

June

2009

# Register of Interests Guide

## Primary and Ordinary Returns

**June 2009**

Published by Local Government Victoria  
Department of Planning and Community Development  
55 Collins Street, Melbourne Victoria 3000  
Tel: 03 9651 7026  
<http://www.localgovernment.vic.gov.au>

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# 1. Introduction

This Guide deals with the requirement to lodge primary and ordinary returns in Victorian local governments. It complements the Guide, “*Conflicts of Interest in Local Government*” (see below).

People who are Councillors, Council officers or members of special committees in local government must lodge interest returns in which they disclose information about their personal circumstances. This particularly includes information that may give rise to conflicts of interest in certain circumstances.

The reason for having to lodge interest returns is to ensure public transparency. It also serves as a reminder about your obligations to avoid conflicts of interest.

## Primary and Ordinary Returns

Two types of interest returns are required to be lodged under section 81 of the *Local Government Act 1989* (the Act). These are:

- Primary returns, which must be lodged after taking office or commencing in a specified role; and
- Ordinary returns, which must be lodged twice yearly while holding office or occupying the role.

## Compared to Conflicts of Interest

It is important to understand that information required to be disclosed in a return is not always the same as for a conflict of interest.

There are circumstances where a person has a conflict of interest even though nothing has been recorded in a primary or ordinary return. For example:

- You are not necessarily required to disclose shares held by a member of your family but the ownership of shares by your spouse may well be an indirect financial interest for you.
- You are not necessarily required to disclose the name of a person for whom you act as agent, although this can also give rise to an indirect interest because of a conflicting duty.

For detailed information about conflicts of interest see the Guide, “*Conflicts of Interest in Local Government*”, which is available from Local Government Victoria or at [www.localgovernment.vic.gov.au](http://www.localgovernment.vic.gov.au).

## 2. Who should lodge returns?

Section 81 of the Act requires Councillors, nominated members of Council staff and members of special committees to lodge returns.

### Councillors

All Councillors must lodge primary and ordinary returns in accordance with the Act. There are no exceptions.

### Council Staff

The Act states that a person who is a nominated officer must lodge primary and ordinary returns. A nominated officer includes senior officers of the Council and other staff nominated by the Chief Executive Officer.

Senior officers are:

- The Chief Executive Officer;
- Any officer with management responsibilities who reports directly to the CEO; and
- Any other member of staff whose total annual remuneration exceeds \$100,000 (or a higher amount specified in the Regulations).

It is recommended that CEOs ensure that any staff member who is authorised to exercise a significant delegation is made a nominated officer for the purpose of lodging returns. Nominations should be in writing.

### Committee members

Any person who is a member of a special committee of the Council must lodge primary and ordinary returns. This applies to the members of any committee with delegated Council powers, duties or functions under the Local Government Act or any other Act, including the Planning and Environment Act 1987.

Under section 81(2A) of the Act, the Council may exempt a member of a special committee who is not a Councillor from this responsibility. This would normally be done when a committee was formed or when new members were appointed.

Exemptions should not be granted lightly. Councils should consider the level of authority granted to the relevant committee when deciding whether to grant exemptions. Committees with significant powers or where there is scope for significant conflicts of interest in terms of money or property should not be granted exemptions.

It is important to note that an exemption from the duty to lodge a return is not an exemption from the responsibility to disclose a conflict of interest.

### 3. When are returns lodged?

All returns must be lodged at the proper times. A return must not be lodged before the due date or after the end of the specified period.

#### Primary Returns

A primary return must be lodged with the Chief Executive Officer of the Council at the following times.

For a Councillor, a primary return must be lodged within 30 days after the election day.

- If the taking of the oath of office is delayed, a primary return may be lodged within seven days after taking the Oath.
- It is not necessary for a Councillor to lodge a primary return if re-elected for a following term of office, but it is required in the event that a Councillor's terms of office are not contiguous.

For a special committee member, a primary return must be lodged within 30 days after becoming a member of the relevant committee.

- This will normally be within 30 days of the Council decision to establish the committee or to appoint the person to the committee.
- A primary return is not required when a person is reappointed to a special committee and where the memberships are contiguous.

For a member of Council staff, a primary return must be lodged within 30 days of becoming a nominated officer. This will be within 30 days of whichever of the following applies:

- An appointment or promotion to a senior officer position;
- Becoming a senior officer as a result of a reclassification or increase in remuneration; or
- When the CEO designates the staff member as a "nominated officer" for the purpose of lodging returns.

#### Ordinary Returns

An ordinary return must be lodged with the CEO of the Council two times each year for as long as you hold the office or role that requires you to lodge returns.

