RESEARCH PAPER
OWN-MOTION INVESTIGATION FISHER

29 September 2022

MANAGING CONFLICTS OF INTEREST BETWEEN LOCAL GOVERNMENT COUNCILLORS AND PROPERTY DEVELOPERS

INTEGRITY COMMISSION TASMANIA

The objectives of the Integrity Commission are to:

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with, and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

We acknowledge and pay our respects to Tasmanian Aboriginal people as the traditional owners of the Land upon which we work. We recognise and value Aboriginal histories, knowledge and lived experiences, and commit to being culturally inclusive and respectful in our working relationships with all Aboriginal people.

This report and further information about the Commission can be found on the website www.integrity.tas.gov.au

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Acronyms

Acronym	Full title
EFA	*Electoral Funding Act 2018* (NSW)
LGA NSW	*Local Government Act 1993* (NSW)
LG Act	*Local Government Act 1993* (Tas)
LGAQ	*Local Government Act 2009* (Qld)
LGAV	*Local Government Act 2020* (Vic)
LGEA	*Local Government Electoral Act 2011* (Qld)

EXECUTIVE SUMMARY

Research shows that undisclosed conflicts between personal interests and public duty are the most common form of public sector corruption.[1] This research paper focuses on one particular situation where a conflict of interest may arise — where there is a relationship between a local government councillor and a property developer. In addition to focusing on that situation, the paper also examines efforts to manage misconduct risks that apply to a broader set of circumstances.

The focus is on the relationship between councillors and property developers because this paper is a supplement to Integrity Commission own-motion investigation Fisher. Own-motion Investigation Fisher found that then Derwent Valley Councillor Paul Belcher failed to disclose or manage a conflict of interest arising from his association with a property developer, Roostam Sadri.

The investigation found that, as a councillor, Mr Belcher agitated for Mr Sadri's interests and pressured Council employees on behalf of Mr Sadri, while Mr Belcher had a personal and financial association with Mr Sadri. This was a conflict of interest between his role as a councillor and his personal interests. Mr Belcher also received $5,000 from Mr Sadri when Mr Belcher was running for Council. Mr Belcher used at least part of this gift for his re-election campaign.

Mr Belcher's conduct was largely not covered by the *Local Government Act 1993* (Tas) (LG Act). The *LG Act* imposes disclosure obligations only with respect to pecuniary interests, and only when a matter related to the conflict is discussed at a council meeting (see *LG Act* section 48). There is no ongoing statutory obligation on councillors to disclose other pecuniary or non-pecuniary personal interests.

Councillors are subject to donations and gifts declaration requirements under section 56B of the *LG Act* when they are in office, but there is no requirement to declare donations or gifts before they are elected. When Mr Belcher accepted the gift of $5,000, he was not a member of Council but had publicly declared his intention to stand for re-election. He was not required to declare this donation.

The Derwent Valley Council Councillor Code of Conduct does include provisions about non-pecuniary conflicts of interest, requiring that councillors not be unduly influenced in the performance of public duty by personal interests.

However, this investigation raises concerns that there are significant gaps in the current regulatory framework. The purpose of this paper is to:

- highlight those gaps for public discussion
- examine approaches elsewhere, and
- identify potential reforms that we could adopt to address those gaps.

This paper does not discuss conduct that would constitute a serious indictable offence subject to criminal prosecution.[2] Rather, its focus is on conduct that might be addressed by codes of conduct or legislative risk management processes such as personal interest returns and disclosure obligations.

Recommendations for the amendment of the *LG Act* to better manage disclosures of interests by councillors and to extend campaign funding disclosure requirements to all local government candidates are made at the conclusion of the report.

1. Introduction

1.1. About the Integrity Commission

The Integrity Commission (the Commission) is an independent statutory authority established by the *Integrity Commission Act 2009* (Tas) (IC Act). The Commission's objectives are to:

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with, and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

Section 31 sets out the Commission's educative, preventative and advisory functions. This includes a function to 'undertake research into matters related to ethical conduct', and to 'take such steps as the Integrity Commission considers necessary to uphold, promote and ensure adherence to standards of conduct, propriety and ethics in public authorities'. We are also 'to review and make recommendations about practices, procedures and standards in relation to conduct, propriety and ethics in public authorities and to evaluate their application within those authorities', and 'evaluate the adequacy of systems and procedures in public authorities for ensuring compliance with relevant codes of conduct'.

As part of those functions, we have decided to release this companion research paper to the summary report on own-motion investigation Fisher. The Director of Local Government was consulted in finalising this report, and his submission of the draft report is at Appendix A.

1.2. Own-motion investigation Fisher

In July and August 2020, we received information from the Office of Local Government about then Derwent Valley Council Councillor Paul Belcher's connection with property developer Roostam Sadri. The Board of the Integrity Commission determined to undertake an investigation of its own motion into any potential misconduct by a public officer involving Mr Sadri.

Councillor Belcher was first elected to Derwent Valley Council (the Council) in November 2014. He resigned from Council on 27 July 2018, declaring a possible conflict of interest due to his plans to work for a property developer. That developer was in the process of purchasing the Derwent Valley Resort (the Resort) from Mr Sadri.

Councillor Belcher later performed some paid work for Mr Sadri at the Resort in early to mid-2020, when he was a councillor.

Own-motion investigation Fisher found that there was a conflict of interest between Mr Belcher's role as a councillor and his personal interests in his relationship with Mr Sadri. We also found that Councillor Belcher:

- failed to disclose or manage this conflict
- agitated for Mr Sadri's interests with Council

- pressured Council employees on behalf of Mr Sadri
- received $5,000 from Mr Sadri when Councillor Belcher was running for election to council in 2018, at least part of which was used for his re-election campaign.

Councillor Belcher was re-elected to Council in November 2018.

Mr Belcher's conduct was largely not covered by the *Local Government Act 1993* (Tas) (LG Act). The *LG Act* imposes disclosure obligations only with respect to pecuniary interests, and only when a matter related to the conflict is discussed at a council meeting (see *LG Act* section 48). There is no ongoing statutory obligation on councillors to disclose other pecuniary or non-pecuniary personal interests.

Councillors are subject to donations and gifts declaration requirements under section 56B of the *LG Act* when they are in office, but there is no requirement to declare donations or gifts before they are elected. When Mr Belcher accepted the gift of $5,000, he was not a member of Council but had publicly declared his intention to stand for re-election. He was not required to declare this donation.

Councillor Belcher resigned from Council in December 2021.

During the investigation, we found evidence of Councillor Belcher sharing confidential Council information. The Office of Local Government prosecuted Councillor Belcher for this conduct. In August 2022, Councillor Belcher pleaded guilty to two breaches of section 338A(1)(b) of the *Local Government Act 1993*.

More details about own-motion investigation Fisher are set out in a separate summary report.

