

Personal interests returns: Encouraging disclosure and increasing transparency



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Acknowledgement of Country

The Local Government Inspectorate pays respect to Victoria's traditional owners and their elders past and present who have been custodians of this country for many thousands of years. Their living culture and their role in the life of Victoria is acknowledged by the LGI.

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Foreword



In preparation for the new Local Government Act 2020, we embarked on a wide-ranging review of personal interest declarations of Victorian councillors. The review covered 650 councillors at 78 councils between October 2016 and February 2020.¹

Our aim was to see if councillors were complying with the rules under the Local Government Act 1989 and identify ways to improve compliance. During the review, we also advised Local Government Victoria about our findings in a bid to improve the legislation.

We also embarked on the review because the Inspectorate and other integrity agencies have identified incomplete and inadequate personal interest disclosures are a historical and ongoing issue affecting the local government sector.

Half of the 650 councillors had failed to submit accurate records of their personal interests. While some of these failures were due to minor issues, two out of every five councillors failed to disclose interests in one or more of their returns – or failed to submit a return at all.

We surveyed councillors who were non-compliant and found that many did not understand why declaring their personal interests was important and did not know how to do it. We also identified a lack in guidance on how to complete returns as the guidance material was too legalistic and difficult to understand.

Clearly, more work needs to be done to improve compliance and build public trust that councillors are acting in an impartial way and in the community's best interests. There is also a role for peak bodies to help coordinate councils and share best practice.

The 2020 Act introduced changes to increase both the transparency and oversight and councils are now required to publish a summary of personal interests on their website. However, in late August 2021, we found that 16 councils had not published the first biannual personal interest summary. We also found a wide variation in the presentation of the summaries, leading to difficulties in comparing councils.

Compliance also needs to be improved through better oversight and enforcement. There is currently a lack of oversight and difficulties in enforcing the legislation. This will have to change if we are to raise the level of compliance and public trust in their local representatives.

Councillors and nominated officers not adhering to personal interest declaration legislation can be a key indicator of poor governance and lax council practices. More must be done to raise the bar and improve compliance with personal interest declarations, which in turn improves transparency and public trust in local government.

This report contains 14 recommendations to improve compliance through education and guidance, legislative change and oversight. While our review and recommendations focus on councillors, the disclosure requirements also apply to nominated staff and they will also benefit from our recommendations.

I am pleased to deliver this report into the challenges and issues relating to personal interests returns at Victorian councils. As I began my role as Chief Municipal Inspector in April 2021, I would like to acknowledge the contribution of Dr John Lynch as acting CMI and the team at the Inspectorate for their work on this project. Finally, I would like to thank the council staff and councillors who provided extensive feedback on a draft of this report.

Michael Stefanovic AM
Chief Municipal Inspector

October 2021

¹ A review of Whittlesea councillors' personal interests returns was conducted as part of a separate investigation and is not covered in this report.

Glossary²

Beneficiary – a person who receives benefits, profits or advantages from something, such as a trust.

Biannual personal interests return – a return lodged by a specified person twice yearly while they continue to be a specified person.

Delegated committee – The Local Government Act 2020 defines a delegated committee as a committee established by a council which:

- must include 2 or more councillors
- may include other people appointed by the council who are entitled to vote
- is chaired by a councillor appointed by council or the mayor
- must adhere to the rules of council meetings set out in the Act
- may be formed by a resolution from two or more councils.

Detailed review – an in-depth check of personal interests returns conducted for councillors from 17 councils conducted by the Inspectorate for this report. The detailed review conducted the same checks as the high-level review but also cross-referenced returns with the Victorian land titles register, Australian Securities and Investments Commission (ASIC) register, Australian Business Register, and internet searches of the councillors and their spouses, to identify relevant interests.

High-level review – a broad assessment of personal interests returns conducted for councillors from 61 councils by the Inspectorate for this report. The high-level review considered whether the returns had been submitted within the required timeframe, in the prescribed format, signed, and witnessed. Disclosed land interests were compared with rates notices to identify possible non-disclosures. All other disclosed interests were also compared period to period, to identify possible non-disclosures.

Initial personal interests return – the first return lodged by a specified person within 30 days of taking the oath or affirmation of office (for councillors) or being appointed a member of a delegated committee (for specified persons).

Nominated officer – *The Local Government Act 2020* defines a nominated officer as a member of council staff who:

- has a statutory or delegated power, duty or function and
- is nominated by the Chief Executive Officer because of the nature of that power, duty or function.

The 1989 Act defined nominated officers as senior officers of the council and any other member of the council staff nominated by the CEO.

Office – a position of duty, trust or authority, especially in the government or a company.

Prescribed period – The period from 1–31 March and 1–30 September each year when a specified person (who continues to be a specified person and who has submitted an initial interests return) must lodge a biannual personal interests return.

Personal interests return³ – the declaration of personal interests such as leadership roles in companies, land owned in the municipality or trusts. The return aims to ensure people making decisions at councils disclose interests that may impact on their ability to perform their duty in an impartial way. Returns can be either initial personal interests returns, or biannual personal interests returns.

Property interests – land owned in the municipality or neighbouring municipalities.

Scheme – The legislative scheme is the Acts and regulations which govern the disclosure of personal interests by councillors and senior government officials.

Self-managed superannuation fund (SMSF) – a trust structure that provides benefits to its members upon retirement. The main difference between SMSFs and other super funds is that SMSF members are usually also the trustees. This means the members of the SMSF run it for their benefit.

Specified person – *The Local Government Act 2020* defines a specified person as a:

- councillor
- member of a delegated committee who is not a Councillor
- Chief Executive Officer
or
- nominated officer.

Trust – a fiduciary relationship in which one person (the trustee) holds the title to property (the trust, estate or property trust) for the benefits of others (the beneficiary).

² The terms used in this report have specific meanings under the legislation.

³ Although the term 'personal interests returns' is not grammatically correct, it is used in this report because it is the wording used in both Local Government Acts.

Executive summary

The Local Government Act requires that councillors, members of delegated committees and key council staff submit a record of their personal interests to council. An initial personal interests return must be completed 30 days after election or appointment and biannually afterwards.

The personal interests returns scheme was introduced in the Local Government Act 1989 (1989 Act) and was expanded in the *Local Government Act 2020* (2020 Act). The 1989 requirements compelled councils to maintain a register of interests which were available for public inspection. The 2020 Act requires councils to publish a summary of personal interests on their website.

Declaring personal interests and conflicts of interest ensures decision makers perform their duty in an impartial way and gives the public greater trust in the integrity of the decision-making process.

“Councillors and their decision making needs to be open, transparent and accountable.”

– council officer, responding to our survey on personal interests returns

The Local Government Inspectorate and other integrity agencies previously identified non-compliant personal interests returns as an ongoing issue affecting the local government sector.

In mid-2020, we initiated a review of all councillor interests returns for the 2016–20 council term under the 1989 Act to measure the level of compliance and identify possible improvements across the sector. We then contacted council officers from all 79 councils, and councillors with returns that were non-compliant, seeking feedback on levels of understanding of the interests returns process and any issues or challenges with compliance.

The review and survey responses helped us make recommendations for the new personal interests returns provisions in the 2020 Act and the Local Government (Governance and Integrity) Regulations 2020.

Major review of personal interests returns compliance under the 1989 Act

For our major review of personal interests returns, we obtained copies of primary and ordinary returns completed by all councillors between October 2016 to February 2020 at 78 Victorian councils. Primary returns are the first return submitted after a councillor is elected and ordinary returns are the subsequent returns. We excluded the City of Whittlesea, as a standalone review into councillor interests returns in that municipality had been completed a few months prior.

Our examination consisted of a high-level review of personal interests returns for 61 councils and a detailed review for 17 other councils. For the high-level review, we looked at whether returns had been submitted correctly, within the required timeframe and compared disclosed property interests with rates notices. We randomly chose 17 councils – with a selection of metropolitan, outer suburban, regional, large shire, and small shire councils – for a detailed review. We conducted more rigorous checks in the detailed review, including internet searches, and checks of land titles and business registers.

A total of 4,600 interests returns for 650 councillors were included in the reviews, with 149 councillors captured in the detailed review and 501 in the high-level review.

Overall, we identified a high level of non-compliance, with 51 per cent of councillors not completing at least one return strictly in line with section 81 of the 1989 Act. This ranged from one-off non-disclosures of an interest to multiple non-disclosures of multiple interests, combined with issues such as returns not being signed or witnessed.

Overall, we found five percent of councillors failed to disclose a land interest in all returns and thirteen percent failed to disclose a land interest in one or more returns. We identified even higher levels of non-compliance in the detailed review.

Where possible non-disclosures were identified, we contacted councillors to seek their explanation.⁴ As a result of our review:

- Seven councillors were interviewed
- 35 councillors received a written warning
- 85 received a letter reminding them of their disclosure obligations under the 1989 Act.

Further enforcement action is being considered in relation to one councillor.

Following the review, we surveyed the councillors whose returns had issues, as well as council staff from all 79 councils. We have used comments from our survey throughout this report to highlight issues councillors and staff had. Of the councillor respondents, 94 per cent agreed that the available guidance on interests returns was insufficient and could be improved.

When asked about what the issues were, common themes were that:

- the legal terms used in the legislation and forms were hard to understand
- there was a lack of training and guidance
- the process was paper based rather than electronic.

⁴ We did not contact all councillors with non-compliance issues, only those with recent or more serious failures.

Personal interests summaries

In August 2021, we tested compliance with the requirement to publish a summary of interests returns under the 2020 Act. We reviewed the websites of 79 councils and found that three councils did not have a summary published at all and a further 13 had not published the summary of the biannual returns of March 2021.

The review also revealed a vast difference in the number of council staff required to submit a personal interests return. One council had no returns from staff in its summary, including the CEO, while another council had published the personal interests of 333 staff. The vastly different ways the summaries were published online also made it difficult to find and compare information. More consistency would improve transparency for the public and integrity bodies.

Increasing compliance through guidance and education

Many councillors we surveyed did not adequately understand the purpose or importance of disclosing interests. They also did not understand the relationship between completing returns and disclosing a conflict of interest in council meetings.

“Councillors can be a little blasé about the completion of their returns and perhaps don’t take it as seriously as they should.”

– council officer

Both councillors and council officers said the legislation requiring personal interests returns and the guidance provided by Local Government Victoria (LGV) contained complex legal terms and were difficult to understand.

As the owner of the legislation, LGV has a responsibility to publish guidance material that helps councillors and council staff to comply with the legislation and regulations. The guidance must be able to be understood by councillors from a range of educational and linguistic backgrounds.

“The language used needs to be simplified or examples given.”

– council officer

Councillors were also concerned that there was no way to seek guidance in relation to their personal circumstances, apart from engaging a lawyer or accountant at their own cost.