An ordinary return must be lodged each year:

- Between 30 June and 9 August; and
- Between 31 December and 9 February.

These dates apply to every person who lodges ordinary returns.

## 4. Administrative Matters

### Receipt of returns

It is recommended that CEOs establish appropriate arrangements for the receipt and recording of returns. This may include:

- Delegating an appropriate officer to receive returns on behalf of the CEO and ensuring Councillors, committee members and nominated officers know who that person is;
- Maintaining an up to date list of everyone who is required to lodge returns and ensuring that they are sent reminders when their returns are due;
- Dating and initialling each return as it is lodged and keeping a written record of every return as it is lodged; and
- Providing a written receipt to each person who lodges a return.

It is strongly recommended people lodging returns should do so in accordance with the established procedures of the Council, including lodging them with the designated officer.

Irrespective of the administrative processes in place at a Council, the legal responsibility to lodge an accurate return always rests with the relevant Councillor, committee member or nominated officer and not with staff administering the process.

### Managing records

Records of interest returns must be managed responsibly and in accordance with section 81 of the Act. This involves three stages:

- Including them in the register of interests;
- Retaining them for a designated period; and
- Finally destroying them.

The Chief Executive Officer must maintain a register of interests. This includes the last three returns lodged by each person. When a person ceases to be a Councillor, special committee member or nominated officer, their returns are removed from the register.

After returns are removed from the register:

- They must be retained for as long as the person remains a Councillor, special committee member or a nominated officer;
- After the person ceases to be a Councillor, special committee member or a nominated officer, the returns must still be retained for a period of three years; and
- After that period of three years has expired the returns must be destroyed.

## 5. Other important matters

### Failure to lodge

A failure to lodge a primary or ordinary return, or to make the required disclosures in a return, is an offence that can lead to an investigation by an inspector of municipal administration and possibly to Court action. This may apply to a Councillor, a nominated officer or a member of a special committee.

In addition:

- A Councillor who fails to lodge a correct return may be required to defend his or her actions at a Councillor Conduct Panel or VCAT and may be disqualified or suspended; and
- A member of Council staff who fails to lodge a correct return may be subject to disciplinary action as an employee.

### Public access

The Act provides a process whereby anyone can inspect the register of interests.

A person who wishes to inspect the register must apply to do so, in writing to the CEO indicating which person's records they wish to inspect. A request form is provided in the Regulations. The CEO cannot refuse a person who has made a request in the required manner.

An inspection may be made at the Council office during normal office hours and, for practical reasons, may require a prior appointment. A person who inspects the record may make a written record of the details in a return, but there is no clear entitlement for a person to take a photocopy of a return.

A number of protections are included in the Act to ensure the power to inspect a person's records is not misused.

- The CEO must keep a record of the names of people who inspect the register and a Councillor, committee member or nominated officer is entitled to inspect the list of names of people who have inspected their personal records.
- A person must not publish information derived from the register unless the information is a fair and accurate summary or copy of the information.
- A Council employee may not make a record of, divulge or communicate information gained in relation to anyone's interest returns other than in the proper discharge of his or her duties. Failure to comply can result in prosecution.

## 6. Primary return – disclosures

Section 81(6) of the Act describes the information that must be disclosed in a Primary Return. This is information that is current on the date that the return is lodged.

You must answer all questions on the form. If you have nothing to disclose, indicate that fact by writing “*nil*” or “*nothing to disclose*” in the relevant space.

### (a) Offices

The name of any company or other body in which you hold any office as a director or otherwise. This includes:

- Directorships of corporations;
- Positions on boards or committees of
  - charitable or community organisations, and
  - sporting or social organisations;
- Positions on boards or committees to which you were appointed by the Council; and
- Offices held as an employee of a company, government agency or other body.

For each of these offices held, you must disclose the name of the company or body.

### (b) Shares

The name of any company or body in which you hold a beneficial interest, in shares or any other form:

- This does not include shareholdings not exceeding \$10,000 in value where the total value of the shares issued by the company exceeds \$10 million;
- It does include interests of any value held in a company or body that has not issued shares or whose total share issue is valued at \$10 million or less, including proprietary companies;
- It does not include shares held by members of your family unless they are held in trust and you are the beneficiary; and
- You only need to disclose the name of the company or body, not the value of your interest.

## (c) Land

The address or description of any land in which you have a beneficial interest that is in the municipal district or in an adjoining municipal district:

- This includes land that you own by yourself;
- It also includes land you own together with anyone else;
- It includes land you own that is mortgaged; and
- It includes land in neighbouring Council areas; but
- It does not include land you hold as security for a debt.

