

An interest in conflicts

For whom are these provisions intended – lawyers or councillors!

Firstly – I don't really have to state that the VLGA supports measures that improve transparency, confidence in councils and good governance. We are also committed to working through what many of our members are quite concerned about – the impact of these new provisions on their capacity to govern and represent the communities in which they are active participants.

We have made a commitment to LGV to provide them with constructive and useful feedback from councillors, officers, community members and this forum, our on-line survey and ongoing discussions as we visit all of Victoria's 79 councils will inform this feedback.

Initial feedback has focussed on some key areas of concern – as well as some positive feedback too. I will be exploring the areas of concern in a moment, but first I wanted to step back in perspective - and time.

I'm a bit of a Classics geek and I love a reference to Plato. When Plato was creating his idealised republic, he saw the need to ensure that decision makers had no political, social or familial conflicts of interest. Therefore, he demanded that they would reject all property ownership, live in communal barracks, give away their children and be fed only highly controlled information.

Of course, there will never be councillors like Plato's ideal, willing to sacrifice all individual possessions and interests – including their children.

And the fact that this problem has not been solved since Plato's day is testament to the notion that "there are few absolutes in life and conflict of interest is not among them."

Decision makers universally, whether on Councils, Boards, committees, wrestle with the demands of disclosing conflicts and removing themselves from decision making.

When does a decision maker not bring private and personal values and interests, political beliefs, connections, relationships to decision making – does any decision making occur in an interest-free zone?

A councillor who cycles wants to see more bike paths, a councillor who teaches wants to see more youth services – but when do personal interests intersect with public duties such that they become legal conflicts – when do they and when should they?

If I can answer that question with confidence in the ten minutes I have, then I deserve a gig as the Minister for local Government. It is a brave undertaking to try to capture the elusive ethics of conflicts and set them in the concrete of legislation.

The objective is not the Plato ideal in which Councillors don't or can't have personal and private interests. What Councillors are looking for is a clearly codified position on when we need to speak up or step out – based on an ethical rationale that makes sense to community representatives making decisions about their neighbours and their environment.

In plain speak – clear rules on what to do that make good sound sense for councillors.

As councillors, we're not always into talking about the ethical rationale of conflicts provisions, we prefer talking about the footy.

But I think we really need to ask whether disqualifying councillors from decision making if they have received \$200 worth of gifts over the past five years – or when they are the secretary of the toy library that is receiving a \$300 grant to buy some shelves - is based on clear ethical rationale?

In ethical terms, what do we need to avoid as Councillors? We need to avoid:

- Interference with our objective professional judgment
- The appearance of such interference
- Undermining public confidence in our council
- Exploiting our official capacity for personal benefit
- Influencing the outcome of a decision for our personal benefit

Sounds like good law – except, obviously, it doesn't tell councillors terribly much. Translating this into a code and rules is fraught, but the objective in doing so has to be to provide clarity for councillors – who, and this is terribly

important, for the most part, have absolutely no desire or intention of doing the wrong thing.

In evaluating the new provisions, we can ask: are they based on clear ethical rationale? Do they give Councillors clarity and make it easy for Councillors to do the right thing?

Many of the new provisions pass this evaluation with flying colours, but Councillors are raising questions about the clarity and fairness of some:

- Gifts
- Close association?
- Residential amenity?
- Indirect financial interest?
- Conflict of duty?
- To whom it applies – committee reps
- Bias

Applicable gift:

- Underlying rationale here is that receipt of gifts compromises objectivity
- Long lunches, artwork, bottles of wine may curry favour – but is this actually better described as a bribe? Are rules around declaration of gifts and donations already sufficient for the purposes of transparency or is removal from decision making after the fifth Christmas bottle of wine warranted?
- is \$200 over 5 yrs appropriate? What sorts of gifts does this then capture?
- Is it easy for Councillors to adhere to? Is the retrospective element to the clause fair on returning Councillors who may not have kept appropriate records?

Close association

- the rationale here is that you have a personal interest in the direct and some indirect interests of those you are close to
- is this assumption always logical? It is determined by the relationship existing, not the degree of personal interest – b/c this of course is harder to measure

- Is this easy to comply with? Are councillors likely to have kept a record of the gifts their domestic partners have received for the past five years? Who has hosted them at the footy? Can you prove that you didn't know – as required in defence
- Spouse's share portfolios become important

Residential amenity?

- Can a Councillor be objective about a planning development nearby? In many cases, probably not
- How far away do you have to live to be able to be trusted to make objective decisions? 3 houses? Five? We take planning objections from down the street and around the corner with respect to parking and traffic issues – but where is the boundary for councillors?
- And given that this is a direct interest, a councillors' step-son, niece and brother in law's residential amenity gives rise to a COI – the properties owned by your aunt become relevant

Indirect financial interest?

- I need someone to explain to me how a scenario in which I am likely to receive a benefit or incur a loss in financial terms is not a direct interest – regardless of the involvement of a third party

Conflict of duty?

- The logic here is that if you have a duty to an organisation with a direct interest, this will intersect with your council duty - you may seek to influence, achieve a benefit or have an appearance of compromised objectivity – in purely ethical terms, removal from decision making may be the only way to preserve objective decision making
- But is it easy for Councillors to comply with this – and we know the answer to that is no – membership on community boards and organisations is the norm for Councillors – generally, that's how our community knows us and is willing to give us the responsibility of greater representation
- Is it worth upholding b/c it ensures objective decision making?

- Or is there another way and another test? But for the affected councillor's involvement, the decision would not have been made could be a possible test? If the benefit or loss would have occurred anyway, is the involvement of the Councillor a problem?

Bias

- Only mentioning as an area that is still unclear for councillors – although I actually have some confidence that our understanding of what is allowable will increase

The immense value of this discussion is that we are talking about our decision making practices, our expectations, the expectations of your communities and how we ensure ethically sound practice as councillors. Just having this discussion and reflecting on the issue will have a positive impact on our good governance.

I have been asking a lot of questions – not to be deliberately provocative – but to make sure that we help to get this legislation right. As I said earlier, this isn't an easy area and it isn't surprising that we are debating this and asking questions.

The themes of ethical rationale and clarity for councillors will be pursued by the VLGA in our discussions with the sector and with the Minister as we seek to achieve the best rules for Victorian councillors.

And I will leave with the disclaimer that anything of value you receive from the VLGA tonight is to be considered an awkward gift that you are receiving on behalf of your council and dinner tonight does not count in your accumulated \$200 – so you can all still vote on whether to be a VLGA member Council at budget time!