Councillors and council staff wanted LGV to improve its written guidance on personal interests returns by:

- seeking input from councillors and council staff
- using plain English and explaining legal terms
- using real-life examples.

They also suggested to include more information about the relationship between conflict-of-interest provisions and the personal interests returns.

“Obviously, conflict of interest is an important issue and where donations/gifts occur that may influence a councillor’s decision-making it is equally important that these be made known.”

– councillor

Councillors and council staff also asked for training to improve their understanding of the obligations for submitting personal interests returns. They believed training should be mandatory, consistent across the sector and delivered as induction and refresher courses. Nominated officers who submit returns would also benefit from training.

LGV could also provide other support to councillors to complete their interests returns, including:

- creating a ‘help desk’ for councillors and council staff to direct queries about their personal interests returns
- providing best-practice examples
- giving updates to remind councillors of their obligations
- mandating the use of a prescribed form
- creating online submission software.

“I failed to include my residence in one return. A year later I copied from that return and didn’t realise the mistake.”

– councillor

Our review revealed large variations in the support and guidance councils provided to their councillors. We believe councils and the peak bodies would be open to working with LGV to improve current guidance.

In a bid to provide some guidance to the sector, this report includes a check list and template emails kindly provided by Melbourne City Council to help councils with compliance with personal interests returns under the 2020 Act.

Increasing compliance through legislative change and oversight

There are several ways to increase compliance, transparency and improve public trust.

Automating the personal interests returns process would make it easier for councillors and council staff to comply with the requirements of the 2020 Act, replacing outdated hard-copy forms.

Non-compliance could be deterred through the introduction of a range of proportional and scalable measures, such as non-monetary sanctions and replacing prosecutions with infringements for all but the most serious cases. The only option currently available for the Inspectorate to address

non-compliance – apart from initial warnings – is through the criminal justice system, which is resource-intensive and does not act as an effective deterrent. Fines could be applied and increased depending on the severity of the infringement.

Another option to promote compliance is to enhance scrutiny and reporting. There are currently no requirements for councils to report breaches, however, mandatory reporting could alleviate staff concerns about repercussions for reporting non-compliance.

The legislation does not specifically require any entity, including councils and the Inspectorate, to oversee the interests return scheme or scrutinise the accuracy and completeness of the interests disclosed in the returns.

Structured oversight in the form of an external review program could improve compliance.

Conclusion

Our major review of personal interests returns under the 1989 Act revealed a concerning level of non-compliance due to a lack of guidance and education. The scheme also had a lack of oversight with no entity given responsibility to audit responses.

The implementation of the 2020 Act provided an opportunity to reassess personal interests returns and improve the transparency and accountability of the 2020 scheme.

However, our review of personal interest summaries under the 2020 Act showed there was still a lack of transparency and work remains to be done to improve guidance to help with oversight.

This report provides 14 recommendations to improve the scheme, in turn, increasing public confidence in the impartial decision-making of the local government sector. We hope that this report is a first step on a journey to improving the functioning of the scheme.

We also commit to working with LGV, the peak bodies and councils to improve the understanding of the importance of the scheme and supporting those who must comply with it.

1 Introduction

In Victoria, councillors, members of delegated committees and nominated council staff must submit a record of their personal interests, which can be viewed by the public.⁵ The Local Government Act requires that the record – which includes personal interests such as property owned, shares held or positions in companies – be completed soon after election and updated every six months.⁶

The declaration of personal interests (in the form of a personal interests return) 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.

Councillors' personal interests must not conflict with their public duties. Where councillors have a conflict of interest in a matter considered at a council meeting, they must disclose it and exclude themselves from the decision-making process.⁷ This is essential to counter any bias or perception of bias in council decision making or ability to gain advantage through their position.

Interests disclosed in a personal interests return may give rise to a conflict of interest. It is therefore important, in the pursuance of integrity, that councillors accurately disclose all their interests in their personal interests returns. When council decision makers adequately and regularly disclose their personal interests, it gives the public confidence in the integrity and impartiality of the decision-making process.

The personal interest disclosure scheme was introduced with the 1989 Act. Last year, the 2020 Act was enacted, and the number and type of interests which are to be disclosed was increased. The new 2020 Act brought increased accountability and transparency because it covers a broader range of personal interests and requires that a summary of personal interests be published on a council's website.

Although personal interest disclosures have been required by law for more than three decades, the Inspectorate and other integrity agencies have identified that incomplete and inadequate personal interest disclosures are a historical and ongoing issue affecting the local government sector.

In 2018, we prosecuted former Wyndham City councillor Intaj Khan for failing to disclose companies in which he held office positions and financial interests, and for failing to submit two ordinary returns, in breach of the interest provisions of the 1989 Act. Mr Khan was convicted and fined \$26,000.⁸

In 2019–20, the Independent Broad-based Anti-corruption Commission's Operation Sandon hearings revealed multiple former Casey City councillors had received payments or donations from property developers and then failed to declare conflicts of interest when matters involving the developers came before council.⁹

The City of Casey Municipal Monitor Report released in February 2020 identified a culture of a low-level of understanding and regard for the importance of effectively and transparently managing councillor conflicts of interest.¹⁰ The council was dismissed in February 2020.

In late 2019 to early 2020, we investigated numerous complaints relating to the behaviour of Whittlesea councillors. A Municipal Monitor was appointed in December 2019, and in March 2020, the council was dismissed.¹¹

During the investigation of Whittlesea, many inconsistent and missing disclosures were identified in the councillors' interests returns. This same issue had also been identified in numerous Inspectorate investigations of other councils.

1.1 Our role

The Local Government Inspectorate is the lead integrity agency for Victorian councils. We are an independent agency that ensures Victoria's councils follow the Local Government Act. Our responsibilities include:

- accept and investigate complaints about council operations, including councillors and council staff
- monitor governance and compliance with the Act
- provide guidance and education for councils
- encourage transparency and accountability across the sector.

Our role is to ensure compliance by investigating and prosecuting breaches of the provisions in the 2020 Act and prior to it coming into force, the 1989 Act. The two main offences in relation to interests returns are failure to submit within the prescribed timeframe and lodging returns that contain false or incomplete information.

We also provide guidance and education by undertaking reviews and audits and providing suggestions and recommendations to improve procedures and potential amendments to legislation.

5 Under section 81(10) of the 1989 Act, council CEOs were required to allow any person to inspect the register of interests of councillors following a written application made in accordance with the Regulations. Under section 135(3) of the 2020 Act, council Chief Executive Officers must publish a summary of councillor personal interests on the council's website.

6 Section 81 of the 1989 Act and sections 132-136 of the 2020 Act, together with the *Local Government (Governance and Integrity) Regulations 2020*, regulate councillor interests returns.

7 Per section 79 of the 1989 Act and section 130 of the 2020 Act.

8 See case study in [6.2.1 Replacing some prosecutions with infringements](#).

9 As of 15 July 2021, the Operation Sandon investigation was still ongoing.

10 [City of Casey Municipal Monitor Report February 2020](#), Victorian Government Printer, February 2020

11 [Municipal Monitor's Report on the governance and operations of the Whittlesea City Council](#), Municipal Monitor to Whittlesea City Council, March 2020

1.2 Scope of the review under the 1989 Act

Against the background of identified issues with interests return disclosures and conflicts of interest, we initiated a sector-wide review of all councillor interests returns for the 2016–20 council term.

We conducted our review in mid-2020 under the 1989 Act, which was in force at the time. The review measured levels of councillor compliance with the requirements of section 81 of the Act and addressed any offences under the Act. Our aim was to determine the level of compliance across the state, make recommendations to increase compliance with the Act and to bring about sustained improvement across the sector.

The review also helped us make recommendations for the content of the new personal interests returns provisions in the 2020 Act and Local Government (Governance and Integrity) Regulations 2020 (Regulations).

The 1989 provisions required councillors submit a ‘primary’ return within 30 days of election, or 7 days of making the oath or affirmation of office of a councillor, and an ‘ordinary’ return biannually.¹² Councillors were required to disclose:

- office positions
- beneficial interests in companies
- land interests
- trusts
- gifts equal to or exceeding \$500¹³; and
- any other substantial interest they consider might appear to raise a material conflict between their private interest and public duty as a councillor.

1.3 Whittlesea councillors’ personal interests returns

The personal interests returns of Whittlesea councillors were not included in the data in this report as they were reviewed as part of a separate investigation. Whittlesea City Council was dismissed on 21 March 2020 and the Inspectorate reviewed the personal interests returns of the 11 councillors from October 2016 until their dismissal.

We contacted seven councillors who had at least one potential breach each. We issued warnings to four former councillors for breaches of section 81 of the 1989 Act.

1.4 Scope of review of summaries under the 2020 Act

While preparing this report, we undertook an assessment of compliance with the publication of summaries of personal interests returns in August 2021. This assessment was done when the 2020 Act was in force which requires the CEO of a council to publish a summary of personal interests on the council’s website.

We searched for the publicly available summaries on the websites of all 79 councils. Our review of the summaries was done just prior to the September interests returns declaration period.

¹² For more detail, see [2.1 The 1989 Act and scheme](#)

¹³ Only required to be disclosed in ordinary returns, per section 81(7) of the 1989 Act, not in a primary return.

2 The legislative framework

A proper legislative scheme ensures that an appropriate standard of disclosure for councillors and senior local government officials is established, sanctioned by law, and applied consistently across the sector.¹⁴

Victoria's personal interests disclosure scheme was introduced in 1989 and remained unchanged until 2020. When we undertook our review, personal interests returns were regulated by s 81 of the 1989 Act. On 24 October 2020, the 1989 scheme was replaced with a new personal interests return scheme contained in Division 3 of Part 6 of the 2020 Act (ss 132-136).

Although the 2020 scheme was a significant improvement on the 1989 scheme, it contains some of the same structural weaknesses and may not address all the issues we identified.¹⁵

As a result, it may be necessary to amend Division 3 if the local government sector is to have a 'best practice' model to declare personal interests which addresses integrity risks for councillors and senior local government officials. This is discussed in greater detail in the compliance section on legislative change and oversight.¹⁶

2.1 The 1989 Act and scheme

The 1989 scheme created a system for the declaration of personal interests for local government councillors, members of special committees, senior officers and nominated officers. The basic structure of the scheme remained unchanged for 31 years until it was replaced by the 2020 scheme.

The 1989 scheme required councillors, members of special committees, senior officers and nominated officers (senior council officers nominated by the CEO) to submit:

- primary returns within 30 days of election, appointment or nomination, or within 7 days of making the oath or affirmation of office of a councillor.
- ordinary returns biannually – within 40 days of 30 June and 31 December each year.