## (d) Trusts

A concise description of any trust where:

- You hold a beneficial interest; or
- You are the trustee for a member of your family who has a beneficial interest (*see Appendix 1*).

## (e) Other interests

Any other substantial interests, of you or your family (*see Appendix 1*) which you think may appear to raise a material conflict between your private interest and your public duty. This may include:

- A recent gift or donation valued at \$200 or more that you or a member of your family has received from a person or organisation that has, or is likely to have, significant dealings with the Council;
- Responsibilities as a partner, agent, consultant, contractor or employee for a person or organisation that has, or is likely to have, significant dealings with the Council; or
- Civil proceedings in which you are or have recently been a party which relates to a matter that is likely to require a Council decision.

## Signature and Witness

A primary return must be signed by the person lodging the return and their signature must be witnessed. It should be noted that the witness is witnessing the signature, not attesting to the accuracy of the return.

## 7. Ordinary return – disclosures

Section 81(7) of the Act describes the information that must be disclosed in an ordinary return. It includes information about your personal interests during the “*return period*”, which is the period since your last primary or ordinary return. It is important that you must disclose all relevant interests you have held during the return period, even if you no longer hold those interests.

You must answer all questions on the form. If you have nothing to disclose, indicate that fact by writing “*nil*” or “*nothing to disclose*” in the relevant space.

### (a) Offices

The name of any company or other body in which you hold any office as a director or otherwise. This includes:

- Directorships of corporations;
- Positions on boards or committees of
  - charitable or community organisations, and
  - sporting or social organisations;
- Positions on boards or committees to which you were appointed by the Council; and
- Offices held as an employee of a company, government agency or other body.

For each of these offices held, you must disclose the name of the company or body.

### (b) Shares

The name of any company or body in which you hold a beneficial interest, in shares or any other form:

- This does not include shareholdings not exceeding \$10,000 in value where the total value of the shares issued by the company exceeds \$10 million;
- It does include interests of any value held in a company or body that has not issued shares or whose total share issue is valued at \$10 million or less, including proprietary companies;
- It does not include shares held by members of your family unless they are held in trust and you are the beneficiary; and
- You only need to disclose the name of the company or body, not the value of your interest.

## (c) Land

The address or description of any land in which you have a beneficial interest that is in the municipal district or in an adjoining municipal district:

- This includes land that you own by yourself;
- It also includes land you own together with anyone else;
- It includes land you own that is mortgaged; and
- It includes land in neighbouring Council areas; but
- It does not include land you hold as security for a debt.

## (d) Trusts

A concise description of any trust where:

- You hold a beneficial interest; or
- You are the trustee for a member of your family who has a beneficial interest (*see Appendix 1*).

## (d) Gifts

An ordinary return must include a record of all gifts valued at \$200 or more that you have received directly or indirectly during the disclosure period, but does not include gifts from relatives (*see Appendix 1*).

Gifts will include any election campaign donations that have been received during the disclosure period. (This is in addition to disclosures in campaign donation returns under section 62 of the Act.)

## (e) Other interests

Any other substantial interests, of you or your family (*see Appendix 1*) which you think may appear to raise a material conflict between your private interest and your public duty. This may include:

- Responsibilities as a partner, agent, consultant, contractor or employee for a person or organisation that has, or is likely to have, significant dealings with the Council; or
- Civil proceedings in which you are or have recently been a party which relates to a matter that is likely to require a Council decision.

## Signature and Witness

An ordinary return must be signed by the person lodging the return and their signature must be witnessed. It should be noted that the witness is witnessing the signature, not attesting to the accuracy of the return.

# Appendix 1 – Definitions

## “Family”

For the purpose of primary and ordinary returns, a member or your “family” is defined to include:

- Your spouse or domestic partner; and
- Any child of yours under 18 years of age who normally resides with you.

*(This is different from the definition of “family member” for the purpose of defining an indirect interest by close association, under section 78 of the Act.)*