1.3. Conflicts of interest in local government

> *It is likely that in the course of their daily lives citizens have more contact with local agencies than with the national government. This proximity to the people and the discretion that local officials have in exercising their functions can make local government highly vulnerable to corruption.*[3]

Conflicts between public duty and private interest are a recognised risk area for misconduct and unethical behaviour by public officers. They arise in myriad contexts and take many forms. However, they all share some common features. Conflicts of interest potentially undermine:

- the quality of decisions made by public officers
- public trust in decision makers, and
- social cohesion.[4]

In all Australian jurisdictions, conflicts of interest in the public sector are regulated by legislative instruments including subordinate legislation (such as regulations authorised by primary legislation) and quasi-legislative instruments (such as codes of conduct). The common law may also have a limited role to play.

In other words, these legal instruments prescribe the circumstances in which a conflict of interest presumably arises but otherwise they do not define the concept. The High Court explains the concept in terms of consequence; that is, identifying a personal interest of the decision-maker in the outcome risks a 'deviation from the course of deciding the case on its merits'.[5]

Democratically elected officials rely on the support of their constituents and the creation of networks of relationships. Indeed, local government councils in particular need good relationships with the community in order to run effectively and efficiently. Such relationships are not problematic per se. However, as elected members of one of the tiers of government in a representative democracy, local government councillors must make decisions in a way that fairly represents the interests of the community. Relationships become problematic when they give rise to conflicts that affect the impartiality of councillors' decision-making.

An effective framework for managing conflicts of interest should not, therefore, aim to eradicate all relationships that might create a conflict but must adopt a more nuanced approach. Attention should be directed to those relationships that may give rise to bias or the appearance of bias, and how these biases or conflicts should be managed.

The development of a preventive framework is made more difficult by the increased complexity of contemporary decision-making processes and the range of situations in which conflicts of interest may arise. However, this complexity is itself a justification for investing in efforts to deter misconduct. Misconduct can be difficult to detect. Investigating and prosecuting misconduct places a substantial burden on the resource-strapped public sector. These factors 'point to the importance of preventive policies and procedures as a way of making public officials aware of their responsibilities and of providing opportunities for resolving conflicts before they occur'.[6]

The OECD recognises two distinct categories of 'conflict of interest'. The first, **actual conflicts of interest**, are defined as a:

> *conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.* [7]

The second is **apparent conflicts of interest**, which are defined as situations:

> *where it appears that a public official's private interests could improperly influence the performance of their duties but this is not in fact the case.*[8]

Apparent or perceived conflicts of interest must be included in a regulatory framework, as a concession to the sometimes hopeless task of establishing an actual conflict in particular cases, and also to safeguard public trust in decision makers. As Grant and Drew acknowledge:

> *the perception that local governments are … bad governments … has the capacity to undermine their legitimacy and have significant deleterious effects on their functioning.*[9]

This should be a significant concern for local councils. Research on public perceptions of the three tiers of government reveals that local government is considered the **least** effective in terms of governance quality and capacity.[10]

1.4. Local government as a planning authority

There is a fundamental tension between the duty of councillors to act in the public interest[11] and the concern of most property developers to maximise profits. It is perhaps not surprising that relationships between local government members and property developers give rise to conflicts of interest, whether actual or perceived.

In recent years there have been multiple inquiries into inappropriate or corrupt relationships between councillors and property developers. According to Grant and Drew it is a history 'blighted with … scandalous and salacious episodes of corruption'.[12] The list of councils investigated is extensive. To cite only a few: Wollongong City Council;[13] Tweed Shire Council;[14] Gold Coast City Council;[15] and Ipswich, Moreton Bay and Logan Councils.[16]

Local government's role as a planning authority, combining the three functions of regulating land development, advocating for constituents, and making decisions on development applications inherently gives rise to a risk of misconduct. As Dodson et al note, '[i]n Australia, there is a persistent underlying appreciation among planners, politicians and the public of the potential for corruption in land development processes'.[17] Planning decisions may also generate conflicts with councillors' personal interests; for example, such as where a decision on a re-zoning application decision may personally benefit or disadvantage the councillor as an affected landowner.

Councillors have a responsibility to represent community interests. However, this should not extend to becoming an advocate for a particular individual or group interest.

The primary risk is that councillors are responsible for approving new land releases and development applications. This makes them vulnerable to attempts by developers to exert undue influence on them. Increasing land values, increased demand for housing, and resulting planning delays exacerbate this risk.

New South Wales Independent Commission against Corruption Assistant Commissioner Adrian Roden QC notes in his report into corrupt practices in land development in Tweed Shire:

> *A lot of money can depend on the success or failure of a lobbyist's representations to government. Grant or refusal of a rezoning application, acceptance or rejection of a tender, even delay in processing an application that must eventually succeed, can make or break a developer. … The temptation to offer inducements must be considerable.*[18]

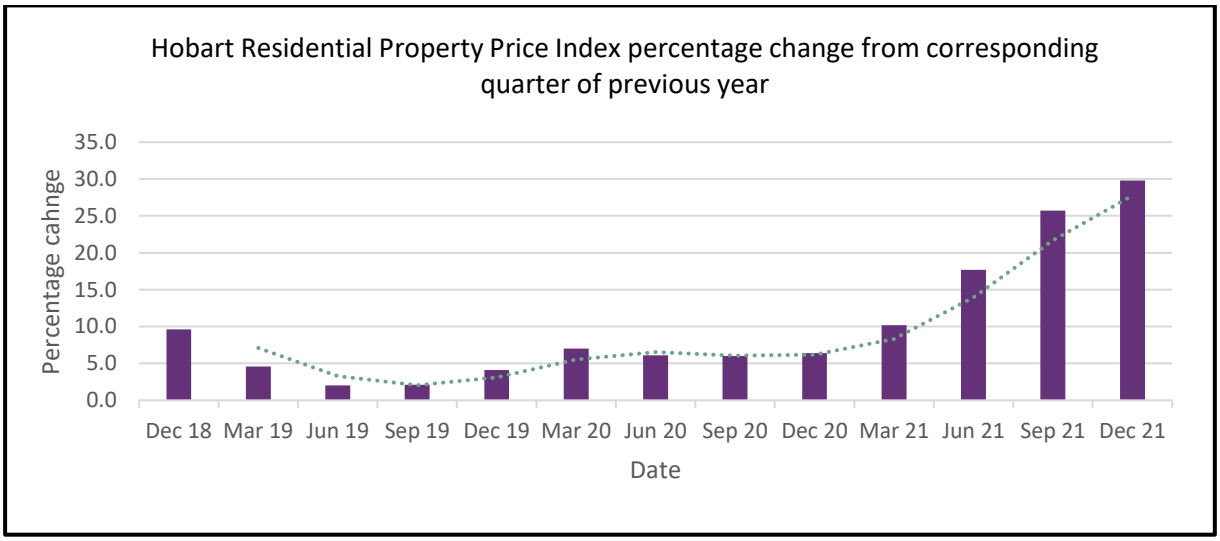
Indeed, it has been suggested that 'procurement and decision-making, particularly around planning and development, [offer] the greatest opportunity for duplicitousness and self-interest'.[19]

Media reports relating to improper processes in land development are common.[20] These problems may only be emerging in Tasmania, but recent unprecedented increases in land and property values suggest pressure from developers to re-zone land and approve development applications, sometimes in marginal areas, is only going to increase.