Failure to do so was an offence and punishable by up to 60 penalty units.¹⁷

It was also an offence to fail to disclose specific information prescribed in the 1989 Act, including interests in companies, land and trusts, and "any other substantial interest ... [which] might appear to raise a material conflict" between private interests and public duty.

Councils were required to maintain a register of the interests which were open to the public by written application. Anyone

who inspected the register could publish register information, provided it was 'a fair and accurate summary or a copy'. Council officers could be prosecuted for copying or divulging information from the register or the returns, or for making use of information for non-official purposes.

When a person ceased to be a councillor, a member of a special committee or the holder of a nominated office, their register entries were retained for three years and then securely destroyed.

2.2 The 2020 Act and scheme

The 2020 personal interests return scheme applies to councillors, members of delegated committees, CEOs and nominated officers. These are known as 'specified persons'. The scheme is part of a broader council integrity scheme and is strongly linked to ensuring public confidence in council decision-making.

The 2020 scheme is set out in Division 3 Part 6 of the 2020 Act (sections 132-136). Part 6 of the Act also includes detailed provisions related to the management of conflicts of interest, gifts, codes of conduct and councillor conduct panels.

The 2020 scheme's stated intention is to "ensure people in decision making positions at a council provide reasonable disclosure of personal interests that may impact on their ability to exercise their roles impartially".¹⁸ That is, the scheme recognises that adequate disclosure of the personal interests of council decision-makers helps boost the integrity of, and consequently public confidence in, the decision-making process.

The system of 'reasonable disclosure' for specified persons in the 2020 scheme has two main components:

- specified persons are required to lodge initial and biannual personal interests returns, and
- CEOs are required to prepare and publish summaries of those returns.

Specified persons are required to lodge an initial personal interests return with their CEO on election or appointment, and to lodge biannual returns with the CEO while they continue to hold office. It is an offence to fail to do so, or to lodge inaccurate or incomplete returns intentionally or recklessly. Returns need to be lodged during the prescribed periods, which are between 1 March to 31 March and 1 September to 30 September each year.

A key difference between the 1989 and 2020 schemes is that the 2020 Act does not attempt to exhaustively prescribe each

¹⁴ A legislative scheme is the Acts and regulations which govern the disclosure of personal interests by councillors and senior government officials.

¹⁵ See [Chapter 4 Personal interests summaries](#)

¹⁶ See [Chapter 6 Increasing compliance through legislative change and oversight](#)

¹⁷ A penalty unit is an amount of money set by parliament each year. For the period 1 July 2021 to 30 June 2022, the value of a penalty unit is set at \$181.74

¹⁸ Victoria Parliamentary Documents Local Government Bill 2019 Explanatory Memorandum [Local Government Bill 2019 \(legislation.vic.gov.au\)](#)

item to be disclosed in the returns. Instead, the Regulations prescribe the matters to be included in the initial and biannual returns and specify the dates when biannual returns must be lodged. As subordinate legislation, the Regulations are arguably easier to amend so the prescribed list may be potentially adjusted as circumstances require.

Under the new Regulations, disclosure requirements have been expanded. Where previously interests in five categories had to be disclosed, there are now 11 categories including interests like employment, consultancies and personal debts.¹⁹

A second key difference is that under the 2020 scheme, the public is no longer required to specifically request to inspect the register of interests. Instead, each CEO is required to prepare a summary of each specified person's latest personal interests return and ensure it is available for inspection on the council's website and at the council office.

The 2020 Act specifically states that the summary must include the town or suburb but exclude the street and house number of any residential property. This addresses the privacy concerns councillors had under the 1989 legislation. The Regulations list the other matters to be included and excluded in CEO summaries. They require the summary to contain 'sufficient information to identify the type and nature of interests disclosed in the return'. The level of detail of the interests captured in the summary is at the discretion of the CEO.

The 2020 scheme enhances confidentiality arrangements. CEOs are required to ensure that record-keeping complies with the *Public Records Act 1973*. Access to individual returns is restricted to key council personnel, the disclosers themselves and to municipal monitors, the Chief Municipal Inspector and commissions of inquiry. It is an offence to divulge the contents of a return to any other party unless that information is included in the published summary.

2.3 Interstate schemes

All Australian state and territory jurisdictions have schemes for the disclosure of personal interests by councillors and senior local government personnel. These schemes have the following key elements:

- all Australian jurisdictions:
 - have local government personal interests disclosure schemes for councillors and senior council staff apart from Tasmania
 - require local government CEOs or general managers to keep a register of disclosed or declared interests, although both the information required to be registered and inspection and publication rights vary between jurisdictions
- legislative models range from a requirement to declare interests before a matter is discussed (Tasmania) through to prescription of disclosure requirements via mandatory model codes (NSW)
- the most common legislative model includes a list of disclosable interests in either Acts of Parliament or subordinate legislation.

Most jurisdictions use the threat of criminal prosecution and/or misconduct proceedings to ensure compliance with the disclosure requirements.

Although most jurisdictions prescribe time limits for the submission of returns, the schemes do not contain mechanisms for:

- reporting breaches of reporting requirements
- external scrutiny of the schemes' operations to ensure the timeliness and accuracy of returns (such as, an external audit of the registers).

The Victorian scheme is broadly in line with the interstate schemes; however, the NSW scheme makes provision for non-monetary sanctions. This will be discussed in Chapter 6 of this report.

¹⁹ The categories that had to be disclosed in the 1989 scheme were: leadership roles in companies, beneficiary of companies, land owned in municipality, trusts and any other substantial interest. The categories in the 2020 scheme are: leadership roles in corporations or unincorporated associations, partnerships, trusts, paid employment, consultancies, land owned in municipality, shares, companies owned with family, personal debt or any other matter.

3 Major review of personal interests returns compliance

3.1 Methodology

In our major review of personal interests returns under the 1989 Act, we obtained copies of the primary and ordinary returns completed between November 2016 and February 2020 from 78 councils. We also obtained the annual rates notices for all councillors who served during the 2016–20 council term.

We excluded the City of Whittlesea from our broad-ranging review as we had commenced a standalone review of the councillors' personal interests returns a few months prior.

We conducted a high-level review of the personal interests returns for 61 councils. We randomly chose 17 councils – including a selection of metropolitan, interface (or outer suburban), regional, large shire, and small shire councils – for a detailed review.²⁰

Both reviews considered whether the returns had been submitted within the required timeframe, in the prescribed format, signed, and witnessed. Disclosed land interests were compared with rates notices to identify possible non-disclosures.²¹ All other disclosed interests were also compared period to period, to identify possible non-disclosures.

The detailed review built on this, with checks conducted of the Victorian land titles register, Australian Securities and Investments Commission (ASIC) register, Australian Business Register, and internet searches of the councillors and their spouses, to identify relevant interests. The search results were compared with the disclosed interests to identify possible anomalies.

Where possible non-disclosures were identified in the reviews, we wrote to the councillor concerned seeking an explanation for the possible non-disclosures. We took any responses into account when issuing an outcome to each councillor. The outcomes included:

- a reminder of the councillor's obligations under the Act
- a written warning for breaching the Act
- consideration of commencing a prosecution.

A total of 4,600 interests returns for 650 councillors were examined with 149 councillors included in the detailed review and 501 in the high-level review.

Overall, the review found high rates of non-compliance, with 51 percent of councillors not completing at least one interests return in strict compliance with the requirements of section 81 of the Act. These ranged from one-off non-disclosures of an interest to multiple omissions of more

than one interest. Other issues included not signing a return or not having it witnessed.

Land interests were the most readily tested as councils had supplied us with all the rates notices of councillors. We found five per cent of councillors failed to disclose a land interest in all returns while 13 per cent disclosed a land interest in some returns but failed to disclose it in others.

The detailed review identified higher levels of non-compliance with the 1989 Act because we ran more detailed searches, such as a search of ASIC registers, which revealed interests that would have otherwise not been known.

For example, 13 percent of councillors in the detailed review failed to disclose an office position in one or more, but not all, returns. The same metric for the high-level review was only 2 percent of councillors. This indicates that there was likely a high level of non-compliance which remained undetected in the high-level review.

3.2 What our survey told us

With the high rate of errors and misunderstandings of the Act in mind, we wanted to know what issues councillors and officers involved in the process are facing. In addition to seeking feedback from over 120 councillors who submitted late returns or omitted interests, we conducted a survey among council officers and councillors who we had contacted for non-compliance during our review. We received survey responses from 35 councillors and 56 councils around Victoria. Council responses were mostly completed by council officers involved in the administrative process of collecting councillor and staff interests returns.

Overall, the five main themes that came up repeatedly about why returns were not completed accurately were:

- attitude of councillors
- a lack of education
- the manual process of completing and submitting the forms
- a lack of checks and balances
- a lack of plain English instructions that councillors (and council officers) could easily understand.

“It's not so much about the process but about the councillor's willingness to comply.”

– council officer

20 The interface councils are nine councils which form a ring around metropolitan Melbourne. They are Wyndham City Council, Melton City Council, Hume City Council, City of Whittlesea, Nillumbik Shire Council, Yarra Ranges Shire Council, Cardinia Shire Council, City of Casey and Mornington Peninsula Shire Council.

21 While personal interests returns must take into account the property interests in neighbouring municipalities, our review only cross-referenced the declaration with councillors' property interests from their own municipality.

Of the councillors and council officers who responded, 90 per cent agreed that it is important to collect accurate information about councillor interests, with the remaining 10 per cent stating it was somewhat important. Councillors saw the main value of interests returns in helping them identify and be mindful of potential conflicts of interest, with only one councillor being of the view that interests returns were a duplication because of the requirement to declare conflicts of interest at council meetings. Council staff agreed that interests returns helped with managing conflicts of interest but also pointed out that it increased transparency and integrity of council decisions.

There were differing opinions regarding what council officers should be responsible for in managing the returns process. Most council officers said they should be responsible for sending out the forms, reminders of when they are due, and storing the collected returns (86 per cent), while 21 per cent said they should also assume some responsibility for providing training or guidance to councillors.

Councillors agreed that officers should be responsible for the administrative process (42 per cent), while a third mentioned that officers should provide training or guidance and answer their questions. There was a clear expectation gap between councillors and council officers, as more than a quarter of councillors thought that officers should also check their returns (for example, comparing them to previous returns). Officers, however, were clear that they had no responsibility for the accuracy of the disclosures.

“The onus is on the councillor to submit and provide accurate information, as officers have no way of verifying the information.”

– council officer

The 1989 Act and 2020 Act both assign full responsibility to the councillor for completing and submitting their return.

The process of collecting interests returns was very similar across councils, with officers sending out forms via email or handing them out in person, sending reminders about the due date, and safely storing the collected returns.

Some councils also regularly provided a LGV guidance document and/or previous interests returns to councillors each time the returns were due.

Around 60 per cent of council staff and 30 per cent of councillors thought the current process at their council worked well. When asked about what did not work well and what the perceived causes of this were, a number of themes were identified by councillors. These themes were:

- legislation and forms are hard to understand (27 per cent)
- interests returns are not given the attention they require (lack of understanding the importance) (25 per cent)
- lack of training/guidance and support by council officers (17 per cent)

- forms are paper based rather than electronic (17 per cent)
- no consequences for non-compliance (3 per cent).

Overall, 94 per cent of councillors agreed that the available guidance on interests returns was insufficient and could be improved.

“Many councillors are not legal professionals so don’t understand the terminology used. The consequences are great, so it would offer comfort and confidence if further guidance is offered and there is someone to speak to if unsure. You’re a bit on your own and don’t want to mislead.”

– councillor

In addition, 40 per cent of council officers stated the main issue was that councillors did not understand the importance of their obligations under the Local Government Act.

“The major challenges are councillor apathy or indifference, and a tendency to see the requirement to submit an ordinary return as being an organisational requirement (as opposed to an individual obligation)”

– council officer

“I think it is essential for councillors to have training/guidance on the importance of interests returns – and ensure it is not seen as a box ticking exercise”

– councillor

The themes mentioned by council officers were similar to those raised by councillors:

- lack of education and guidance, with legal terms hard to understand (21 per cent)
- manual, paper-based process (9 per cent)
- councillors are usually busy (9 per cent)
- lack of consequences /enforcement of legislation (7 per cent).

When it came to improving the system, the following suggestions were made by councillors and council officers:

- Implement an online portal or electronic system for lodgement, for example a state-wide app (22 per cent of councillors and 13 per cent of council officers).
- Improve resources such as forms and guidance in plain English, with detailed instructions and examples (19 per cent of councillors and 18 per cent of council officers). An advice hotline and video training modules were also on councillors wish lists.
- Introduce compulsory training, for example through an online training module (14 per cent of councillors and 18 per cent of council officers).
- Implement better enforcement – for example through random audits, introducing a requirement to report non-compliance to the Inspectorate (14 per cent of council officers).

- Introduce a centralised system for submission, for example directly to the Inspectorate or the Minister (11 per cent of council officers).
- Require council officers to provide previous returns and perform cross-checks between returns (11 per cent of councillors).

“An online portal that councillors could complete the returns electronically with a declaration at the end would be great. This could also highlight what key fields would be included in the summary that would be published online.”

– council officer

“Perhaps more detailed guidance around what does and doesn’t need to be included on a return given we have some councillors that own lots of property and shares and others who own very little, some councillors skilled in interpreting information, others are easily confused by this”

– council officer

“A process for councillors to be able to discuss their personal circumstances and seek specific advice would be useful (and governance officers are not necessarily equipped to provide that advice.”

– council officer

Another suggestion made by one councillor and a council officer was to move to a system where interests returns are only completed once per year and updated only when circumstances change.

Safety concerns were raised by some of the councillors and council staff, with the main concern being their residential address being made available to the public if it is disclosed in the return.

“There is a good deal of concern that the transparency merits of the register of interests comes at a significant cost to personal privacy and security. It is not unheard of for councillors and staff to be threatened and having a process which exposes staff and councillor private addresses is of concern in this regard.”

– council officer

We also asked for suggestions on how to improve transparency. Both cohorts suggested to publish information on interests online to achieve greater transparency (16 per cent of council officers and 11 per cent of councillors). A small number of councillors (5 per cent) were supportive of an increase in the types of interests that need to be disclosed, for example including interests of family members.

More detail about the survey responses is listed in Appendix 1.

3.3 What our review told us

3.3.1 High rates of non-compliance

In our audit of personal interests returns, we reviewed 4,600 interests returns for 650 councillors from 78 councils for the period between November 2016 and February 2020.

Overall, our review identified high rates of non-compliance, with more than half of the 650 councillors not completing their returns as required under section 81 of the 1989 Act.

Issues ranged from interests being omitted from returns and returns not being submitted to missing signatures or returns not being witnessed.

Table 1 – Summary of compliance of councillors’ personal interests returns

Compliance submission of returns	Number
Number of councillors	650
Number of councillors who did not complete their returns in compliance with section 81 of the 1989 Act*	332 (51%)
Number of returns reviewed	4,600

* Includes missing signatures, the form not being witnessed, not using the prescribed form, submitting returns outside required timeframes, not submitting a return, interests not disclosed

When we focused on the issues that we consider to be more serious, there was still a high level of non-compliance, with 42 per cent of councillors failing to disclose interests in one or more return, and 184 returns either not submitted or submitted late.

Table 2 – Summary of timeliness of councillors’ personal interests returns

Timely submission of returns	Number	Percentage
Number of returns not submitted	41	1%
Number of returns not submitted on time (out of 4,600)	143	3%
Total not submitted or submitted late	184	4%

When we reviewed the personal interests returns against other available information, we identified the following omissions.

Table 3 – Number and type of private interests not disclosed

Type of interests	Number of councillors	Percentage
Failure to disclose office held – all returns*	18	3%
Failure to disclose office held – some returns**	28	4%
Failure to disclose beneficial interest in company – all returns	35	5%
Failure to disclose beneficial interest in company – some returns	33	5%
Failure to disclose land interest – all returns	30	5%
Failure to disclose land interest – some returns	86	13%
Failure to disclose trust interest – all returns	11	2%
Failure to disclose trust interest – some returns	12	2%

Note: The sum does not necessarily represent individuals as a councillor may have omitted interests from several categories and would be captured more than once.

* An example of 'all returns' is when a councillor was a director of a company at all times during a particular period of time but failed to disclose this in any of the returns completed for that period.

** An example of 'some returns' is when a councillor disclosed their director position in some of the returns but not others, even though the position was held the whole time.

It is noteworthy that a significant number of councillors disclosed their interests inconsistently, for example, declaring an interest in land in one return, then leaving it off the next, but declaring it again in the following return. Councillors that we contacted about these omissions mainly said that it was a simple oversight, as they had not had their previous return at hand to compare to, or they were rushed when completing a return (for example, being given the paperwork at a council meeting shortly before the due date).

"I failed to include my residence in one return. A year later I copied from that return and didn't realise the mistake."

– councillor

"My failure to disclose a concise description of the super fund again was an oversight made on the assumption that it had been declared prior and there was no change to the nature of the interest"

– councillor

"I do not recall getting legal advice from council about this return and as most of the form was not applicable to me, I often filled it during meetings, not realising its importance."

– councillor

We detected higher numbers of non-disclosure in our detailed review of 147 councillors at 17 councils, because we performed more thorough background checks, such as obtaining extracts from the ASIC company register and the land titles office (refer to Table 3 – Number and type of private interests not disclosed).

In the high-level review, we only detected one councillor not declaring an office they held in a company, compared to 17 councillors in the detailed review where we conducted ASIC checks. However, given the high rate of non-disclosures for the detailed review, we believe that we would have found a much greater rate of non-disclosures overall if we had conducted a detailed review for all 650 councillors.

Table 4 – Comparison of non-disclosures between detailed and high-level reviews²²

Non-disclosure of interests	Detailed review (147 councillors)	High-level review (503 councillors)
Failure to disclose office held – all returns	17 (12%)	1 (0%)
Failure to disclose beneficial interest in company – all returns	29 (20%)	6 (1%)
Failure to disclose land interest – all returns	9 (6%)	21 (4%)
Failure to disclose trust interest – all returns	10 (7%)	1 (0%)

²² The difference between the detailed review and high-level review is explained in [3.1 Methodology](#).

We limited our checks to certain categories, with a particular focus on officeholdings in registered companies and landholdings. We did not perform targeted checks for gifts, trusts, employment, or spousal interests. It is therefore highly likely that we have not detected all omissions in our detailed review.

The likelihood that the true level of non-disclosure remained undetected for the larger group is also supported by the fact that for various categories, close to or more than 50 per cent

of councillors did not disclose any interests during the full council term.

While some councillors may genuinely not have any disclosable interests, it seems unlikely that such high proportions of them would have none, especially in the 'other interests' category. The level of non-disclosure of the various interests, as set out in the table below, supports our finding that there is a widespread lack of understanding of what needed to be or should be disclosed.

Table 5 – Councillors who did not disclose any interests - by category

Type of interest not disclosed	Number of councillors	Percentage
Councillors not declaring any office positions, such as directorships, during term	157	24%
Councillors not declaring any beneficial interests during term	306	47%
Councillors not declaring any property interests during term	56	9%
Councillors not declaring any trust interests during term	427	66%
Councillors not declaring any other interests during term	374	58%

Some of the interests that were not disclosed were unlikely to lead to a conflict of interest, for example where a company was not actively trading and did not hold assets. However, the legislation requires all interests in the prescribed categories to be disclosed, and in the interest of transparency it should not be up to the councillor to determine whether an interest is likely or unlikely to lead to a conflict with council business.

When looking at the different cohorts (testing the theory that small shire councils may have a higher level of non-compliance due to less resources or less support available), the differences are minimal. This suggests that the size or resources of the council do not make a significant difference to the level of compliance.

Table 6 – Compliance by council location and size*

Cohort	Number of councils in cohort	Councillors with no issues identified	Returns not submitted or submitted late	Failure to disclose interests in some or all returns
Metropolitan	22	52%	4%	42%
Interface*	8	46%	1%	38%
Regional	10	45%	5%	36%
Large shire	19	52%	4%	39%
Small shire	19	44%	5%	52%

* The interface councils are Wyndham, Melton, and Hume city councils, cities of Whittlesea and Casey, Nillumbik, Yarra Ranges, Cardinia and Mornington Peninsula shire councils.

Note: Percentages do not add up to 100 per cent because councillors may have submitted returns late and failed to disclose an interest. In addition, the table does not include other issues such as missing signatures or using the wrong form.

As a result of the review:

- letters were sent to 123 councillors with details of the alleged breaches of the 1989 Act, offering an opportunity for councillors to provide explanations for their identified breaches.
- 7 councillors were interviewed
- 35 warnings and 85 reminders of obligations were issued
- 1 case is still pending further enforcement action.

3.3.2 Failings identified through the review

We found that councillors failed to comply or disclose private interests for a range of reasons however there were several themes that were common, including that they:

- struggled to understand the legislation and technical terms
- completed their returns in haste, with little thought put into the interests that needed to be disclosed, indicating that the returns were not a priority and their importance not fully understood
- copied returns from previous years without considering if their circumstances had changed
- did not understand that returns cover the whole period, not just interests held at the time of the declaration.

We also observed that councillors with lots of interests may have benefitted from consulting their accountant or lawyer for independent advice regarding which interests require disclosure.