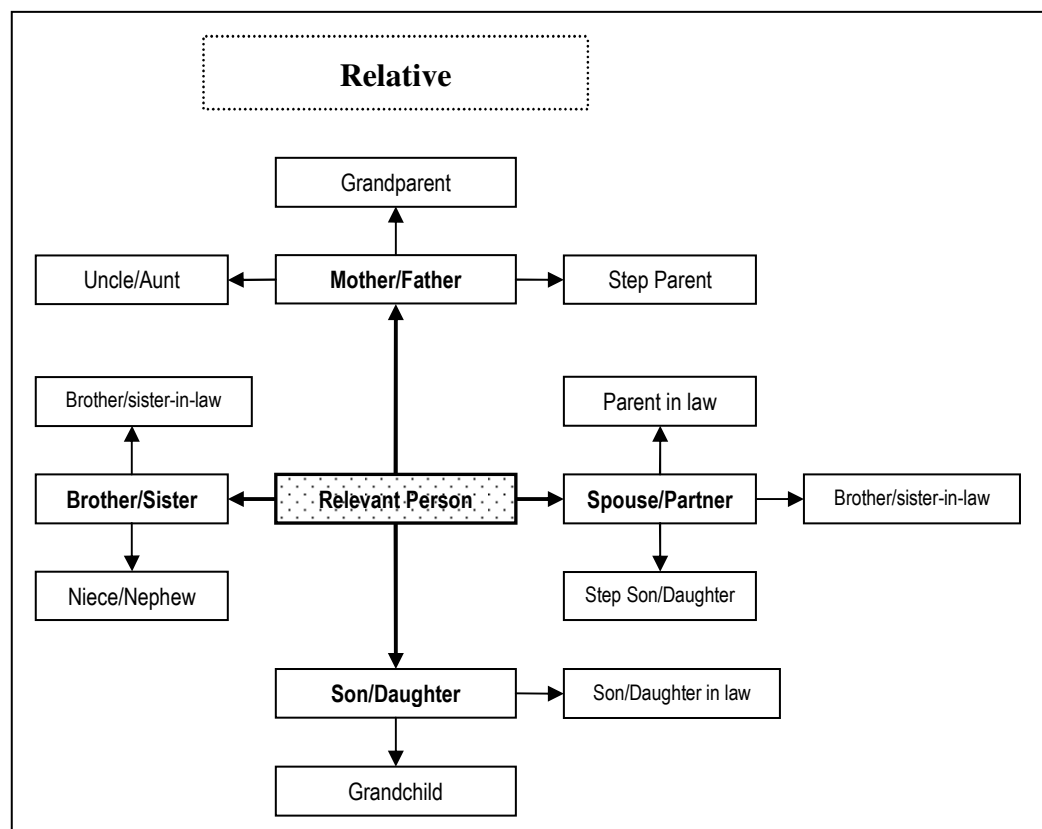
## “Relative”

“Relative” is defined in the Act for conflict of interest purposes. It includes a person who is a direct relative or a person who is a direct relative of a direct relative.

A “direct relative”, is defined to be a person who is your:

- Mother or father;
- Brother or sister;
- Son or daughter; or
- Spouse or domestic partner.

*(In very broad terms, a person is a “relative” for the purpose of an ordinary return if they are once or twice removed from you by blood or marriage.)*



# Appendix 2 – Primary Return

**Local Government Act 1989**, Sections 81(2) & 81(4)

Local Government (General) Regulations 2004, Regulation 6

(Family name)

(Given names)

Council:

Ward: (if applicable)

Details of Registrable Interests as at the date of this return:

1. The name of any company or other body in which you hold any office whether as director or otherwise.
2. The name or description of any company or body in which you hold a beneficial interest unless the total value of the interest does not exceed \$10,000 and the total value of issued shares of the company or body exceeds \$10 million.
3. The address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which you hold any beneficial interest other than by way of security for any debt.
4. A concise description of any trust in which you hold a beneficial interest or of which you are a trustee and a member of your family\* holds a beneficial interest.
5. Any other substantial interest (whether of a pecuniary nature or not) held by you or a member of your family of which you are aware and which you consider might appear to raise a material conflict between your private interest and your public duty as a Councillor, member of a special committee or nominated officer.

Signature of person making return:

Signature of witness:

Date:

# Appendix 3 – Ordinary Return

**Local Government Act 1989**, Sections 81(5) & 81(7)

Local Government (General) Regulations 2004, Regulation 7

(Family name)

(Given names)

Council:

Ward: (if applicable)

Details of Registrable Interests as at the date of this return:

1. The name of any company or other body corporate or unincorporate in which you held an office as a director or otherwise.
2. The name or description of any company or body in which you hold or have held a beneficial interest unless the total value of the interest does or did not exceed \$10,000 and the total value of issued shares of the company or body exceeds \$10 million.
3. The address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which you held any beneficial interest other than by way of security for any debt.
4. A concise description of any trust in which you held a beneficial interest or of which you are a trustee and in which a member of your family held a beneficial interest.
5. Particulars of any gift of or above the amount or value of \$200 received by you, either directly or indirectly, from a person other than a relative of yours.
6. Any other substantial interest (whether of a pecuniary nature or not) held by you or a member of your family of which you are aware and which you consider might appear to raise a material conflict between your private interest and your public duty as a councillor, member of a special committee or nominated officer.

Signature of person making return:

Signature of witness:

Date: