

Wodonga City Council Governance Code

Incorporating the Code of Conduct

November 2009

Endorsement

This Governance Code was adopted by council on November 16, 2009 and is signed by the following councillors:

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Cr Mark Byatt

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Cr Ed Foulston

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Cr Lisa Mahood

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Cr Anna Speedie

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Cr Rodney Wangman

Governance Code

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Introduction

In accordance with the *Local Government Act 1989* (the Act), it is the role of Wodonga City Council (the council) to provide governance and leadership for the Wodonga community through advocacy, decision-making and action.

Adherence to good governance principles assists council in achieving this role.

This Governance Code has been developed to meet council's goal of good governance for the Wodonga community. It is structured into two parts. Part A meets council's statutory requirements under the Act to have a code of conduct. As such, it focuses on those specific issues which must be addressed under this legislation. Part B is council's broader governance framework and incorporates those principles and practices of good governance to which council is committed.

Definitions

Code: A system of rules and regulations. In this case it includes both what the Act requires the council to address and also what the council itself has chosen to incorporate.

Councillor: Elected community representative.

Council: Elected representatives sitting as council.

Council Officers (the officers): means the Chief Executive Officer (CEO) and staff of Council appointed by the CEO.

Mayor: The elected leader of the councillors.

***Local Government Act 1989* (the Act):** The primary piece of State Government legislation under which local government operates.

Local Law: Under the Act, local governments have the power (and in some cases the requirement) to develop local legislation to cover certain areas. Wodonga's Local Law No 1 deals with meeting procedure.

PART A: Code of Conduct

1. Councillor conduct

(Statutory requirement under s76C of the Act)

Councillors should work together to succeed as a council on behalf of the Wodonga community. Councillors may have legitimate differences of opinion on issues but should value this diversity. To manage this diversity in the interests of the community, councillors should treat each other with respect, courtesy and in ways that will build and maintain trust.

Councillors need the support of one another to achieve the things they want to achieve and should work accordingly.

Furthermore, councillors should adhere to the following principles of behaviour:

Primary principle of Councillor conduct (S. 76B)

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

General Councillor conduct principles (S. 76BA)

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other councillors, council officers and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;

- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

Further to the above statutory requirements, councillors should adhere to the following:

- A. Councillors should treat each other with courtesy and respect. Councillors should adhere to the provisions of Council's *Meeting Procedure Local Law* (No 1 of 2009) when participating in council and special committee meetings.
- B. Councillors should recognise that communication is the key to good relationships and the addressing of issues and should agree to meet with the Mayor and/or CEO within a week of such a meeting being requested.
- C. Councillors should update their entry in the Register of Interests within one month following a transaction in land within the municipality.
- D. Councillors should adhere to the provisions of the Act (S. 77) with regard to confidential information (refer Attachment 1).
- E. Councillors should adhere to the *Equal Opportunity Act* 1995, and refrain from discriminating, harassing or bullying other people and using offensive language in their capacity as a councillor.
- F. Councillors should adhere to the requirements of the *Occupational Health and Safety Act 2004* and have regard to the principles of health and safety. Councillors have the status of employees under the *OH&S Act* and should ensure that they contribute to the notion of a healthy and safe workplace. Councillors should be particularly mindful of this in their interactions with officers.
- G. Councillors should adhere to the Media Policy.
- H. Councillors should adhere to the Councillors Support and Expenses Policy when seeking reimbursement of any necessary out of pocket expenses incurred while performing duties as a councillor or committee member.
- I. Councillors should not expect or seek any gift, fee, reward or benefit for themselves, their family or any other person or body for anything done in pursuit of their role as a councillor. In this regard, councillors should adhere to any legislative requirements and any policies or guidelines that may be adopted or approved on gifts and hospitality.
- J. Councillors should acknowledge the requirements in the Act dealing with the conduct of council during election periods (refer Attachment 2) and should adhere to council's Pre-election Caretaker policy.

2. Conflict of interest procedures

Conflict of interest requirements are enshrined in the Act and are attached as Attachment 3.

Notwithstanding the legislative requirements, councillors should keep their public and private interests separate. Councillors should note that under the legislation, they are ultimately accountable to identify and declare interests. Given the complexity of the legislation, councillors should make every effort to identify relevant interests and seek appropriate advice as required. The CEO should provide appropriate assistance to councillors if requested.

