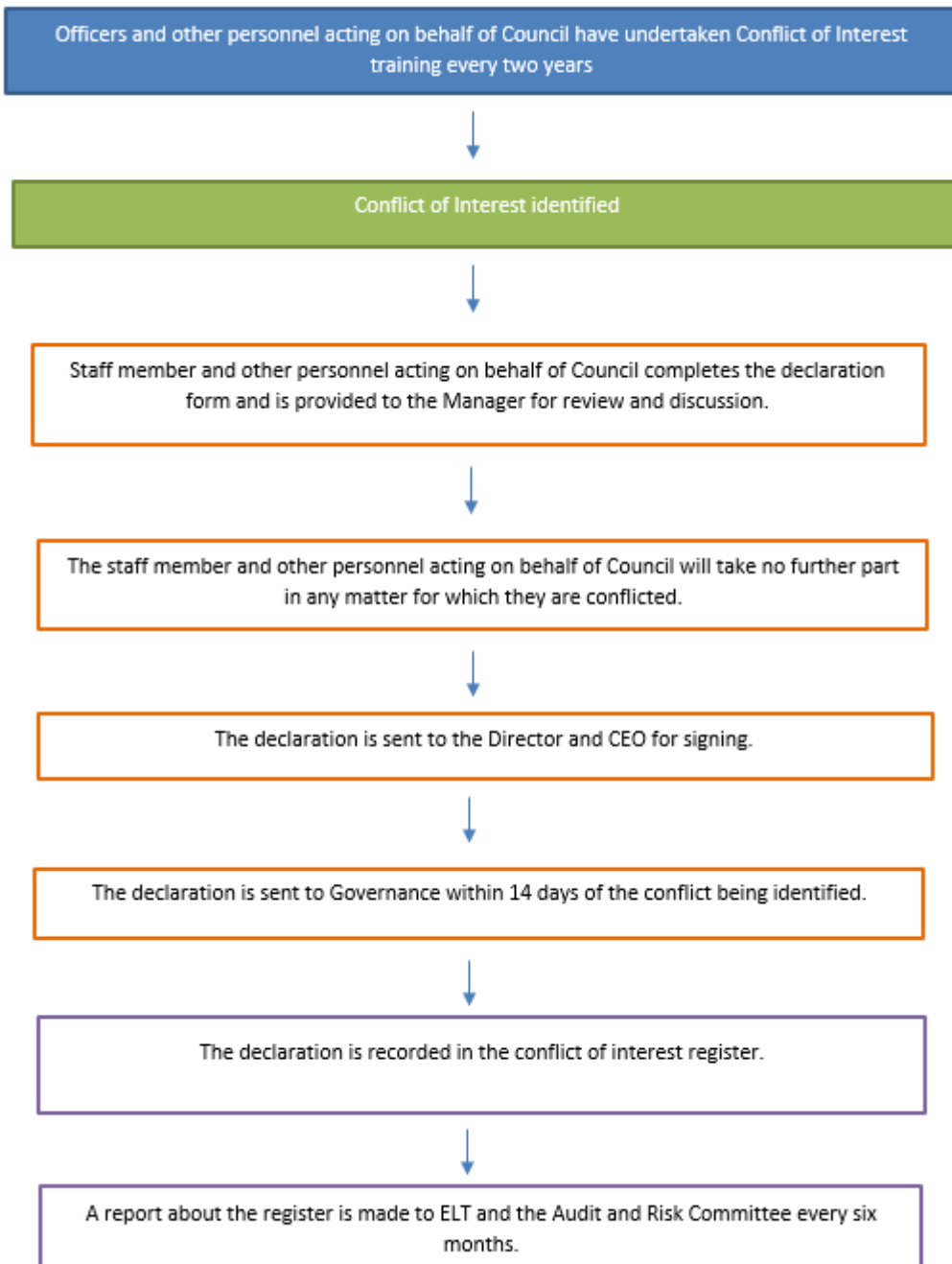
As specified in the Corporate Code of Conduct, any employment or an offer outside of Council (whether paid or unpaid) may create a conflict of interest under certain circumstances. This also includes the external employer who may be affected by any decision, action or advice of the Council. A conflict of interest may also arise from self-employment.

To ensure that an officer is not placed in conflict of interest situations, declarations to the relevant Manager, Director or CEO are required. All declarations of secondary employment will be maintained on a Register. In the instance where a conflict of interest occurs a declaration form must be completed and submitted to Governance.

Process Flow Chart (Councillors)



Process Flow Chart (Officers and other personnel acting on behalf of Council)



2. Roles and Responsibilities

Person/s responsible	Accountabilities
Councillors	<ul style="list-style-type: none"> • Being aware of their obligations to avoid conflicts of interest; • Disclosing any conflicts of interest in accordance with sections 77A to 79C of the Act; • Not being involved in decisions and actions that could reasonable be seen to be compromised by their private interests or affiliations; • Avoiding private action in which they could be seen to have an improper advantage from inside information from their position within Council; • Not using their position or Council resources for private gain; • Ensuring that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties; • Ensuring meetings of minutes and records of Assemblies of Councillors accurately reflect the management of conflicts of interest they have declared.
CEO	<ul style="list-style-type: none"> • Implementing policy and procedure for identifying and managing conflicts of interest; • Signing conflict of interest declarations; • Oversight of investigations of complaints regarding breaches of this document; • Managing conflicts of interests of the Directors.
Directors	<ul style="list-style-type: none"> • Assist in building an organisational culture that supports compliance with this document; • Supporting and assisting Managers with managing instances of conflicts of interest.
Managers, supervisors and coordinators	<ul style="list-style-type: none"> • Ensuring that all officers and personnel acting on behalf of Council are aware of conflict of interest provisions and that a culture is fostered where any conflicts are routinely declared and managed appropriately; • Being aware of the risks of conflicts inherent in the duties of the officers they manage; • Ensuring that all officers are aware of policies and procedures; • Ensuring that all officers attend training; • Advising officers about appropriate ways to manage conflicts of interest; • Managing real, potential or perceived conflicts of interests of their staff; • Ensuring all tender evaluation panel and staff selection panel members in their team have declared any conflicts of interest and that these have been appropriately managed; • Ensuring that conflicts of interest that have been reported to them are forwarded to the Governance Unit for recording.
Members of advisory committees	<ul style="list-style-type: none"> • Being aware of their obligations to avoid conflicts of interest; • Disclosing any conflicts of interest in accordance with sections 77A to 79C of the Act; • Abstaining from any involvement in decisions and actions that could reasonably be seen to be compromised by their private interests or affiliations; • Avoiding private action in which they could be seen to have an improper advantage from inside information from their position within Council; • Not using their position or Council resources for private gain; • Ensuring that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties;

<p>Manager Corporate Affairs</p>	<ul style="list-style-type: none"> • Maintaining a register of disclosed conflicts of interest; • Support, endorse, enforce and review the conflict of interest policy, procedures and any guidance; • Educate train and induct persons they supervise or manage about the meaning and effect of the policy, procedures or guidance and how to apply them, in a practical sense; • Lead by example, understand and support the conflicts of interest policy, procedures and any guidance; • Meet their obligation to disclose and report relevant personal interests and conflicts of interest; • Report upon how conflicts of interest that they have disclosed have been avoided or managed; • Negotiate and agree the steps or processes to avoid or manage conflicts of interest where such conflicts are identified and reported to them; • Monitor, analyse and report upon relevant personal interests and conflicts of interest that have been disclosed, avoided or managed; • Monitor the effectiveness of this document and review on a regular basis; and • Where conflicts of interest reported or disclosed to them concern the CEO or Executive, record and act upon advice from IBAC or another appropriate independent advisor about recommended steps or processes they should take;
<p>Manager Planning and Building</p>	<ul style="list-style-type: none"> • Provide the Manager of Corporate Affairs declarations of any conflict of interest by members issuing any permits.
<p>Manager Procurement</p>	<ul style="list-style-type: none"> • Provide the Manager of Corporate Affairs declarations of any conflict of interest by members of a tender evaluation panel for registration.
<p>Manager Risk and Compliance</p>	<ul style="list-style-type: none"> • Provide the Manager of Corporate Affairs declarations of any conflict of interest by members of the internal audit process and assist with reporting requirements to the Audit and Risk Committee.
<p>Manager City Amenity and Safety</p>	<ul style="list-style-type: none"> • Inform the Manager of Corporate Affairs of all declarations of any conflict of interest by members issuing permits or undertaking enforcement action.
<p>Staff members (including board or committee members, volunteers and suppliers or consultants)</p>	<ul style="list-style-type: none"> • Being aware of their obligations to avoid conflicts of interest; • Assessing whether their private and personal interests conflict, or have the potential to conflict with their Council duties; • Disclosing any conflicts of interest they may have in accordance with this document; • Abstaining from any involvement in decisions and actions that could reasonably be seen to be compromised by their private interests or affiliations; • Avoiding private action in which they could be seen to have an improper advantage from inside information gained from their position within Council; • Not using their position or Council resources for private gain; • Ensuring that there can be no reasonable perception that they have received an improper benefit that may influence the performance of their duties; • Notifying their Manager or Protected Disclosure Officer where they have reasonable grounds to believe that another employee, contractor or consultant has a conflict of interest in a matter and that conflict has not been disclosed; and • Complying with this document and other associated policies.

3. Compliance

Audit and Reporting

All declared conflicts of interests will be recorded in the Conflict of Interest Register by Governance staff who will have oversight. Declarations will also include information on how the conflict will be managed by the relevant Manager, or the CEO in the instance of ELT members. A conflict of interest declaration by the CEO will be signed by the Mayor and Chair of the Audit and Risk Committee.

The Register will be maintained by Governance staff and will include:

- Name and role of person declaring the conflict;
- Date of disclosure;
- Description of the conflict (whether disclosed or considered);
- Type of conflict;
- How the conflict will be managed and when the management plan will be reviewed; and
- Signed by person declaring conflict, Manager, Director and CEO.

The Register will be audited on a six-monthly basis. A report about the outcomes, including potential trends and patterns including possible vulnerabilities regarding individuals and the organisation, will be made available to the ELT and the Audit and Risk Committee.

Declarations will also be routinely audited on a six-monthly basis in conjunction with Ordinary Interest Returns and Related Party Disclosures.

Any matters of noncompliance which are identified by the Governance Unit between audits will be raised with the Chief Executive Officer (or delegate). The CEO (or delegate) will put in place the appropriate mechanism for investigation and further action if required.

Failure to declare a conflict of interest is a breach of the Act.

Where a Councillor fails to comply with this Policy, the issue shall be dealt with in the same manner as disputes arising under the Councillor Code of Conduct.

Where an Officer fails to comply with this Policy, the issue shall be dealt with in the same manner as disputes arising under the Corporate Code of Conduct.

The completion of declarations, under the categories specified on pages 4 and 5 will be audited on a six-monthly basis.

Training and Development

This Policy will be included in induction and ongoing governance training programs. Self-training will be made available to staff on an ongoing basis via WOLP. External, independent training will continue to be offered to staff, twice per year.

The Governance Unit will develop and manage the annual education and training program. The program will include a range of communication tools and mechanisms including face to face training, articles in staff and Councillor newsletters, information provided at regular intervals such as when Ordinary Interest Returns are due.

Training and development will be put into place for Councillors annually.

It is expected that staff will undertake Conflict of Interest training provided by an external Legal firm every two years, which is part of the existing program.

A report will be provided to ELT on attendance at external training sessions with a recommendation that all officers review their development every two years.

Privacy

In accordance with the Victorian *Privacy and Data Protection Act 2014* any personal or confidential information collected will be for the purpose of documenting any real or apparent conflicts of interest and to record of acknowledgement the obligations of Council personnel under Council Policy, the Councillor Code of Conduct and Corporate Code of Conduct. This assists Council in preventing fraud or corruption within its activities and dealings.

Declaring a conflict of interest is a requirement of this Policy and the respective Codes of Conduct. If the Declaration of Conflict of Interest form is not completed in full, then this may be regarded as a breach of this policy and Code.

Information relevant to Conflicts of Interest will be disclosed to the CEO, relevant Director or Manager. If a resolution or agreement cannot be achieved, this will be reported to the CEO. Information will be used for the purpose of recording and evaluating conflicts of interest and may be disclosed as permitted by law.

Please refer to Council's Privacy Policy for further information.

4. Appendix

Related Documents

- Local Government Act 1989
- Councillor Code of Conduct 2017
- Corporate Code of Conduct 2016
- Gifts, Benefits and Hospitality Policy
- Fraud and Corruption Control Policy 2019
- Selection and Recruitment Policy 2019
- Privacy policy 2017
- Local Government Victoria: Conflict of Interest – A Guide for Councillors
- Local Government Victoria: Conflict of interest – A Guide for Council Staff