Tasmanian median house prices data from the Australian Bureau of Statistics show a significant increase in residential property prices in Tasmania over the last 3–4 years. This increase is also reflected in State Government Budget Papers and estimates of increases in land tax and conveyancing revenues.[21]

Figure 1 shows the percentage increase in residential property prices from the corresponding quarter of the previous year. The latest data (from the December 2021 quarter) shows an increase of 29.8% compared to December 2020.

Figure 1. Hobart Residential Property Price Index percentage change from corresponding quarter of previous year (Dec 2018–Dec 2021) [22]



1.5. Overview of legislative framework

Regulatory schemes nationally have attempted to address corruption and misconduct risks within local government by employing a mix of primary legislation, subordinate legislation and quasi-legislative instruments. A robust regulatory framework with a focus on risk management and prevention is essential to good governance. This is due to the often unclear nature of relationships between councillors and individuals who are both property developers and constituents, and the difficulty of proving corruption in a given case.[23] In the High Court decision *McCloy v New South Wales*, Justice Stephen Gageler cautioned:

> *The influence which comes with the preferential access to government resulting from the making of political donations does not necessarily equate to corruption. But the line between a payment which increases access to an elected official and a payment which influences the official conduct of an elected official is not always easy to discern.*[24]

It is also clear that the causes of corruption are many-faceted and cannot adequately be addressed simply by responding reactively with punitive sanctions where misconduct has been uncovered. Rather, effective anti-corruption initiatives will promote transparency and subject councillor behaviour and relationships to scrutiny as a matter of course.[25] This reflects the fact that theories of corruption include both explanations based on individual pathologies ('bad apples')[26] and explanations based on corrupt environments ('bad barrels').[27] Even well-intentioned individuals may behave unethically through ignorance or negligence if they are not held to high standards by a system that both regulates conduct and monitors for compliance.

As a rule, misconduct risks are managed within four discrete categories. Legislative schemes generally:

- exclude councillors from decision-making where a conflict exists
- regulate electoral funding donations for all individuals who nominate for election
- impose disclosure requirements for pecuniary interests, including gifts and benefits received by sitting councillors, and
- impose enforceable codes of conduct which set benchmarks for integrity and accountability and encourage ethical behaviour.

The legislative schemes prohibit certain behaviours by local government officials, monitor compliance to some extent, impose obligations in each category, and enact sanctions for a breach.

In this paper, comparisons are drawn between the schemes in Tasmania and the states of New South Wales, Victoria and Queensland. These jurisdictions make useful subjects for comparison, as they each have significant history of attempts to respond to corruption at the local government level.

2. Conflicts of interest and council decision-making

The existence of a conflict of interest is critically important in the context of decisions made in council meetings. Along with introducing largely uniform model codes of conduct that cover conflicts of interest, most jurisdictions have established independent oversight bodies which generally have powers to investigate misconduct and to impose sanctions.[28] In this paper, we have not explained compliance mechanisms in other jurisdictions, but have briefly explained the Tasmanian system.

Tasmania

Section 48(2) of the *LG Act* governs the obligations on councillors in relation to a pecuniary (or financial) interest they have in a matter discussed at a council meeting. A councillor has a pecuniary interest where (depending on how a matter is decided) they have an expectation of receiving a pecuniary benefit or detriment and also where a close associate has such an expectation. A close associate is defined to include an employer.

The councillor must declare any pecuniary interest they have in the matter, not participate in the meeting at which the matter is discussed, and must leave the room on declaring their interest. The councillor must also advise the general manager of their interest.

Failing to declare a pecuniary interest in a matter constitutes an offence, punishable by a maximum fine of 50 penalty units. Non-compliance with the other requirements of section 48 attracts a maximum fine of 20 penalty units.

Conflict of interests that are not pecuniary are dealt with the Model Councillor Code of Conduct (Model Code) authorised by section 28R of the *LG Act*.[29] But there are also aspects of the Model Code that could apply to pecuniary interests. Part 1 of the Model Code relates to decision-making by councillors and says that councillors must:

- bring an open and unprejudiced mind to decision-making, including when making planning decisions as a Planning Authority
- make decisions free from personal bias or prejudgment
- give genuine and impartial consideration to matters, and
- make decisions solely on merit and not take into account irrelevant considerations.

As a consequence, failing to declare a pecuniary interest may also be dealt with as a Code of Conduct complaint and be determined by a Code of Conduct Panel. The Integrity Commission could also investigate it, as it did in own-motion Investigation Fisher.

Non-pecuniary conflicts

Part 2 of the Model Code is about 'conflict of interests that are not pecuniary'. Clause 5 of Part 2 requires that '[a] councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible'. However, clause 6(b) gives a councillor more discretion in how they manage and deal with non-pecuniary conflicts than the pecuniary conflict of interest provisions in the *LG Act*. Following a declaration of a non-pecuniary interest, a councillor must:

> *act in good faith and exercise reasonable judgement to determine whether a reasonable person would consider that the conflict of interest requires the councillor to remove himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.*

This provides the opportunity for transparency in decision-making while not mandating the removal of the councillor from the meeting. This is a logical approach as, in relation to non-pecuniary interests:

> *assessing the potential for bias arising from a relationship or association between a party and a decision-maker is difficult. Ideally, assessment ought to involve considering the facts of the relationships or associations, such as the proximity of the relationship, its duration, nature, and its intensity.*[30]

The approach is taken further in Queensland, where it is for the other councillors attending the meeting to decide whether a conflict of interest exists and whether a councillor can still be involved in decision-making. This approach is not uncommon in corporate and other boards, including Government statutory authorities.

In response to a draft of this paper, the Director of Local Government provided support for a more flexible approach to managing interests declared at council meetings. This would include proactively and routinely disclosing interests, and the development of interest management plans, thus removing the emphasis on determining the management of any declarations at meetings. The Director said that this would remove a key cause of conflict between councillors, and that, '[t]hrough active management, these interests should not limit the ability of councillors to appropriately engage in discussion and debate provided that they can remain objective'.

However, the Director was less supportive of enabling other councillors to determine the management of a declared conflict, saying that the

> *reactive management of conflicts of interest on a meeting-by- meeting basis is often a source of conflict amongst councillors and has driven a reasonable proportion of Code of Conduct complaints or complaints to me regarding breaches of the Act.*

The Director's full submission is at **Appendix A**. The Commission understands the concerns raised by the Director however has maintained its position of there being both routine disclosure of interests and a more nuanced process for managing of conflicts of interest declared in Council meetings.

Compliance mechanisms

In Tasmania, Councillor Code of Conduct complaints must first be submitted in writing to the general manager of the relevant council.[31] The general manager's role is limited to assessing the complaint for compliance with the requirements of section 28V of the *LG Act*. If the complaint satisfies the threshold requirements it must be referred.

Complaints are referred either to the Code of Conduct Panel established under section 28K of the *LG Act* or the Director of Local Government as appropriate (section 28Z). Complaints involving more than half the councillors must be investigated by the Director.

The Code of Conduct Panel may investigate the matter itself or may refer the complaint to another body as appropriate.

The available sanctions where a complaint is upheld are set out in section 28ZI. They include a caution or a reprimand or suspension from office for a maximum period of 3 months. If a councillor is suspended 3 times during their period in office as a local government councillor, the Minister (section 28ZL) may dismiss them.

The Office of Local Government (a division of the Department of Premier and Cabinet) publishes Code of Conduct Panel determination reports on its website.

The Integrity Commission can also investigate complaints against councillors. The interaction between the *IC Act* and the *LG Act* is complicated. The organisation best placed to deal with alleged misconduct will depend on the circumstances. The Integrity Commission was best placed to conduct own-motion investigation Fisher due to the absence of a complaint under the *LG Act*, and the presence of a pattern of alleged behaviour over which the Commission had clearer jurisdiction. The Commission also has powers to investigate matters that are not available to a Code of Conduct Panel.

The Local Government Code of Conduct Framework is currently under review.

Victoria

The Victorian rules contained in the *Local Government Act 2020* (Vic) (LGAV) are broadly similar to Tasmania in that they mandate disclosure of conflicts of interest relating to matters to be discussed at council meetings, and the exclusion of the relevant councillor from the decision-making process.

The LGAV makes a distinction between 'material' and 'general' conflicts of interest. These largely reflect the traditional distinction between pecuniary and non-pecuniary interests.

A material conflict of interest exists where the person (or an 'affected' person) would gain a benefit or suffer a loss depending on the outcome of the matter. An affected person includes an employer and a person for whom the councillor is an agent.

A general conflict of interest exists where there is a reasonable apprehension that a person's private interest could result in them acting contrary to their public duty.

The classification of an interest determines the possible consequences of non-compliance. Non-compliance in relation to a material conflict of interest is an offence punishable by a fine of 120 penalty units.

It is not an offence, however, to fail to comply in relation to a general conflict of interest (unless the person has a previous history of sanctions for conflict-of-interest breaches) but a Councillor Conduct Panel may hear the matter as an allegation of serious misconduct. A Councillor Conduct Panel may impose sanctions including suspension from office for a period not exceeding 12 months.

New South Wales

NSW deals with conflicts of interest and council decision-making under a mandatory model code of conduct. The model code imposes similar obligations to those in the *LG Act* and the *LGAV* — councillors must disclose any pecuniary interest in a matter that is being considered at a council meeting (clause 4.28) and where a pecuniary interest exists, the councillor must absent themselves from discussions on the matter (clause 4.29). As in Tasmania, this extends to pecuniary interests of family members and employers (clause 4.3).

NSW is the only one of the jurisdictions considered in the paper that expressly deals with risks of misconduct that may arise in the context of land use planning and development assessments. A councillor must 'avoid any occasion for suspicion of improper conduct' in the exercise of functions as a planning authority (clause 3.13) and, in exercising those functions, must not convey 'any suggestion of willingness to improperly … provide …preferential … treatment' (clause 3.14).

Queensland

Like Victoria, Queensland deals discretely with pecuniary and non-pecuniary conflicts of interest. Conflicts are referred to as 'prescribed' and 'declarable'.

A prescribed conflict of interest exists under section 150EG of the *Local Government Act 2009* (Qld) (LGAQ) where a councillor accepts gifts totalling $2,000 or more from a donor with an interest in a matter. This includes gifts to close associates of the councillor. A close associate, defined in section 150EJ, includes an employer.

Chapter 5B of the *LGAQ* stipulates how councils are to deal with councillors' declared interests.

The usual obligations apply — the councillor must inform either the meeting, or the Chief Executive Officer (CEO) as relevant, of the conflict. Under section 150EK, the councillor must not participate in a decision relating to a matter in which they have a prescribed conflict of interest. Failure to comply constitutes an offence attracting a significant maximum penalty of 200 penalty units or two years' imprisonment.

A declarable conflict of interest exists under section 150EN where there is a conflict between the councillor's personal interest (or those of a related party) and the public interest and, because of that conflict, the councillor might reach a decision that is contrary to the public interest.

As for a prescribed conflict of interest, the councillor must inform the meeting or the CEO as relevant of the declarable interest. Where the meeting is informed otherwise than by the councillor, it is for the meeting to determine whether the councillor has a declarable conflict of interest.

However, the affected councillor may participate in a decision about the matter, despite the existence of a conflict of interest, if the meeting resolves that they may do so. This concession is unique to Queensland. It recognises that, in some cases, it may be in the public interest to permit a conflicted councillor to take part in the decision. This may be so, for example, where the councillor is unlikely to significantly influence the decision, where there is only a remote possibility the councillor might potentially benefit from the decision, or where the relationship with the related party is remote.

If their continued participation is subject to conditions, failure to comply with the conditions constitutes an offence punishable by a maximum penalty of 100 penalty units or 12 months' imprisonment.

Recommendation

The provisions in the Tasmanian *LG Act* relating to councillor conflicts of interest are inflexible but also not robust. The provisions should be broadened and allow a more flexible approach to conflicts.

Recommendation 1. Active personal interest disclosures

We recommend that the Government amend Part 5 of the *Local Government Act 1993* to provide a more flexible approach to managing conflicts of interest disclosed in council meetings. This would:

- address both pecuniary and non-pecuniary interests, and
- provide that responsibility for deciding the management of the disclosed conflict is to fall to other attendees of the meeting.

3. Election campaign funding

A report by the Commonwealth Joint Standing Committee on Electoral Matters into funding of political parties and election campaigns emphasised that attempts to regulate funding and disclosure systems must not 'unduly restrict the ability of individuals and groups to engage in the political arena, whether through donating to a candidate, political party or third party'.[32] The report continued, '[t]he use of donations as a form of political expression is an essential element of participatory democracy'.[33] These observations should be kept in mind when considering any changes to political donations rules.

In Tasmania and Victoria, the principal instruments regulating funding for local government elections are the respective local government Acts, with further detail about how the provisions of the Act are to be applied set out in subordinate legislation.

In contrast, New South Wales and Queensland have dedicated legislation governing funding for election campaigns. Broadly speaking, in contrast to Tasmania and Victoria, the New South Wales and Queensland legislative schemes are more extensive, consisting of a mixture of disclosure obligations, monitoring provisions, caps on donations and prohibitions on certain categories of donors.

3.1. Disclosure obligations

Tasmania

In Tasmania, electoral campaign expenditure is regulated by the *LG Act.* All candidates for election are required under section 279 of the Act to submit a return to the Tasmanian Electoral Commission stating their total expenditure on electoral advertising. This applies to both successful and unsuccessful candidates. According to the 'Advertising Expenditure Return' provided by the Tasmanian Electoral Commission, every candidate is required to provide:

- details of the expenditure
- details of the service/product provider
- the cost incurred, and
- the date of payment.[34]

Section 279 does not impose a requirement to disclose the source of funds disbursed for electoral advertising. Electoral donations disclosures are instead subsumed within the general rule for declaring the receipt of gifts and benefits in section 56A of the *LG Act*. Section 56A requires a councillor to notify the general manager in writing of the receipt of donations with a monetary value of $50 or more. The disclosure threshold is prescribed by the *Local Government (General) Regulations 2015* (Tas).

Importantly, the disclosure obligations under section 56A only apply to sitting councillors. Accordingly, while sitting councillors are required to disclose donations to their re-election campaign, prospective councillors are not subject to the same obligation.

Tasmania is the only Australian state that does not require all candidates standing in local government elections to disclose the source of campaign funds.

It is an offence under section 279(1) of the *LG Act* to fail to lodge an electoral advertising return with the Tasmanian Electoral Commission and, under section 56A, to fail to declare the receipt of gifts or donations. It is also an offence under section 345 to knowingly make a false or misleading statement when giving any information under the Act.

Both electoral expenditure returns and registers of declared gifts and donations must be made available on request to the public. However, there is no express provision in the legislation for auditing either returns or declarations.

Of the jurisdictions considered in this paper, Tasmania has the least stringent rules regulating local government election funding.

Victoria

In Victoria, the Independent Broad-based Anti-corruption Commission investigation into allegations of serious corrupt conduct in relation to planning and property development decisions at the City of Casey Council resulted in the implementation of a new local government Act. Under the *LGAV*, electoral spending and election campaign donations are regulated by part 8.

The regulation of campaign funding remains relatively weak, despite the introduction of the *LGAV* in 2020 which was designed, among other things, to enhance accountability. The *LGAV* relies primarily on a single accountability mechanism of election campaign donation returns supported by a prohibition on receiving anonymous donations.

However, compliance with the rules relating to election campaign donation returns is enhanced by the inclusion of substantial powers to monitor candidates' returns. The CEO must submit a report to the Minister identifying all candidates who stood for election (whether successful or not) and those who have submitted a return. A summary is also to be made available on the Council's website. In addition, the independent Local Government Inspectorate monitors the submission of returns and has the power to prosecute for a failure to comply with the Act.

The rules apply to all candidates and the threshold for disclosure is set at $500.

It is an offence to fail to provide a return or to provide false or misleading details in a return. A person is not qualified to be a councillor in the current term if convicted of the offence of failing to lodge an election campaign donation return.

It is not an offence to receive an unlawful anonymous donation but section 310 of the *LGAV* offers a strong incentive to decline such a gift, as twice the amount donated must be forfeited to the State.

As noted above, given that it relies primarily on a single accountability mechanism, the Victorian scheme can be considered relatively weak. The original Bill proposed an additional mechanism of a cap on electoral campaign gifts and donations, but this is absent from the final version of the Act as passed.

New South Wales

In New South Wales, political donations and electoral expenditure are primarily regulated by the *Electoral Funding Act 2018* (NSW) (*EFA*). The *Local Government Act 1993* (NSW) (LGA NSW) requires the general manager to maintain a register of political donation disclosures made under the *EFA*. However, the substantive provisions prescribing mandatory requirements for disclosure and the content of disclosures of political donations and electoral expenses are contained in the *EFA*. The *EFA* applies to both state parliamentary and local government elections and adopts a consistent regulatory approach to political donations.

Key terms in the Act include 'political donation', 'reportable political donation' and 'electoral expenditure'. Political donations include gifts, free or discounted services, and amounts paid to participate in fundraising ventures. Reportable political donations are donations that exceed $1,000. Reportable political donations attract stricter reporting requirements than small donations. Electoral expenditure is defined broadly to include advertising expenditure, campaign staff payments, travel and accommodation.

Part 3 of the *EFA* deals with political donations and electoral expenditure. All candidates for election must register with the New South Wales Electoral Commission before they are permitted to accept political donations or incur electoral expenditure, and all donations received must be paid into a dedicated campaign account from which all electoral expenditure must be drawn.

The *EFA* mandates the disclosure of donations received and electoral expenditure incurred, sets donation caps, and bans donations from 'prohibited donors'. The rules also apply as relevant to so-called 'third-party campaigners'. These are individuals or other entities who incur expenditure on behalf of candidates that have 'the dominant purpose of promoting or opposing a party or candidate/s or influencing voting at a by-election'.[35]

Candidates standing for election in New South Wales must disclose all political donations and electoral expenditure incurred in a declaration lodged with the Electoral Commission.[36] This includes candidates who resign their candidacy prior to the election being held. The Act implements a system of mandatory half-yearly political donations returns and annual electoral expenditure returns. In turn, an up-to-date register of disclosures is to be made publicly available on the website of the Electoral Commission.

Unlike the other jurisdictions, New South Wales also has specific disclosure requirements in the *Environmental Planning and Assessment Act 1979*, designed to provide transparency in planning application determinations.

Under section 10.4(4) of that Act, a person who makes a council planning application must disclose all reportable political donations and gifts made to a local councillor by anyone with a financial interest in the application. Section 10.4(5) provides similarly for a person (or an associate of that person) making a public submission on a planning application.

The reporting period commences 2 years before the application is made and includes a period when the councillor was a candidate for election.

Part 10 of the *EFA* creates several offences in relation to political donations and electoral expenditure, including in relation to disclosures and donation caps. The Electoral Commission has the power to audit declarations of disclosures[37] and can institute prosecutions for failure to comply with the Act.

Queensland

In Queensland, political donations and electoral expenditure are primarily regulated by the *Local Government Electoral Act 2011* (*LGEA*). The scheme shares many of the features of the New South Wales approach, including requirements for operating a dedicated campaign bank account that is registered with the Electoral Commission of Queensland.

The *LGEA* governs disclosure of electoral expenditure and the receipt of donations during an election period. All candidates are required to lodge a return with the Electoral Commission of Queensland declaring electoral expenditure incurred and donations received once they reach the threshold of $500. Candidates are required to make 'real-time disclosure' (within 7 days of the expenditure being incurred or the donation received) and provide an election summary disclosure within 15 weeks after the election. These reporting obligations are supported by a prohibition on receiving reportable political donations from anonymous donors.

Queensland prescribes stricter disclosure requirements than the other jurisdictions. In particular, if the donor has an interest in a local government matter that is greater than that of other persons in the local government area, that fact and the nature of the person's interest must be disclosed.[38]

Section 128 of the *LGEA* requires the electoral commission to publish returns provided to it by candidates (section 128) and ensure that the public may inspect a return (section 129). The Electoral Commission also has the power to prosecute for a failure to comply with the Act.

3.2. Donation caps

New South Wales

New South Wales is alone in setting limits on the amount that a single donor can contribute to a candidate for local government. For 2021–22 the cap for a donation to a single candidate is $3,100.[39] It is an offence to knowingly accept or make a political donation that exceeds the cap.

The Commonwealth Joint Standing Committee report considered the relative merits of a rigorous disclosure scheme versus a system of capping donations. The committee expressed a strong preference for a robust disclosure scheme, stating that it:

> *does not support caps on donations to political parties at the current time, given the potential that exists for circumvention. A disclosure scheme — with a lower disclosure threshold and detailed disclosure — provides an effective forum through which information about the movement of funds in the political system can be made public.*[40]

3.3. Prohibited donors

Some jurisdictions have bans on receiving donations from particular categories of donors. In introducing legislation to ban property developers from donating to political parties and candidates, Australian Capital Territory Attorney-General Gordon Ramsay stated, '[p]roperty developers depend heavily on decisions made by government about land development applications and other processes'.[41] The justification for the ban on categories of donors is that, with so much at stake, the risk of corrupt conduct rises to a level that should not be accepted.

In the High Court case of *Spence v Queensland*, Justice Nettle (in dissent) conceded that measures imposing additional restrictions on particular categories of donors have been accepted as 'reasonably appropriate and adapted to achieving a legitimate purpose of reducing the risk of undue or corrupt influence in an area relating to planning decisions'.[42] However, his Honour remained of the view that:

> *the fact that property developers might make political donations in the hope or expectation of receiving political favours, exerting political influence or otherwise advancing their own interests does not mark them out as a class so different from other sections of the electorate as to warrant discriminately prohibiting them from making political donations*.[43]

Only New South Wales and Queensland have implemented blanket prohibitions on donations from certain categories of donors. Both jurisdictions use the term 'political donations'. This is defined to include donations made for election-related purposes and for purposes related to an elected councillor's duties as a member of council.[44]

New South Wales

In New South Wales, the categories of prohibited donors include property developers.[45] A property developer is defined in section 53(1) of the *EFA*. The definition includes both individuals and corporations. It is unlawful for a prohibited donor, or someone on behalf of a prohibited donor, to make a political donation. It is also unlawful for a person to accept a donation from a prohibited donor.

Queensland

In Queensland, the categories of prohibited donors also include property developers.[46] However, the scope of the legislation is narrower than New South Wales. Unlike New South Wales, a property developer is defined as 'a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation'. This means that the ban does not extend to individual property developers.[47]

Section 113B of the *LGEA* makes it unlawful to accept a 'political donation' from a prohibited donor. Significant penalties apply in both jurisdictions – 400 penalty units and 2 years' imprisonment.

3.4. Bribery offences

Apart from these provisions that regulate the receipt of gifts and donations by councillors and candidates for election, bribery offences in each jurisdiction also regulate the exchange of benefits (defined broadly) in relation to nomination for election and support for a candidate. Section 314 of the Tasmanian *LG Act* creates an offence of 'electoral bribery'.

Section 314 concerns the practice of bribing or attempting to unduly influence voters or candidates. For example, section 314(3) prohibits the supply of food, drink or entertainment with a view to influencing the vote of an elector, and section 314(4) prohibits candidates from offering gifts and prizes to the listed organisations, including sporting clubs, during an election period. It is likely to apply to circumstances in which a candidate, or someone on their behalf, offers bribes or inducements to improperly influence votes.[48] It may also apply where inducements are offered to a candidate to encourage them to stand for office.

The Queensland Crime and Misconduct Commission (now Crime and Corruption Commission: CCC) considered the Queensland equivalent of this provision in its inquiry into allegations of serious misconduct during the 2004 Gold Coast City Council election.[49] The inquiry centred on allegations that a group of property developers funded the election campaigns of certain individuals who pledged to support a pro-development agenda, if elected to Council. The CCC concluded that it was by no means clear that the bribery offence would cover a situation such as this.[50] Moreover, the provision was 'broad enough to cover a range of common and accepted political behaviour'[51] and thus should be read narrowly.

Although in some respects the Queensland provision mirrors section 314 of the Tasmanian *LG Act*, it differs in that it requires proof of improper intent, something which is absent from the Tasmanian offence.[52] This suggests that the Tasmanian provision is likely be construed even more narrowly. It may be that section 314 will have little work to do unless there is strong evidence that the outcome of the election was in fact influenced in some way.

The Victorian and New South Wales equivalents employ similar wording and are to similar effect.[53]

Recommendation

Of the jurisdictions considered in this paper, Tasmania has the least stringent rules regulating local government election funding. It is striking that Tasmania is the only Australian state that does not require all candidates to disclose the source of campaign funds. Own-motion investigation Fisher demonstrates the misconduct risks inherent in this loophole.

Recommendation 2. Election campaign funding

We recommend that the Government extend campaign funding disclosure requirements to all local government candidates, not just sitting candidates.

4. Disclosures of personal interests

Personal interest disclosures, also known as declarations or returns, involve the documentation of personal interests that may or may not lead to actual conflicts of interest. They are usually done on a routine basis and are not reactive to particular situations. They concern personal interests – such as property owned – and therefore are different to disclosures of gifts and donations for election campaigns.

The Victorian Local Government Inspectorate, in its report on a review of personal interest disclosures by Victorian councillors, explains, '[t]he declaration of personal interests … is a vital mechanism to ensure that people in decision-making positions at councils disclose the personal interests that may impact on their ability to perform their duty in an impartial manner'.[54]

All jurisdictions except Tasmania have personal interest disclosure schemes for councillors (and other council employees) which stipulate interests that must be disclosed, establish reporting requirements, and prescribe sanctions for non-compliance.

However, as noted by the Victorian Local Government Inspectorate, factors that are notably absent from these schemes are 'mechanisms for reporting breaches of reporting requirements' and 'external scrutiny of the schemes' operations … (such as an audit of the registers)'.[55]

Pecuniary interests and gifts

The schemes impose obligations to report pecuniary interests, including the receipt of gifts and benefits by councillors.

The various definitions of pecuniary interest adopt a version of the definition in the *LGA NSW* where a pecuniary interest is defined as 'an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person'.[56] They generally reflect the notion of a benefit or loss in money terms.

Victoria, New South Wales and Queensland adopt broadly equivalent definitions of 'gift'. The New South Wales and Victorian definitions are virtually identical whereas Queensland adopts a shorter definition but with the same effect. The definitions generally refer to a transfer of property (broadly defined) without payment or with inadequate payment.[57] The Tasmanian legislation does not include a definition of 'gift'. Instead, the *Local Government General Regulations 2015* (Tas) prescribes the classes of gifts or donations that must be disclosed under section 56A of the *LG Act*.[58]

Tasmania

Tasmania does not have a personal interests disclosure scheme. As a result, the legislation does not prescribe categories of pecuniary interest that must be disclosed, nor does it impose specific penalties for non-compliance. Disclosure obligations are – as discussed above – limited to the requirement, under section 48(2) of the *LG Act*, to declare any pecuniary interest the councillor has in a matter before discussion on that matter commences.

Effectively, this means that there is no requirement to declare a pecuniary interest if the relevant matter does not come before a Council meeting. This contrasts to obligations on Members of Parliament to disclose interests under the *Parliamentary (Disclosure of Interests) Act 1996* (Tas).

Under section 54(1) of the *LG Act*, the general manager must keep a register of declared pecuniary interests. The register is not made publicly available but may be inspected on application.

Tasmania deals with disclosures relating to the receipt of gifts and benefits separately from pecuniary interest disclosures. As noted above, section 56A of the *LG Act* governs sitting councillors' disclosure requirements in relation to prescribed gifts and donations, during both their term of office and any election periods. Sitting councillors are required under this provision to give real-time notice of gifts and donations (within 14 days of receipt) to the Council General Manager.

The *Local Government General Regulations 2015* (Tas) stipulates the classes of gifts and donations that must be disclosed, which include services, loans of money and loans of property. The disclosure obligation extends to smaller gifts from a single donor with an aggregate value of $50 or more during a single financial year. There is no upper limit on the value of a gift disclosed in accordance with the regulations that may be accepted by a councillor.

The name of the donor is to be included in the notice, if known. The effect of this qualification is that anonymous donations are not absolutely prohibited.

Section 56B of the *LG Act* requires the General Manager to maintain a register for the purposes of section 56A. Although the register is to be made publicly available, it is not otherwise subject to external monitoring and oversight.

Part 6 of the Model Code of Conduct also addresses the acceptance of gifts and benefits. Where a gift or benefit is offered, it may be appropriate to accept 'if it directly relates to the carrying out of the councillor's duties and is appropriate in the circumstances'.[59] Whether it is appropriate to accept should be assessed with reference to a test of whether a reasonable person would consider that the offeror is attempting to secure influence or favour from the councillor.[60]

Victoria

The Victorian approach to councillor disclosure of pecuniary interests is 3-pronged. First, provisions in the *LGAV* require ongoing disclosure of identified categories of pecuniary interests in an initial personal interest return lodged within 30 days of taking the oath or affirmation of office and subsequent bi-annual returns. The initial return must include details of any paid employment during the preceding six months where the employment income exceeded $10,000. The bi-annual return must also include details of any gifts with a value that exceeds $500.

Second, the CEO is to prepare a summary of the most recent personal interest information, redacted in accordance with the regulations, and make it available on the council's website.

Finally, it is an offence to fail to submit a personal interests return or to lodge an incomplete or inaccurate return.

Significant changes in how gifts and benefits are regulated were introduced with the overhaul of the Victorian local government legislative scheme in 2020. Gifts (other than those required to be disclosed in an election campaign return) are dealt with in part 6 of the *LGAV* dealing with Council Integrity and the *Local Government (Governance and Integrity) Regulations 2020* (regulation 9(1)(k)).

Section 138 imposes a requirement to adopt a council gift policy which must include provision for a public gift register and set a minimum gift disclosure threshold as prescribed by the regulations. The gift disclosure threshold is currently set at $500.

It is an offence for a councillor to accept an anonymous gift that exceeds the gift disclosure threshold but there is no upper limit on the value of gifts that may be accepted provided that they are disclosed in accordance with the regulations.

In its report, the Local Government Inspectorate recommended introducing an infringement system and non-monetary sanctions to replace court-based prosecutions. The grounds for this recommendation are that it is often difficult to obtain convictions through the courts, and sanctions such as reprimands or temporary suspension from office are more 'appropriate, proportional and scalable' for breaches of the personal interests returns provisions.[61]

New South Wales

In New South Wales, the disclosure of personal interests is governed by a mandatory Model Code of Conduct prescribed by section 440(3) of the *LGA NSW* and regulation 180 of the *Local Government (General) Regulation 2021* (NSW).[62]

Under clause 4.20 of the Model Code, a councillor must submit an annual return of interests in the prescribed form (see clause 4.21) to the CEO. As noted previously, they must also disclose a pecuniary interest in any matter that is being considered at council meetings (see clause 4.28).

Schedule 1, Part 2 of the Code prescribes the matters to be disclosed. These include gifts exceeding the value of $500 (item 9), sources of income (item 26) and, unique among the jurisdictions, any interests as a property developer or close associate of a property developer (item 19).

Disclosed interests are included in a register of returns maintained by the general manager as required by section 440AAB of the *LGA NSW*.

The rules relating to gifts and benefits more generally are contained in part 6 of the Model Code.

New South Wales has the lowest gift disclosure threshold of the jurisdictions under consideration and is the only jurisdiction to impose an upper limit on gifts that may be accepted. The receipt of any gift or benefit with a value exceeding $10 must be disclosed to the general manager in writing and the general manger must record the details of the gift, including the name of the donor, in the council's gift register.[63] However, gifts and benefits valued over $100 must not be accepted.[64]

The New South Wales scheme is also distinguished by its reliance on non-monetary penalties for non-compliance. Non-compliance with the Code of Conduct constitutes misconduct under section 440F(1)(b) of the *LGA NSW.* The CEO may investigate misconduct under section 440H and may impose a range of non-monetary sanctions under section 440I, including a reprimand, a direction to undertake training, and suspension from office.

Queensland

Queensland local government councillors have an obligation under s 201A of the *LGAQ* to inform the CEO within 30 days of election of any interest required to be disclosed by regulation. This includes their interests and interests of a related person. Apart from family members, a person is related to a councillor if their affairs are so closely connected that 'a benefit derived by the person, or a substantial part of it, could pass to the councillor'. They are also under a continuing obligation to furnish an annual interests return to the CEO.

Under section 290 of the *Local Government Regulation 2012* (LGRQ) the CEO must maintain a register of interests of, inter alia, councillors. The register of interests may be inspected by the public.

The interests to be disclosed are also governed by the *LGRQ*. Schedule 5 sets out the particulars that must be recorded in the register. These include identifying details of gifts received that exceed $500 in total from a single donor (item 12(1)) and other sources of income of $500 or more per year (item 16).

If a councillor, with intent to obtain an advantage or disadvantage another, fails to lodge a personal interest return or to advise the CEO of a correction to the register that is an offence under section 201D of the *LGAQ*, punishable by a significant maximum penalty of two years' imprisonment. In the absence of such an intent, non-compliance with the disclosure requirements under these sections constitutes misconduct as defined in section 150L.

Recommendation

All jurisdictions examined in this report – except Tasmania – have personal interest disclosure schemes for councillors. Other elected Tasmanian public officers are required to routinely disclose their personal interests. There is no reason to exclude councillors from this requirement, and own-motion investigation Fisher shows the risks in doing so.

Recommendation 3. Routine personal interest disclosures

We recommend that the Government legislate a mandated system of routine local government disclosures of interests for councillors. The disclosures required should include:

- both pecuniary and non-pecuniary interests, and
- all paid and voluntary employment, including the identity of the employer.