3. Dispute resolution procedures

Council recognises that legitimate diversity exists in the council and the community and that management of this diversity is an important part of good governance. Within this diversity, councillors should work together effectively at all times and develop and maintain good working relationships.

Personal differences may arise from time to time but the disputes referred to in this section are interpersonal disputes that may affect the operation of the council. In the case of a personal difference becoming a dispute, early intervention measures are crucial. Disputes may also arise around allegations of breaches of this Governance Code.

This code is not intended to address differences in policy or decision making which are tackled through normal council processes.

Good governance could be adversely impacted if differences and disputes are inappropriately aired externally. The community may lose confidence in council if councillors verbally attack each other in public. Councillors should settle disputes internally wherever possible.

Council's procedure for dispute resolution is as follows:

- The Mayor, as leader of the council, has ultimate responsibility for councillor working relationships.
- A dispute is defined as a disagreement or issue between two or more councillors which either they, the Mayor, other councillors or the CEO believes is adversely impacting on the council and its governance. These may include allegations of a breach of this code.
- Councillors should take the initial responsibility themselves for settling any differences they may have. They should inform the Mayor if they are unsuccessful.
- If participants are unable to resolve the dispute themselves, the Mayor is responsible for overseeing the resolution of the dispute. This does not mean that the Mayor must intervene personally, but the Mayor should take

responsibility for overseeing the process. The Mayor should consult the CEO as part of this process.

- If the Mayor is a party to the dispute, council should approach a peak body to oversee the dispute resolution process.
- All involved should make every effort to keep the dispute and its resolution in-house. While powers exist to refer a dispute to a Councillor Conduct Panel, this should occur only after an attempt has been made to resolve it internally. If a criminal offence is being alleged, the Mayor and CEO should take the allegation to the responsible authorities.
- Participants in the dispute or any other councillors should not take the dispute to the media.
- All councillors should co-operate with the dispute resolution process and provide reasonable assistance when requested.
- If the above process is unsuccessful, powers exist to refer the issue to a Councillor Conduct Panel.
- Councillors should accept the outcome of the dispute resolution process.

PART B: Good governance principles and practices

4. Key roles and relationships

4.1 Roles

An understanding and agreement of the different roles within council helps achieve good governance. The key roles are as follows:

4.1.1 Mayor

Councillors should acknowledge that the Mayor is the leader of council and give the position the respect it deserves to fulfil this leadership role.

The Mayor's roles include:

- To chair council meetings effectively and in a way which maximises the opportunity for all councillors to participate in decision-making.
- To provide leadership and direction for councillors and for the city.
- To assist councillors to work with each other and be an effective group.
- To be the public face of council and take key responsibility for how council presents itself in the wider community.
- To be the main media spokesperson.
- To work with all councillors and assist them to achieve their goals and to use the authority of the position to suggest processes to tackle and resolve issues.
- To keep across progress on key issues and help keep councillors informed about those key issues.
- To oversee dispute resolution processes between councillors except when the Mayor is a party to the dispute. In this case, the Deputy Mayor will oversee the process.
- To assist councillors to liaise with the CEO and staff (in accordance with the councillor / staff protocols stated in this Code), and to advocate on behalf of councillors as necessary.

4.1.2 Deputy Mayor

The Deputy Mayor's roles include:

- To deputise for the Mayor in his/her absence.
- To provide support for the Mayor as agreed between the Mayor and Deputy Mayor and by the council.

4.1.3 Council

- To advocate on behalf of the community.
- To plan for the future of Wodonga through general and specific strategic planning.
- To oversee and monitor progress towards achieving the Council Plan.
- To develop policy to guide programs and services.
- To make decisions on all matters within council's responsibility.
- To make laws and administer them as appropriate.

4.1.4 Councillors

Councillors' main focus should be on strategy and policy. However, councillors will at times follow up operational issues on behalf of constituents. Also, at times individual situations can fall between or outside existing policies. Even when addressing these situations, councillors should recognise that their most significant impact will be if these situations are addressed at a policy/strategic level.

Key roles of councillors are:

- To advocate and represent to council on behalf of their constituents.
- To facilitate communication between council and the community.
- To debate the issues in an open, honest and informed manner to assist the decision-making process.
- To participate in council decision-making and activities in a way that supports the interests of the whole Wodonga community.
- To chair council's advisory committee meetings in their capacity as council delegates.

4.1.5 Chief Executive Officer (CEO)

The CEO has a critical role in fostering a culture within the organisation that supports democratic governance and respects the role of councillors in the local government system.

Key roles of the CEO with regard to good governance are:

- Provision of advice and support to councillors, individually and collectively.
- Managing the organisation.
- Ensuring the implementation of council decisions.
- Liaison between the staff and councillors.
- Helping manage the relationship between elected representatives and the staff and ensuring that councillors' requests are handled by the staff without causing an excessive workload for officers and budget implications.
- Fostering a positive culture within the organisation.
- Working closely with the Mayor to provide leadership and direction to the organisation.

4.2 Relationships

Good working relationships are a key factor in helping council to govern well. All relationships should be characterised by adherence to council's values and an understanding of everyone's different roles. The key relationships and their characteristics are as follows:

4.2.1 Mayor/councillors

A good relationship between the Mayor and councillors helps council to deliver the Council Plan and increases the public credibility of the organisation.

- The Mayor is the leader of the council and this role should be respected by all councillors.
- Even though the Mayor does not have statutory authority, councillors should recognise the Mayor's leadership role and should afford the position the authority to provide that leadership.
- The Mayor should be a source of advice and support to councillors to help them achieve their goals.

- The Mayor is the Mayor of all councillors, and as such, should foster relationships which support inclusive decision-making and involvement in council activities in general.
- The Mayor should be an early contact point if there are disputes between councillors and has the responsibility for facilitating resolution of such disputes.

4.2.2 Councillors/councillors

Councillors should work with each other to achieve their individual and collective goals. Good relationships between councillors should assist in achieving a successful council, a pleasant working environment and a council with public credibility.

- While they may have different views, councillors should treat each other with respect and courtesy.
- Disagreements, if they must be aired, should be expressed in a way that causes no detriment to individual councillors or the council as a whole.
- Councillors should adhere to the “no surprises” principle in their relationships with each other.
- Debate and discussions should focus on issues and not on personalities.

4.2.3 Mayor/CEO

This important relationship can assist in the smooth running of council through good communication and anticipation of issues. It should be outward looking – that is focused on how the elected representatives and the organisation can be supported to best achieve council’s goals.

- The Mayor and CEO should work closely together and strive for a good working relationship.
- The relationship between the Mayor and CEO should be characterised by consistency, openness and good communication. Each has the responsibility to keep the other informed about important and relevant issues. Good communication ensures that an understanding develops about what is important and relevant.
- The Mayor and the CEO should understand that each has different roles and authorities. While the Mayor is the leader of the council, this position has no statutory authority (other than to chair meetings of council) while the CEO has specific authorities. The relationship between the Mayor and the CEO should be sensitive to this issue.

- The CEO should be conscious of the Mayor's role in assisting councillors to address their issues and achieve their goals and should look to support this.
- The relationship between the Mayor and the CEO should facilitate involvement and inclusion amongst the elected representatives and the officers. It should not seek to concentrate power in the relationship.
- The Mayor and the CEO recognise the importance of consistent communication and to support this will have regular meetings.

4.2.4 Councillors/CEO

Good relationships between councillors and the CEO assists good governance. The CEO is often able to assist councillors in addressing constituent issues. Councillors can help keep the CEO informed about what is happening in the community. Good relationships between the CEO and councillors can improve liaison between councillors and the staff.

The CEO is also accountable to councillors when they sit as council. Councillors, sitting as council, are also responsible for performance management of the CEO.

- Performance management of the CEO is important to council achieving its goals. Setting the goals for the CEO as leader of the administration and assessing performance against these goals is very important. Councillors should allocate sufficient time to set the goals and assess their achievement.
- Councillors should recognise that the CEO can be a source of advice and support and that good communication between councillors and the CEO can assist the CEO's role.
- Councillors and the CEO should make time to meet periodically.

4.2.5 Councillors/officers

To achieve good governance, clear and effective communication protocols for councillors and officers are essential. The protocols which apply to councillor and officer communication are:

- Council employs the CEO, and the CEO is responsible for the organisation, and therefore councillors primary point of communication should be with the CEO.
- Councillors seeking information or wishing to make comment on a specific matter should do so either via the CEO, or if the matter specifically relates to a particular directorate, in which case the councillor should contact the relevant Director.
- Councillors do not have the authority to direct staff members.

- Any information that is provided to an individual councillor should be such that it is, or could be, copied to all councillors
- Senior managers may be requested to provide information to councillors by their director or the CEO in some situations.
- Contact with managers is appropriate where councillors are seeking clarification or further specific information on matters sent to councillors for their information by that manager.
- Staff should inform their director/manager of any contact made directly to them by councillors if the contact is outside of this protocol.
- Contact by councillors with directors is appropriate for matters specific to the director's area of individual responsibility. The CEO should be copied in on all communication between councillors and directors or managers.
- Where a manager, or one of their staff, services a committee or a forum attended by a councillor it is appropriate for the councillor to seek information directly from that manager or staff member, provided the relevant director is copied in.
- Given the above protocols telephone, verbal or email contact between councillors and staff should not occur.
- In regard to governance, media, and councillors IT Support, councillors may deal directly with the Governance Officer, Communications Adviser and relevant IT staff, where needed.

Improper councillor direction to, or influence on, council staff in relation to advice (oral or written) is prohibited under S76E of the Act. This provision also applies in respect of officer reports presented to council and on directing staff acting under delegation, as an authorised officer, in a position held under another Act.

5. Decision-making process

Councillors should recognise that good decisions are more likely to be made if good decision-making processes are used.

The key features of council's decision-making process are:

5.1 Agenda setting

- The main way of having issues considered by council is through the Council Plan and budget processes together with the development and review of policies and strategies.
- If issues arise during the year which councillors believe require council consideration, councillors can work with each other, the Mayor and the CEO to put them forward for council's consideration. If councillors are seeking

assistance in getting their issues up for consideration, they should approach the CEO or the Mayor.

- If councillors wish to put items onto the Agenda as notices of motion, the procedures of the *Meeting Procedures Local Law* should be followed.
- Opportunities such as councillor briefings exist for councillors to be proactive in canvassing issues with fellow councillors.

5.2 Information gathering

- Councillors should acknowledge that decisions must be based on the best possible data and as such expect the CEO to provide council with quality research.
- Councillors should understand that the views of those affected by council's decisions is an important source of information for elected members and to that end should engage with the community in accordance with the principles and practices established in the Community Engagement Policy.
- Councillors should value the information provided by the members of Advisory Committees and use that information to help in the decision making process.

5.3 Opinion formation

- Councillor briefing sessions offer elected representatives the opportunity to ask questions, seek further information and float issues and options which are necessary for them to form their opinions on issues.
- Discussion at briefing sessions is not a substitute for debate in open council meetings. In order to fully explore options, issues and information needs, it is necessary for briefing sessions to be closed to the public. Transparency requirements should be met through having issues openly addressed by council at its formal meetings.
- Briefing sessions should provide each councillor with sufficient information to make a decision when a matter comes before council.
- Appropriate use of briefing sessions should result in "no surprises" occurring at council meetings or other public forums.
- Briefing sessions are confidential, and can be used as brainstorming opportunities with all views being accepted and worked through. Councillors and staff should therefore participate equally in briefing sessions. It is each councillor's responsibility to raise all information requests and any other matters which are necessary for making an informed decision.

- Briefing sessions are “Assemblies of councillors” under the conflict of interest provisions of the Act and councillors are required to make appropriate conflict of interest disclosures.

5.4 Decision-making

- Council’s decision-making should be transparent. The community is entitled to understand how council reaches a decision. Therefore, councillors should debate matters when they come before council at the formal council meeting, notwithstanding that discussion may have occurred at a councillor briefing session.
- Councillors should respect differences of opinion and should treat each other with courtesy at council meetings.
- Council decisions should be made in such a way that councillors are as participative as possible. Chairing and meeting procedures should recognise and encourage participation by all councillors.

5.5 Implementation

- Once council has made a decision, it becomes the collective decision of council. While it is recognised that some councillors may not have supported the decisions, councillors should not undermine or publicly denigrate the decision.
- If a councillor believes that his or her accountability to constituents requires him or her to express dissent this should be done carefully and with respect. Councillors should bear in mind that post-decision dissent weakens the council in the eyes of the community.

Attachment 1 – Confidential information

77. Confidential information

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this section, information is 'confidential information' if -
 - (a) the information was provided to the council or a special committee in relation to a matter considered by the council or special committee at a meeting closed to members of the public and the council or special committee has not passed a resolution that the information is not confidential; or
 - (b) the information has been designated as confidential information by a resolution of the council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the council or special committee has not passed a resolution that the information is not confidential; or
 - (c) subject to sub-section (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the council has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in sub-section (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless sub-section (2)(a) or (2)(b) applies to the information.

Attachment 2 – Caretaker period

93A Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a **major policy decision** means any decision—
 - (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

Attachment 3 – Conflict of interest provisions

77A Direct and indirect interests

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has—
 - (a) a close association as specified in section 78; or
 - (b) an indirect financial interest as specified in section 78A; or
 - (c) a conflicting duty as specified in section 78B; or
 - (d) received an applicable gift as specified in section 78C; or
 - (e) become an interested party as specified in section 78D.
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds is one held as a resident, ratepayer or voter and the interest—
 - (a) is held in common with other residents, ratepayers or voters; and
 - (b) does not exceed the interests held by other residents, ratepayers or voters.

77B Direct interest

- (1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
 - (b) there is a reasonable likelihood that the residential amenity of the person will be directly affected if the matter is decided in a particular way.

78 Indirect interest by close association

- (1) In this section—

daughter means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;

direct relative means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

family member means—

- (a) a spouse or domestic partner of the person; or
- (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means—

- (a) a direct relative of the person;
- (b) a direct relative of a person who is the direct relative of the person;

son means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

- (2) A person has an indirect interest by close association in a matter if—
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) For the purposes of the definition of **domestic partner** in subsection (1)—
 - (a) **registered relationship** has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.

78A Indirect interest that is an indirect financial interest

- (1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.

- (2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—
 - (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
 - (b) the person is owed money from another person and that other person has a direct interest in the matter.
- (3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.
- (4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.
- (5) For the purposes of determining the value of shares under this section, the share value is to be taken from—
 - (a) the close of business on the most recent of 30 June or 31 December; or
 - (b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

78B Indirect interest because of conflicting duties

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
 - (c) is a trustee for a person who has a direct interest in a matter.
- (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
- (3) A person does not have an indirect interest because of a conflicting duty if—
 - (a) the person is only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;
 - (b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person—
 - (i) was appointed or nominated to that position by the Council; or
 - (ii) was appointed to the relevant special committee of the Council to be a representative of the not-for-profit organisation;
 - (c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;

- (d) the person only holds a position that has been prescribed for the purposes of this section.

78C Indirect interest because of receipt of an applicable gift

- (1) In this section, **applicable gift** means one or more gifts with a total value of \$200 or more, received from a person or persons specified in subsection (2), in the 5 years preceding the decision or the exercise of the power, duty or function.
- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
 - (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.

78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

79 Disclosure of conflict of interest

- (1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or the special committee, the Councillor or member must—
 - (a) if he or she intends to be present at the meeting, disclose the conflict of interest in accordance with subsection (2);
 - (b) if he or she does not intend to be present at the meeting, disclose the conflict of interest in accordance with subsection (3).
- (2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—
 - (a) by either—
 - (i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or
 - (ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and
 - (b) classifying the type of interest that has given rise to the conflict as either—
 - (i) a direct interest; or
 - (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, or 78D; and
 - (c) describing the nature of the interest; and

- (d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.
- (3) A Councillor or member of a special committee who has a conflict of interest and will not be attending the meeting of Council or special committee must make a full disclosure of that interest to the Chief Executive Officer or Chairperson that—
 - (a) is in writing; and
 - (b) classifies the type of interest that has given rise to the conflict as either—
 - (i) a direct interest; or
 - (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, or 78D; and
 - (c) describes the nature of the interest.
- (4) If a Chairperson has been given a written disclosure under subsection (3), he or she must give the written disclosure to the Chief Executive Officer.
- (5) The Chief Executive Officer must—
 - (a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and
 - (b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.
- (6) While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—
 - (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
 - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—
 - (a) consideration of the matter; and
 - (b) all votes on the matter.
- (8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—
 - (a) the declaration of the conflict of interest; and
 - (b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.

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

Penalty: 100 penalty units.

79A Conflict of interest defence

It is a defence to a prosecution under section 79(9), 80A(3), 80B(2) or 80C(2) if the relevant person proves that he or she did not know—

- (a) that he or she had a conflict of interest in relation to the matter; or
- (b) that a matter in respect of which he or she had a conflict of interest was considered or discussed at the relevant meeting.

79B Conflicting personal interest

- (1) This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.
- (2) If a Councillor or a member of a special committee considers that he or she has a personal interest 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, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.
- (3) If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.
- (4) A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.
- (5) If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

79C Certain situations where Councillor taken to not have a conflict of interest

- (1) A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter relates to—
 - (a) the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;
 - (b) the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);
 - (c) a decision in relation to the payment of allowances to the Mayor or councillors under section 74 or 74C(2);
 - (d) the adoption of a policy in relation to the reimbursement of expenses under section 75A;
 - (e) the adoption of a Councillor Code of Conduct under section 76C;
 - (f) an application to a Councillor Conduct Panel or VCAT under Division 1B;
 - (g) an application for an exemption under section 80;
 - (h) the appointment of members and Chairpersons of special committees;
 - (i) a resolution that has the effect of making the councillors eligible or ineligible for the superannuation guarantee under taxation legislation.

- (2) If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if—
 - (a) the Council approved the matter and the proposed funding previously; and
 - (b) the Councillor disclosed the nature of the conflict of interest under this Division when the decision in respect of the funding was originally considered and made.

79D Person may make submission despite conflict of interest

- (1) Subject to subsection (2), a relevant person who has a conflict of interest in a matter and who has made a written submission under section 223 in respect of the matter, may present his or her submission under section 223(1)(b) to the Council or committee of the Council.
- (2) The relevant person who has a conflict of interest in a matter must not be at the meeting of the Council or committee of the Council any longer than is required for the person to be heard in support of the person's written submission.

80 Exemption by Minister

- (1) Despite section 79—
 - (a) a Council may apply, in writing, to the Minister for an exemption of any Councillor from any or all of the provisions of section 79 if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of councillors affected by section 79;
 - (b) a Chief Executive Officer of a Council may apply, in writing, to the Minister, after receiving written declarations of conflicts of interest from a majority of councillors, for an exemption of those councillors from any or all of the provisions of section 79.
- (1A) After reviewing an application received from a Council or a Chief Executive Officer, the Minister may require the Council or Chief Executive Officer to provide additional information in respect of the application, including copies of the written declarations of conflicts of interests made by councillors under section 79.
- (1B) In considering an application made by a Council or Chief Executive Officer, the Minister must have regard to—
 - (a) the extent of the conflicts of interest of the councillors; and
 - (b) the public interest.
- (2) The Minister may, after considering an application under subsection (1B), exempt in writing a Councillor from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit.
- (3) The Minister may revoke an exemption.

80A Requirements to be observed by an assembly of councillors

- (1) At an assembly of councillors, the Chief Executive Officer must ensure that a written record is kept of—
 - (a) the names of all councillors and members of Council staff attending;
 - (b) the matters considered;
 - (c) any conflict of interest disclosures made by a Councillor attending under subsection (3).
- (2) The Chief Executive Officer must ensure that the written record of an assembly of councillors is—
 - (a) kept for a period of 4 years after the date of the assembly; and
 - (b) made available for public inspection at the offices of the Council for a period of 12 months after the date of the assembly.
- (3) If a Councillor attending an assembly of councillors knows that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsection (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.
 Penalty: 100 penalty units.
- (4) A Councillor must disclose the conflict of interest either—
 - (a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered; or
 - (b) if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor becomes aware that he or she has a conflict of interest.

80B Members of Council staff to disclose conflicts of interest in respect of delegated functions

- (1) This section applies to a member of Council staff who has been delegated a power, duty or function of the Council under section 98 or under another Act, either directly or indirectly.
- (2) A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must—
 - (a) not exercise the power or discharge the duty or function; and
 - (b) in the case of the Chief Executive Officer, disclose the type of interest and the nature of the interest to—
 - (i) the Mayor, in writing, as soon as he or she becomes aware of the conflict of interest in the matter; and
 - (ii) the Council by no later than the next ordinary meeting of the Council.
 - (c) in the case of any other member of staff, disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter.

Penalty: 100 penalty units.

80C Persons to disclose interests to Council when providing advice

- (1) This section applies to Council staff and persons engaged under a contract to provide advice or services to the Council or a special committee.
- (2) A person who is providing advice or a report to a meeting of the Council or a special committee, and who has a direct or indirect interest in a matter to which the advice or report relates, must disclose the type of interest when providing the advice or report and before the advice or report is considered by the Council or the committee.

Penalty: 50 penalty units.

- (3) A disclosure made by a person under subsection (2) must be recorded in the minutes of the meeting.
- (4) A person who has made a disclosure under subsection (2) must disclose the nature of the interest if required to make that disclosure by the Council or committee.
- (5) Sections 77A to 78D apply to a person to whom this section applies as if the person were a relevant person under this Division.