5. Conclusion and recommendations

The relationship between a former Derwent Valley Councillor and a property developer raised concerns that significant gaps exist in the current regulatory framework governing political donations and election campaign funding at the local government level. The conduct identified in the Commission's own-motion Investigation Fisher was not captured sufficiently by the *LG Act*.

Part of the explanation for the development of more robust regulatory schemes in other jurisdictions is concern about the corruption and misconduct risks posed by the existence of relationships between councillors and property developers. These risks were exposed by a series of prominent investigations into councillor misconduct.

As land values and demand for housing increase in Tasmania, attempts by developers to influence those responsible for planning decisions are also likely to increase. The regulatory shortcomings in this jurisdiction suggest that Tasmania is unprepared to manage the risks that that presents.

Weak disclosure requirements and the sanction of anonymous donations provide no disincentive to unscrupulous councillors who would seek to profit from their relationship with a developer.

This research paper has compared the Tasmanian approach with the legislative frameworks in three other Australian jurisdictions for the purposes of identifying possible reforms to improve the way that such risks are managed. We make the following recommendations.

Recommendation 1. Active personal interest disclosures

We recommend that the Government amend Part 5 of the *Local Government Act 1993* to provide a more flexible approach to managing conflicts of interest disclosed in council meetings. This would:

- address both pecuniary and non-pecuniary interests, and
- provide that responsibility for deciding the management of the disclosed conflict is to fall to other attendees of the meeting.

Recommendation 2. Election campaign funding

We recommend that the Government extend campaign funding disclosure requirements to all local government candidates, not just sitting candidates.

Recommendation 3. Routine personal interest disclosures

We recommend that the Government legislate a mandated system of routine local government disclosures of interests for councillors. The disclosures required should include:

- both pecuniary and non-pecuniary interests, and
- all paid and voluntary employment, including the identity of the employer.

Appendix A: Director of Local Government submission on draft report

Department of Premier and Cabinet

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Michael Easton
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Dear Michael

Thank you for providing the draft Research Report on managing conflicts of interest between local government councillors and property developers. I appreciate the opportunity to comment on your research and recommendations.

As a general comment, I support the Commission's observations that the regulatory framework in Tasmania can be improved in terms of both managing interests and the obligations for candidates in Local Government elections to disclose donations.

Simplifying the arrangements for the management of conflicts of interest is a key reform agreed by the State Government in its response to the Review of the *Local Government Act 1993* (the Act). The Office of Local Government has also had preliminary discussions with the sector around improving the regulatory framework for managing interests in terms not dissimilar to those recommended by the Commission.

More specifically, I support the need for an increased focus on routine disclosure of pecuniary and non-pecuniary interests in Local Government. The reactive management of conflicts of interest on a meeting-by-meeting basis is often a source of conflict amongst councillors and has driven a reasonable proportion of Code of Conduct complaints or complaints to me regarding breaches of the Act. These issues often arise not through deliberate mismanagement of interests, but rather through divergent views of councillors on how best to manage interests. I consider that a more proactive regime of both declaring interests and developing interest management plans will reduce the level of conflict that arises in this area.

I also support measures to encourage the flexible management of both pecuniary and non-pecuniary interests. It is often the case that the popularity of a candidate arises from their active engagement in their community in both voluntary and remunerated positions. Through active management, these interests should not limit the ability of councillors to appropriately engage in discussion and debate provided that they can remain objective.

I support greater transparency across the Council table on how councillors are managing their interests and consider that proactive interest management plans may be a measure towards this goal. I am, however, concerned that transferring the responsibility for deciding how interests are to be managed from the individual to the Council could introduce factional issues in some instances. Reforms that

Insert CM reference

improve transparency in the management of interests may be more successful compared to shifting the accountability for how they are managed away from the individual.

I have no concerns with your observations regarding campaign funding disclosure requirements. While this is a policy decision of Government, I see merit in transparency for all candidates for elected positions across our democratic system, regardless of the level of Government.

Thank you again for the opportunity to comment on your report.

Yours sincerely

Mathew Healey
Director of Local Government

31 August 2022

Appendix B: References

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[43] *Spence v Queensland* (2019) 268 CLR 355, [114].

[44] See *Electoral Funding Act 2018 (NSW)* s 5; *Local Government Electoral Act 2011 (Qld)* s 113A.

[45] *Electoral Funding Act 2018 (NSW)* s 51(a).

[46] *Local Government Electoral Act 2011 (Qld)* s 113(1)(a)(i).

[47] That this is the effect of the provision is confirmed in the case of *Spence v Queensland* (2019) 268 CLR 355, where the majority stated, 'the expression "property developer" is defined to mean a corporation engaged in a business that regularly involves making statutory applications for planning approval in connection with residential or commercial development of land with the ultimate purpose of sale or lease of the land for profit, and to extend to a close associate of such a corporation': at [19].
[48] In 2005, Launceston Mayor Ivan Dean was charged with bribery for promising to donate his mayoral salary to charity during the election campaign. The charge was ultimately dismissed in the Magistrates Court.
[49] Crime and Misconduct Commission (Qld), *Independence, Influence and Integrity in Local Government: A CMC Inquiry into the 2004 Gold Coast City Council Election* (2006).
[50] Crime and Misconduct Commission (Qld), *Independence, Influence and Integrity in Local Government: A CMC Inquiry into the 2004 Gold Coast City Council Election* (2006) 104.
[51] Crime and Misconduct Commission (Qld), *Independence, Influence and Integrity in Local Government: A CMC Inquiry into the 2004 Gold Coast City Council Election* (2006) 161-62.
[52] Section 314(3) is an exception to this. If the particulars allege that food, drink or entertainment was supplied it must be proved that this was done 'with a view to influencing the vote of an elector'.
[53] See *Local Government Act 2020 (Vic)* s 300; *Electoral Act 2017* (NSW) s 209.
[54] Local Government Inspectorate (Vic), *Personal Interests Returns: Encouraging Disclosure and Increasing Transparency* (October 2021) 9.
[55] Local Government Inspectorate (Vic), *Personal Interests Returns: Encouraging Disclosure and Increasing Transparency* (October 2021) 12.
[56] *Local Government Act 1993* (NSW) s 439AA(1). See too, *Local Government Act 1993* (Tas) s 49; *Local Government Act 2020* (Vic) s 128(2)(b).
[57] *Local Government Act 2020* (Vic) s 3; *Electoral Funding Act 2018* (NSW) s 4*; Local Government Regulation 2012* (Qld) Sch 5, item 12.4.
[58] *Local Government General Regulations 2015* (Tas) r 29A.
[59] Model Code of Conduct Part 6.1.
[60] Model Code of Conduct Part 6.2.
[61] Local Government Inspectorate (Vic), *Personal Interests Returns: Encouraging Disclosure and Increasing Transparency* (October 2021) 30.
[62] The content of the model code is prescribed by s 440AAA of the *Local Government Act 1993* (NSW).
[63] Model Code of Conduct clause 6.6.
[64] Model Code of Conduct clause 6.9.