During our review, we wrote to councillors who had breached the Act and asked them for more information about why they did not disclose interests. Examples of some of the breaches we reviewed and the responses were:

- A councillor failed to disclose a self-managed superannuation fund as they were well under retirement age and unlikely to gain any benefit from the fund. They did not consider it an interest requiring disclosure.
- A councillor failed to disclose an interest in their family home after governance staff advised the councillor that only interests in investment properties had to be disclosed.
- A councillor failed to disclose an interest in a home they owned with their wife and mother-in-law. The councillor did not think they were required to disclose the property because they were not the sole owner and the house was mortgaged.
- A councillor failed to disclose an office position as they were appointed only months prior to completing their return and had minimal involvement during the period. They said it was an honest, foolish and unfathomable omission.
- A councillor failed to disclose three properties on one return. They said the return process was rushed and properties were overlooked on that occasion, submitting an apology and commitment to taking greater care in the future.
- A councillor submitted their return three days late because they waited to submit it at a council meeting.

Case study: non-disclosure of primary residence

The Inspectorate wrote to a councillor from an interface council identifying that they had failed to disclose the following interests: firstly, their primary residence in their primary return and ordinary returns for June 2018 to June 2019 inclusive; secondly, their employment as a real estate agent in all their returns except their June 2017 return. We invited a response.

The councillor said they did not know their primary residence had to be disclosed but believed only investment properties had to be disclosed. The councillor did not disclose their role as a real estate agent in their returns because they were only working part-time as a lead generator and did not believe this role might appear to raise a material conflict with their role as a councillor.

“There wasn’t any devious reason for not completing them all in sync, it was an error of confusion at the time of completing the question. My apologies for not taking more care with these and I know you have to scrutinise everyone in a position like mine... Honesty is a trait I value,” the councillor said.

The Inspectorate issued a written warning to the councillor for the failure to disclose their primary residence in four ordinary returns. The Inspectorate accepted the councillor’s evidence that they did not believe their role as a lead generator for a real estate agency could create a material conflict. However, the Inspectorate took the view that this position could give rise to a conflict or perceived conflict, and on this basis recommended the councillor disclose the interest in future returns.

Case study: failure to disclose a company position

The Inspectorate wrote to a councillor identifying that they failed to disclose that they were a director of a company in their December 2018 ordinary return. The councillor also failed to disclose a beneficial interest in a second company, of which they were a director and shareholder, in multiple returns. The councillor did, however, disclose their office position in this second company in all returns.

The councillor provided a written response explaining that the first company of which they were a director was their spouse’s company, which they had no direct involvement in, and so it did not come to mind when they were completing their return.

The Inspectorate accepted the councillor’s evidence that this non-disclosure was an unintentional oversight and issued the councillor with a written reminder regarding their disclosure obligations.

In relation to the second company that the councillor held both an office position and a beneficial interest in, the Inspectorate advised the councillor that the correct approach is to disclose the interest in both the offices and beneficial interests sections of the return form. This provides greater transparency into the nature of the interest held.

The following table summarises our findings for the different categories of interests that were required to be disclosed.

Table 7 – Categories of personal interests that must be disclosed

Category	Common findings
Offices in companies or bodies	<ul style="list-style-type: none"> • Most councillors did not declare council appointments to outside organisations or offices in not-for-profit organisations • Offices were not disclosed where the company was not a typical trading entity (such as a trustee company for a family trust or superannuation trust)
Beneficial interests in companies or bodies	<ul style="list-style-type: none"> • Councillors lacked an understanding of what a ‘beneficial interest’ is or how to apply the disclosure threshold • Many councillors did not understand that they needed to disclose ownership of their own small proprietary companies, especially when they had already disclosed their office in those companies in the previous section
Land	<ul style="list-style-type: none"> • Councillors did not disclose their primary residence because they thought it was exempt or because they had concerns for their personal safety • Councillors misunderstood the legislation and did not declare properties that were subject to a bank loan or held through controlled companies
Trusts	<ul style="list-style-type: none"> • There was a lack of understanding the requirements – almost none of the disclosed trusts included a ‘concise description’ of their purpose • Self-managed superannuation funds (a form of trust) were often omitted, again pointing to a lack of understanding
Gifts	<ul style="list-style-type: none"> • Few gifts were disclosed (which may have been due to gifts not reaching the \$500 threshold) • Disclosed gifts often lacked the required details or reference was made to the declaration in the gift register, which is insufficient
Other interests	<ul style="list-style-type: none"> • Few interests were disclosed in this category – most likely because it is open to judgement of the councillor whether other interests may create a potential conflict of interest • A lot of councillors believed that their employment or the interests their spouse held were unlikely to result in a conflict

4. Personal interests summaries

The 2020 Act requires the CEO to publish a summary of personal interests, which improves transparency and accountability of the interests return process. This allows the public, integrity agencies and other stakeholders to easily see the personal interests of specified persons and reveals potential conflicts of interest. The publication of the summary on a council's website also improves transparency in the digital age, removing the need to write to ask permission to view the register in person.

The 2020 Act specifies that the following persons need to complete a personal interests return:

- councillors
- delegated committee members
- chief executive officers
- council staff who have a statutory or delegated power, duty and function who have been nominated by the CEO.

The new requirement to publish summaries of personal interests allowed the Inspectorate to conduct a high-level assessment of compliance with the new legislation. We reviewed all 79 councils' websites in August 2021 to access the summaries.

It has been nearly a year since the 2020 Act came into force and the Inspectorate would have expected all councils to have published on their website:

- a summary of initial returns which are lodged within 30 days of appointment (for nominated officers and delegated committee members) or affirmation or oath (for councillors) which could have been published alongside or been superseded by
- a summary of the biannual returns which were to have been submitted between 1 March and 31 March 2021.

The existing legislation does not stipulate the timeframe for when councils must publish the summaries, nor does it provide commentary in regards to whether councils are required to publish more than one summary on their website at a time. However, it does state that the CEO must publish a summary of the interests disclosed in the 'last personal interests return'. It also does not mandate the exact format in which the summaries are to be published.²³

Our review found that:

- some councils had not published any summaries
- some councils had only published summaries of the initial returns but not the biannual returns
- one council published summaries for councillors but no staff
- there was a wide variation in the number of staff that were required to complete returns
- the format of the summaries varied greatly, making them difficult to compare.

Significantly, three councils did not have any personal interests return summaries on their websites at all and referenced the old legislation. These councils were:

- Bass Coast
- Hobsons Bay
- Queenscliffe.

This oversight demonstrates poor governance, or a misunderstanding of requirements, and we would have anticipated seeing better governance practices.

Our review also identified 13 councils which had only published the initial return in December 2020 and had failed to publish a summary of their biannual personal interests returns. These councils were: Bayside, Cardinia, Central Goldfields, Corangamite, Frankston, Macedon Ranges, Mildura, Mount Alexander, Moyne, Southern Grampians, Strathbogie, Wangaratta, and Yarriambiack.

Currently, the Local Government Act does not mandate when the summary should be published. Nor does the LGV guidance document provide any suggested timeframe. This leaves it up to the council's discretion when the summaries are published.

Most councils publish their summary shortly after the end of the prescribed period. However, the failure of these 13 councils to publish the summaries five months after the first biannual personal interests returns were due is concerning and highlights the clear need for a deadline to be legislated.

While most councils published their first biannual returns summary within a few weeks of the 31 March deadline, some councils published the summary more than 100 days after the summary period ended. In several cases, it appears that these councils had updated and republished summaries where new staff were appointed. This practice shows that some councils are being very transparent and accountable to their communities.

One further discrepancy between summaries reviewed was in relation to the number of nominated officers submitting interests returns for each council. A staff member is appointed as a nominated officer if they hold a statutory or delegated power, duty or function; and they are nominated by the CEO because of the power, duty or function.

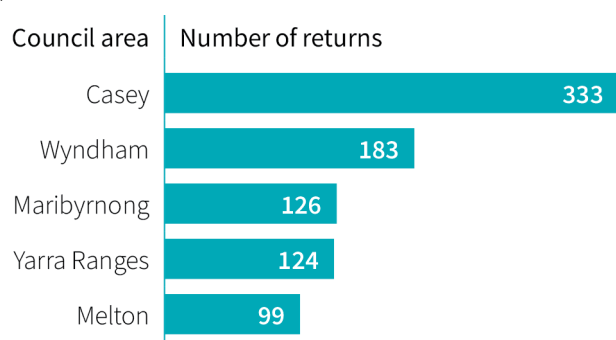
However, the formal appointment process remains at the discretion of the CEO. At one end of the spectrum, some councils only nominate a few officers' interests while at the other end of the scale, Casey nominated 333 council officers.²⁴

²³ Section 135(3)(a) 2020 Act

²⁴ Casey City Council was under administration in August 2021 and therefore did not have any councillors.

Benalla and Dandenong only published the personal interests of councillors in their summaries. Dandenong advised in late October – after this report was published – that the current summary for its CEO and other nominated officers was publicly available on its website but this was not found in our original review. Meanwhile, another two councils (Knox and Manningham) only included the personal interests of councillors and the CEO.

The five councils with the most non-councillors who lodged personal interests returns were:



We found that some CEOs only nominated their executive teams while others nominated every council staff member with the authority to spend council funds.

There was also a lot of variation in what the summaries were called, how they were presented and where they could be found on council websites. Simple searches did not reveal summaries for many councils, often requiring multiple searches to locate the information. Some summaries were 50-page spreadsheets which were uploaded as PDFs and some summaries were listed as individual web pages for each person.

The radically different ways in which the information is uploaded and presented makes oversight and comparison difficult for integrity agencies and other interested parties. The presentation of consistent summaries which are easy to compare is vital to ensure transparency and keep councils accountable.

To facilitate increased transparency and consistency across the sector, it is our position that councils be required to retain previous summaries on their website for the duration of the council term.

Recommendations

1. The *Local Government Act 2020* should be amended to:
 - include a deadline for the publication of the summary on the council website after the end of the prescribed period
 - require councils to have personal interests summaries available online for the duration of the council term.
2. The *Local Government Act 2020* and *Local Government (Governance and Integrity) Regulations 2020* should be amended to make it mandatory for CEOs to use a form in a Schedule to the Regulations when creating a summary of personal interests to ensure consistency across the local government sector.
3. Local Government Victoria should provide improved guidance to councils regarding:
 - how to determine which staff should qualify as nominated officers who are required to submit a personal interests return
 - a standard approach to compiling and presenting summaries on their websites, to assist comparison across councils.

5 Increasing compliance through guidance and education

5.1 The knowledge gap

Our review of personal interests returns and the subsequent survey highlighted that there were impediments to achieving full compliance across the sector. Although we did not review all personal interests returns in the same level of detail across the whole sector, we found higher levels of non-compliance than anticipated.

Some of our findings point to a knowledge gap which could be addressed through better education. For example, councillors we wrote to did not adequately understand the purpose or importance of disclosing interests in an honest and transparent manner. They also did not understand the relationship between completing their interests returns and the disclosure of a conflict of interest in a matter before council for consideration. Council officers surveyed agreed that many councillors lacked the understanding of why the completion of returns was important.

“As a newly elected councillor I do not recall being provided with any information or education during the two days of induction or thereafter on disclosure requirements for primary and ordinary returns. ... I have no legal background. When I did not receive any feedback from my first completed documents, I believed I was compliant.”

–councillor

Councillors and council officers also stated that both the legislation requiring the personal interests returns and the guidance material provided by LGV contained legal terms which are complex and difficult to understand.

Another recurring theme in the surveys of councillors and council staff was a lack of adequate guidance and training available across the sector. A massive 94 per cent of councillors who responded to our survey said the guidance that was currently available was insufficient to enable them to meet their legislative requirements.

The councillors interviewed generally displayed a willingness to comply and to undertake educational opportunities but felt the existing system did not support them and in was unnecessarily confusing.

There was a clear demonstration of a ‘gap’ across the sector. Councillors felt they were not sufficiently supported or assisted to adequately fill out their returns. In addition, council staff indicated that they were reluctant to provide definitive advice for fear that it may be incorrect or create an issue for the councillor and or the staff member.

The high levels of non-compliance indicated that all local government stakeholders must work together to improve personal interests return outcomes across the sector.

5.2 The role of Local Government Victoria in improving guidance and education

As the owner of the legislation, LGV publishes guidance material that helps both councillors and relevant council staff to comply with the personal interest legislation and regulations.

There are no qualifications or criteria that must be met to nominate as a candidate and so there is a broad range of people who nominate and are elected as councillors. All councillors must submit personal interests returns so the guidance material and training should be able to be understood by people from all walks of life and different backgrounds, including culturally and linguistically diverse backgrounds and those with disabilities. Councillors should not be expected to seek and pay for independent legal advice to comply with these obligations.

Councillors also told us they were concerned that they did not have a forum or platform to seek guidance or raise queries regarding their personal circumstances, external to their councils.

5.2.1 Guidance on the 2020 scheme

In preparation for the introduction of the 2020 Act, LGV sought feedback from the local government sector on the personal interests returns requirements of the new Act. This was done through the Engage Victoria website.

Once the 2020 Act was enacted, LGV published draft guidance to the sector, ‘Quick Guide on Personal Interests Returns’. We welcomed the publication of the guidance material to provide direction to the local government sector on the new personal interests returns requirements. The publication of a frequently asked questions section was a particularly welcome addition as they can be added to and provide more guidance as requested by the sector.

We have received feedback from councils that are concerned the LGV guidance is yet to be finalised.

Our review of councils’ summaries of personal interests returns found that:

- councils were confused about how to provide the summary information
- there was no consistency about how the summary was presented
- some councils’ summaries were not compliant.

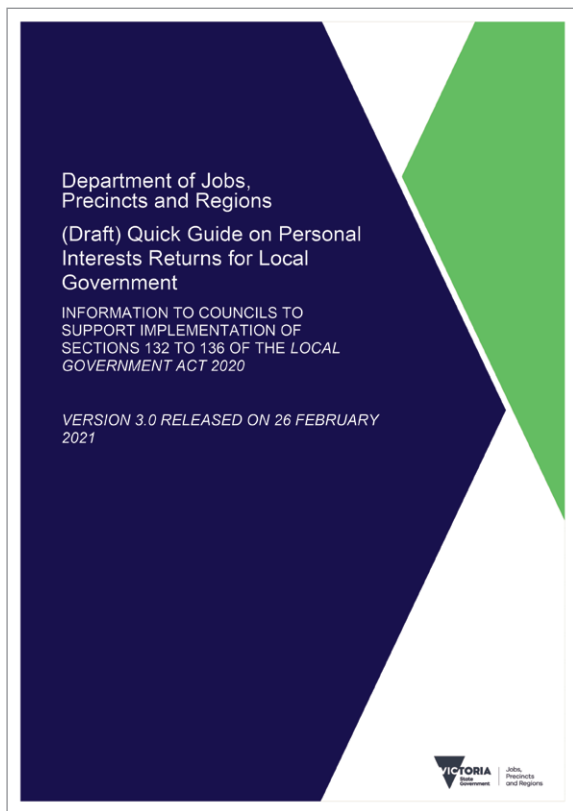
Several councils had not included any disclosures under ‘other interests’ in their summary, as it is not highlighted in the LGV guide. In addition, there are different approaches to disclosing land interests, with some failing to state the town in which a land interest is held, which is not improving transparency.

Clear guidance is vital to ensure that councils are transparent and accountable and understand their obligations under the new Act. A consistent approach regarding the summary of interests would make it easier to assess council compliance with the legislation.

In addition, the location of guidance material on the LGV website needs to be improved, term 'personal interests returns' is used interchangeably with 'conflict of interest' on the website. They are different obligations under the Act and set out in different sections but this is not clear on the

website.²⁵ At the time of writing in early September 2021, the guidance for personal interests returns was still in draft and was located under consultation pages for the new Local Government Act 2020. We understand LGV is in the process of finalising and moving these pages to the main LGV website.

We have raised these concerns with LGV and will continue to work with them and the local government sector to improve the quality of guidance provided.



LGV's draft guidance on initial personal interests returns.

3 Draft Template for Initial Personal Interests Returns

3.1 Corporate Directorships or memberships of a governing body

Name of association	Appointed/Resigned	Proposed/Actual	Office held by you	Date you assumed the position	Description of position/role

7. Land you own or have a beneficial interest in

7.1 Land you own or have a beneficial interest in within the municipal district of the council or an adjoining municipal district

Full address of the land	Address of the land	Partially owned by you	Value of your interest in the land	Is this property a person's residence?

3. Business partnerships or joint ventures which you are a member

3.1 Partnerships or joint ventures

Name of partnership	Description of the purpose or activities of the partnership or joint venture	The AIN of the partnership or joint venture (if applicable)

10. Personal Debt

10.1 Name of creditors to whom I have personal debt over \$10,000

Name of the creditor	Details of the debt

25 The obligation for personal interests returns is set out in Part 6 Division 3 sections 132-136 of the 2020 Act while conflict of interest requirements is set out in Part 6 Division 2 sections 126-131.

5.2.3 Improving the guidance

Our discussions with the local government sector about the 2020 requirements and issues uncovered during the review of personal interests returns under the 1989 requirements highlighted several solutions to the key issues.

Written guides

The main suggestions for improving written guidance on the 2020 requirements were:

- seeking detailed input and feedback from councillors and council staff when developing the guidance
- writing in plain English with clear explanations of any legal terms
- using examples of interests to be disclosed, such as self-managed superannuation funds and family trusts.

“Plain English on the form and guidance is critical. Consideration could be given to an e-learning platform and/or video to assist those who are unable to clearly understand the requirements from a document.”

– councillor

The local government sector also told us that real-life examples were an excellent way to help understand legislative requirements.

“Perhaps give examples on the return about the sort of information that is requested/required. That then helps reduce the chance of Councillors inadvertently answering incorrectly or leaving out relevant information.”

– councillor

We recommend using case studies or examples of issues which lead to high levels of non-compliance, including:

- disclosure of relevant offices held
- clarification of thresholds for declaring beneficial interests
- disclosure of relevant shareholdings
- disclosure of relevant self-managed superannuation funds
- examples of the types of interests to be disclosed under ‘other’.

Councillors and councils should also be given information to provide more clarity and detailed explanations about the relationship between the Conflict of Interest provisions (sections 126-131 of the Act) and the Interests Returns submissions (sections 132-136 of the Act.).

LGV should also consider providing a detailed explanation as to how disclosures made on interests returns may impact on a councillor’s decision-making capability on matters before council.

Recommendations

4. The *Local Government Act 2020* and *Local Government (Governance and Integrity) Regulations 2020* should be amended to make it mandatory for people required to submit personal interests returns to use a form in a Schedule to the Regulations to ensure consistency of personal interests return submissions across the local government sector.
5. LGV should finalise its draft guidance material. The final guidance material should:
 - be written in plain English with all legal terms explained
 - include information about how the accurate completion of their interests returns can assist them to identify possible conflicts of interest
 - include real-life examples of interests to be disclosed
 - be easily accessible on the LGV website
 - be promoted through its communication channels.

Training

Councillors and council staff also asked for training to help councillors and council staff better understand their obligations for submitting personal interests returns, and their practical skills at filling out the return.

“Needs to be included in the induction training, an individual appointment booked for each councillor with the governance officer when completing the first return and each time the previous return is provided to councillors so they can see what they’ve previously declared.”

– councillor

When first elected, councillors must complete mandatory induction training. This training is often outsourced to specialist training providers and is a new requirement under the 2020 Act. However, the mandatory training does not cover personal interests returns and is only done soon after election and no refresher courses are required.

To improve the number of councillors submitting compliant personal interests returns, all specified persons who need to submit returns should have access to regular training on how to complete returns and why the process is important. Governance staff tasked with collecting the information should also be supported with training.

Training for councillors should be:

- mandatory
- consistent across the sector
- delivered as an induction and regular refresher courses
- delivered face-to-face or online.

Mandatory training should be offered to councillors at induction and annually afterwards. This would ensure councillors are aware of their obligations under the Act. Standardised training would ensure all councillors receive identical information and guidance. It would also be useful to align the timing of the training with the submission deadlines for personal interests returns. Creating training for councillors would also reduce the onus on council staff to advise councillors about their obligations under the 2020 Act. Specified persons under the Act, such as nominated officers and delegated committee members, should have access to the same training and support.

Governance staff would also benefit from training tailored to their role and responsibilities and to build their knowledge base generally regarding interests returns processes.

Recommendations

6. LGV should communicate to councils and councillors:
 - the importance of their obligation of completing accurate, complete, and timely personal interests returns for the integrity of local government processes
 - that the personal interests returns will be relied upon by IBAC and other integrity bodies in the event of an investigation.
7. The *Local Government (Governance and Integrity) Regulations 2020* be amended to include the topic of personal interests returns in the induction training for councillors.
8. The *Local Government (Governance and Integrity) Regulations 2020* be amended to introduce annual refresher training in personal interests returns for councillors.
9. Councils should introduce annual training for their nominated officers and delegated committee members to increase their knowledge of the personal interests returns process.

Other support

LGV could provide other support and guidance to councillors to submit compliant personal interests returns, as required under the 2020 Act.

This guidance may include:

- online content, including videos, to explain the rules in plain English
- a plain English communication campaign to remind councillors of their obligations ahead of return periods
- creating online submission software so that the process could be done online, rather than relying on a paper-based system
- creating a ‘help desk’ or email address so that councillors can submit queries about their personal interests returns
- providing best-practice examples – allowing councils to share knowledge across the sector
- providing regular updates to remind councillors of their obligations and keep them informed of legislative amendments
- mandating the use of a prescribed form to promote uniformity and confidence across the sector.

Recommendation

10. LGV should provide regular updates to councillors to remind them of their obligations and to keep them informed about legislative amendments in relation to personal interests returns.

5.3 Peak bodies’ role in guidance and education

Victoria has three main peak bodies that provide support, training and leadership to the local government sector: the Victorian Local Governance Association (VLGA), Municipal Association of Victoria (MAV) and Local Government Professionals (LGPro). These bodies could also have a role in helping coordinate and helping the sector collaborate to share best practice.

LGV should develop guidance to the sector on interests returns in collaboration with these peak bodies. During our review of the summaries, we found a lot of variation in the way summaries were presented. We are concerned there is a lot of variation in the presentation of personal interests returns, making oversight more difficult. It also means that each council is essentially re-inventing the wheel.

A senior governance officer from a council told us that there is a “willingness and a hunger for partnership in the sector”. The officer said the peak bodies would be keen to work with LGV to provide practical guidance to councils. “We need guidance which is practical not theoretical in nature,” they said.

5.4 Councils' role in guidance and education

Our review of personal interests returns under the 1989 scheme did not include a detailed assessment of the guidance councils provided to councillors. However, our survey did reveal that there was a lot of variation in the amount of guidance councils provided to their councillors.

Since we completed our review, the 2020 scheme took effect which has fundamentally changed what and how personal interests returns are to be reported. However, we have had contact from councils seeking guidance from LGV on the best way to submit compliant personal interests returns for councillors and staff and guidance on how to prepare and publish the summary of personal interests.

One issue highlighted in our survey is that councillors were often asked to complete their personal interests return shortly before the start of a council meeting. Councillors were often in a rush and did not have a previous return on hand to compare it to.

It is our belief that councils would be open to:

- working with Local Government Victoria to improve the current guidance
- implementing recommended guidance
- changing processes to promote better compliance
- providing support to councillors and staff where required.

5.4.1 Suggestions to improve council processes

To improve accountability and transparency, some councils review personal interests return summaries from councillors and council staff alongside council agenda items to identify potential conflicts of interest. This is a practice other councils could consider.

Councils also have a key role to provide information and education to councillors and council staff who are obliged to submit personal interests returns.

Councils could also have a role in supporting their governance staff and better equip them to monitor the submission of personal interests returns and provide advice for those who must submit a return. Our survey found that governance staff who did not have to submit a return often lacked confidence about the requirements. Councils could support their governance staff by encouraging them to complete annual training in personal interests returns if it is developed.

“We have a great Governance Manager, but her responsibilities are increasingly onerous and expanding. I am concerned they may be too much for one person to handle. Councillors are part-time and many work full-time or part-time in other occupations.”

– councillor

5.4.2 Return checklists

There is a lot of variation in the governance resources amongst councils. Smaller councils may have the governance task sitting with an executive assistant while larger metropolitan council would have a team of governance staff.

We believe council staff who collect personal interests returns would welcome practical guidance on the process from those who are familiar with the process. Consequently, we have sought advice from the governance team at Melbourne City Council who have shared documentation for their personal interests returns process to help other councils. We are sharing the sample checklist in [Appendix 2](#) in the hope it will help the sector as it adjusts to the new legislation. We will also share sample emails provided by Melbourne City Council, along with the checklist, on [our website](#).

5.5 Independent accountants and lawyers

“When busy, [the returns] are the least thing I want or need to do. The system needs to be overhauled and instruction clear. What is expected, what is applicable and what is not. As a Councillor I have had just ‘wing it’ and hope that I have included all the right information with no assistance. I have to pay a legal person to oversee it, to make sure I’m completing the forms correctly”

– councillor

Clearer guidance from LGV would allow more councillors to complete their own personal interests returns without hiring an accountant or lawyer. Without guidance written in plain English with an explanation of legal terms, councillors with more complex financial interests currently seek and pay for independent legal or accounting advice. However, councillors may be reluctant to seek the advice of lawyers or accountants because of the cost.

Improved guidance from LGV would also benefit independent accountants and lawyers as it would clearly set expectations of what personal interests returns should contain, meaning they do not have to interpret the Act.

6 Increasing compliance through legislative change and oversight

Our review of 4,600 personal interests returns for 650 councillors from 78 councils found much higher rates of non-compliance that we anticipated. We found that 51 per cent of councillors did not complete at least one interests return in strict compliance with the requirements of section 81 of the Act. This level of non-compliance is unacceptable because it risks decreasing public confidence in councils.

Increased compliance with the declaration of personal interests returns will increase transparency and the community's trust in local government decision making. In addition to increasing compliance through education and guidance, we propose three ways to increase compliance by:

- automating processes
- increasing scrutiny and mandatory reporting to make it easier to identify non-compliance
- introducing a proportional range of sanctions to make it easier to hold those who do not comply accountable.

6.1 Compliance systems

Automating the personal interests returns submission process would make it easier for councillors and council staff to comply with the personal interests returns requirements of the Act. The local government sector also gave us consistent feedback that they wanted to move to automated systems to collate personal interests returns information. Councils told us that the current manual process, which was generally done using hard copies, was outdated, time consuming and did not achieve the best outcomes.

Councillors complained that they were often provided with hard copy interests return forms at a council meeting and were required to complete the form prior to leaving, not allowing them the opportunity to fully consider any changes that may have taken place since they had submitted their previous return.

Meanwhile, council staff commented that hard copy forms were time consuming to follow up, particularly in rural councils where councillors do not attend the council office on a regular basis. These issues were compounded during the summer break in January and February. In some instances, return forms were illegible due to poor handwriting.

Automating the personal interests returns process would allow councillors and council staff to fill out the information from anywhere and at any time. A good system could also include information about the process. Other potential benefits of an electronic, possibly web-based system include:

- removing the need for council staff to distribute hard copy forms to councillors
- improving record-keeping
- quick reference to previous returns

- mitigating risk of illegibility
- improving confidentiality/privacy
- automatic reminders
- automatically creating a summary which can be published on the web.

There is also an opportunity for the council peak bodies, to provide leadership and encouraging sharing of knowledge and best practice across the sector. For example, Casey City Council and Melbourne City Council both use a governance system through Microsoft's Sharepoint, and this knowledge could be used by other councils. If VLGA coordinated the collaboration and sharing of knowledge, it would help smaller councils with less governance resources.

Case study – Northern Grampians' automated returns

We surveyed a small number of councils on how they manage the interests returns process.

Northern Grampians use an online internal form system called elementORG. The program has been tailored to the council's needs to mitigate data management issues and manage all governance tasks. Council was not required to purchase new hardware or additional software to support the system. Instead, it was integrated into their existing system, with pre-built templates allowing it to be implemented efficiently.

The system's features include:

- councillor interests returns are completed via an online form, from which a summary of interests is created
- LGV's Quick Guide on Personal Interests Returns for Local Government and the legislation are linked as help notes to each question on the online form
- it is linked to council's Electronic Document Records Management System and completed returns are recorded as part of the workflow
- the workflow includes a governance check prior to the return being finalised to ensure all questions have been adequately answered
- the system automatically transfers the summary of personal interests data onto the council website.

Council described the program as being very simple and user-friendly. One of the key benefits is the transition to a fully automated, paperless process.

Initial Personal Interests Return

Section 133 of the *Local Government Act 2020* requires a Councillor, a member of a delegated committee, a Chief Executive Officer, or a nominated officer to lodge an **Initial Personal Interests Return** with the Chief Executive Officer containing the matters prescribed by the regulations.

For the purposes of section 133(1) and (2), the *Local Government (Governance and Integrity) Regulations 2020* prescribe matters that must be disclosed in an **Initial Personal Interests Return**. This is information that is current on the date that the return is lodged.

The Chief Executive Officer must prepare a summary of the personal interests information disclosed in the last personal interests return lodged and publish the summary on the Council's website which includes the information disclosed, excluding monetary value or amount of income, shares, any beneficial interest other than shares or income or any debt disclosed.

Northern Grampians Shire Council has adapted an internal form system to collect personal interests returns from councillors and staff.

Corporate directorships or memberships

1 - Do you have any corporate directorships or memberships of a governing body to disclose? *

You must disclose details of any corporation of which you are a director or a member of the governing body, at any time since you lodged your preceding initial or biannual personal interests return, including the name of the corporation, the ABN or ACN of the corporation (if applicable), the registered address of the corporation, the office held, the date of appointment to the office and a description of the purpose or activities of the corporation.

Nothing to disclose
 Disclosure required

Corporate directorships or memberships of a governing body: *

Corporation Name	ABN/ACN (if Applicable)	Registered Address	Office Held	Date Appointed	Purpose Or Activities Of The Corporation
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Membership of unincorporated associations

2 - Are you a member of any unincorporated associations in which you perform a leadership role? *

You must disclose details of any unincorporated association in which you are a member and perform a leadership role, at any time since you lodged your preceding initial or biannual personal interests return, including the name of the association, the ABN of the association (if applicable), the address of the association (if applicable), the position held, the date of appointment to the position and a description of the purpose or activities of the association.

Nothing to disclose
 Disclosure required

Unincorporated associations in which you are a member and perform a leadership role: *

Association Name	ABN (if Applicable)	Address	Position Held	Date Appointed	Purpose Or Activities Of The Corporation
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Gifts received

11 - Have you received any gifts that must be disclosed? *

You must disclose details of any gift received, the value of which equals or exceeds \$500, including gifts in the form of goods or services and multiple gifts that together equal or exceed \$500, which was received at any time since you lodged your preceding initial or biannual personal interests return. You must include a description of the gift, the monetary value of the gift, the name of the person who gave the gift and if the gift was given on behalf of another person or body, the name of that person or body.

Please note: you must still declare any gifts disclosed in the Council's Gift Register.

Nothing to disclose
 Disclosure required

Gifts received to the value of \$500 or over *

Please enter **Not applicable** in the 'Gifted on behalf of' field, if the gift was given by an individual, and not on behalf of another person or body.

Gift Description	Value	Name Of Donor	Gifted On Behalf Of
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Other interests

12 - Do you have any other interests to disclose? *

You must disclose details of any other interest which may give rise to a general conflict of interest or a material conflict of interest.

Nothing to disclose
 Disclosure required

Details of any other interest which you have decided to disclose on the basis that it may give rise to a general conflict of interest or a material conflict of interest: *

Paragraph

B *I* U

Screenshots from Northern Grampians Shire council's e-form.

Recommendation

11. LGV should investigate the feasibility of creating a common electronic form that provides a standardised personal interests returns template that councils can incorporate into their IT platforms.

6.2 Towards a best-practice model

Compliance with the requirements of the 2020 scheme is fundamental for its effectiveness as a means of ensuring both the adequacy of personal interests disclosures by council decision-makers and the integrity of the decision-making process.

The 2020 scheme follows the ‘standard’ state model for local government personal interests returns: councillors and senior council officers are required to regularly submit returns, a register of returns is maintained by the council and the public can access information concerning the disclosed interests.²⁶ The only available sanctions for non-compliance are through the criminal justice process.

Making non-compliance a criminal offence is not an adequate response to this issue. Our review indicated that the 2020 scheme should encourage compliance through a range of proportional and scalable measures.

We propose four amendments to enhance the effectiveness of the 2020 scheme:

- replacing the current court-based prosecutions with infringements except in the most serious cases
- introducing a system of non-monetary sanctions for non-compliance
- creating a mandatory reporting requirement for non-compliance
- removing potential barriers to external scrutiny.

6.2.1 Replacing some prosecutions with infringements

A feature of the 2020 scheme (and the 1989 scheme) is the use of the criminal justice process as the principal enforcement mechanism. However, the nature and seriousness of the offences relating to personal interests returns in the 2020 scheme do not lend themselves to prosecution in the Magistrates’ Court.

In our experience, prosecutions cause unreasonable delay, are disproportionately expensive for the Inspectorate, the defendant and the court system itself, and do not act as a deterrent. Because the offences are mainly ‘administrative’ in nature, in most cases they should not carry the stigma associated with criminal judicial processes, including the possibility of a criminal conviction.

Given the significant cost and time needed to bring a matter to court, historically the Inspectorate has issued written warnings for failures to comply with the interests returns provisions. Only the most serious examples of non-compliance have been prosecuted. This means the impression across the sector is that there are little consequences for compliance failings in relation to personal interests returns.

A suitable alternative is to make some of the offences created by the interests returns provisions in the 2020 Act infringeable. Total failure to lodge, or late lodgement, of an initial or biannual personal interests return, are strict liability offences.²⁷ They are suitable for inclusion in the framework for the issuing and serving of infringement notices contained in the *Infringements Act 2006* and meet the determinants found in the Attorney General’s infringements guidelines.²⁸

We consider that the 2020 Act should be amended to give us specific power to issue infringement notices for these offences. Adoption as infringeable offences would have an appropriate deterrent effect and would aid these offences in being taken more seriously by the sector. This, coupled with a public information campaign directed at councillors and senior council officers, should be effective in increasing compliance with the scheme.

Legislative change would allow us to immediately apply penalties once a pre-established threshold has been reached. The change would mean fines would be applied at the point of infringement, removing the need for costly legal and court proceedings. Protections would be afforded in the form of an internal review system built into the process, as directed by the *Infringements Act 2006*.

Any penalties would be dependent on the nature of the offence. For example, a single late return may attract a fine worth one penalty unit, whereas failing to submit any return at all for a return period may attract a fine worth two penalty units. Fines would be dependent upon the severity of the breach.

²⁶ See 2.3 Interstate schemes

²⁷ The offences are created by sections 133(1) and 134(1) of the 2020 Act.

²⁸ Under the 2020 Act, lodgement of a personal interests return containing false or incomplete information under s 133(3) and 134(2) of the Act is not a strict liability offence. This is because it requires proof of a fault element – either intentionality or recklessness. As such, it may be difficult to make this offence infringeable.

In some cases, written warnings and prosecutions will continue to be the most appropriate response to breaches. Prosecutions would be warranted, for example, where a specified person deliberately included false or misleading information in returns to subvert the council decision-making process.

Recommendation

12. The *Local Government Act 2020* should be amended to give the Inspectorate specific power to issue infringement notices for strict liability offences.

Case study – Former Wyndham councillor charged

In 2017 the Inspectorate charged former Wyndham City councillor Intaj Khan for failing to file ordinary interests returns and for the non-disclosure of various interests on those returns between February 2016 and February 2017. Mr Khan was charged with three counts of failing to disclose companies in which he held an office position during the return period; three counts of failing to disclose companies in which he held a financial interest; two counts of failing to submit ordinary returns; and one count of failing to disclose property holdings, in breach of the interest provisions of the 1989 Act.

Mr Khan pleaded guilty to eight charges.²⁹ On 16 July 2018, Mr Khan was convicted in the Sunshine Magistrates Court on the eight charges and was fined \$26,000 – \$8,000 related to the two counts of failing to submit an ordinary return, and \$18,000 for the remaining six charges. Mr Khan was also ordered to pay \$15,000 in legal costs. While he subsequently appealed the matter in the County Court, Mr Khan dropped the appeal partway through proceedings and the decision stood.

Magistrate Therese McCarthy said Mr Khan had received training from Wyndham Council and a previous warning from the Inspectorate over a failure to submit an interests return, which she considered was an essential tool for good governance.

The conviction and penalty imposed against Mr Khan illustrates the importance of councillors complying with the interest provisions of the 1989 Act and 2020 Act, for the promotion of transparency and integrity.

6.2.2 Non-monetary sanctions

It is often difficult to obtain a conviction through the current court system because the courts typically require a higher threshold than that intended by the legislation. As a result, offences at the lower end of the scale have not been pursued as the cost to take the matter to court is often in excess of the penalty that can be applied.

In some cases, non-monetary penalties could provide more appropriate, proportional and scalable sanctions for specified persons who consistently flout the provisions of the 2020 scheme.

A good example of non-monetary sanctions can be found in the New South Wales personal interests return scheme, which is contained primarily in codes of conduct that must be adopted by individual councils under the *Local Government Act 1993* (NSW).

Under the NSW scheme, councillors, administrators, council staff, council delegates and any other person to whom a council's adopted code of conduct applies must comply with the provisions of the code. Failure to do so by a councillor constitutes misconduct for the purposes of the NSW Act. Penalties for misconduct include suspension or disqualification from civic office. A councillor who has been suspended on three or more occasions for misconduct is automatically disqualified from holding civic office for five years. Failure by a member of staff to comply with a council's code of conduct may give rise to disciplinary action.

We believe that consideration should be given to adopting a similar scheme for Victoria for more serious breaches of the 2020 requirements which could be used in conjunction with an infringements scheme. Under this proposal:

- failure to comply with the requirements by a councillor could constitute misconduct
- penalties for misconduct could include suspension or disqualification from civic office, including automatic disqualification from holding civic office where a councillor has been suspended on three or more occasions
- failure by a member of staff to comply could give rise to disciplinary action.

Recommendation

13. LGV should amend the *Local Government Act 2020* to introduce non-monetary sanctions (such as temporary suspension or disqualification from civic office) to provide a more appropriate, proportional, and scalable sanction for persons who consistently flout the personal interests returns provisions of the Act.

²⁹ All the charges brought against him, excepting the failure to disclose property holdings.

6.2.3 Mandatory reporting of breaches

Without mandatory reporting, it is difficult to identify where breaches have occurred as there is no current structured testing regime or general oversight program embedded. Consideration should be given to CEOs being required to report breaches of the 2020 requirements to the Inspectorate. Mandatory reporting of failure to submit returns, or to submit incomplete, inaccurate or late returns would act as significant deterrent – particularly when coupled with a new infringements’ regime.

Currently there is no requirement for councils to report identified breaches of the Act, despite penalties being applicable for non-compliance. Traditionally, no action was taken against those who fail to submit a return or submit a late or incomplete return. An unwritten threshold has been in place where only those that have transgressed on multiple occasions have been threatened with action. Mandatory reporting would ensure we had oversight of non-compliance, could monitor the levels of non-compliance, and act in accordance with the nature of the breach.

Mandatory reporting would also aid council staff who felt they could not report non-compliance for fear of recrimination.

An example of a mandatory reporting requirement can be found in the interests return scheme created by Part 4 of the *Members of Parliament (Standards) Act 1978*. This requires the Clerk of the Parliaments to report Members of Parliament (MPs) who fail to submit returns to the relevant presiding officer. For MPs, the prospect of mandatory reporting would appear to be sufficient to ensure compliance, given that Part 4 does not contain any criminal sanctions. A similar approach could be taken in the local government sector.

It is worth noting that no equivalent interstate requirement for personal interest disclosures in any other state has a mechanism for reporting breaches of the requirement. If Victoria were to introduce such a provision, it would lead the way in how interests return breaches are reported.

Recommendation

14. The *Local Government Act 2020* should be amended to require CEOs to report suspected breaches of the personal interests’ returns provisions to the Inspectorate, including failure to submit returns or submitting inaccurate or late returns.³⁰

6.2.4 Public register of non-compliance

The 2020 Act improves the transparency of the declaration of personal interests by requiring CEOs to publish a summary of the returns. However, consideration should also be given to increasing the transparency at the other end of the system with a public register to name councillors and council staff who do not submit a personal interests return or submit incorrect information in their return.

A governance officer told us that there should be public accountability for infringements so that it was more than a financial penalty. “There needs to be a disincentive for those doing the wrong thing. A public register or something similar would act as a deterrent and expose wrongdoing,” the officer said.

A public register would increase the stakes for councillors in particular, and provide an incentive to take more care with their returns. Knowing that they could be publicly named for non-compliance would also act as a disincentive to ignore the returns process and encourage them to understand the importance of the declaration process.

6.3 External oversight

“There is little point in officers constantly warning people of the consequences of non-compliance, if the regulator fails to take meaningful and public enforcement action.”

– council officer

“The process needs external oversight as it can be seen as a tick and flick-type exercise which councillors don’t take seriously.”

– councillor

Although the personal interests returns requirements have been in place for more than three decades, no audit of the returns has been undertaken by any entity, including councils. The 1989 and 2020 Acts do not require any entity, including councils or the Inspectorate, to oversee the interests return requirement. Nor do the Acts impose any obligation on any entity to scrutinise the accuracy and completeness of the interests disclosed in the returns.

“I would welcome a requirement on councils to provide all returns (or failure to submit returns) to the Inspectorate on a regular basis. Even if the Inspectorate did not actually actively audit this information (which I concede might be overly resource intensive) the fact that the data is being provided to an external agency at all would create cultural change amongst councillors”.

– council officer

³⁰ This change would mean the requirement would be similar to the mandatory reporting of interests for Members of Parliament under the *Members of Parliament (Standards) Act 1978*.

Another method of improving the level of compliance across the sector is through the development of a structured oversight framework, combined with strict enforcement of penalties. Councils have historically carried out minimal scrutiny of personal interests returns, and those that do typically focus only on ensuring that basic requirements are met.

Our review highlighted that some councillors were not aware that they breached the legislation until it had been pointed out to them, and the misdemeanour clearly explained. The creation of a structured review program, particularly if it is external, would increase the level of compliance at a time much closer to the breach.

Further, where breaches are discovered and are found to have been intentional, applying the set penalties has historically proven to be problematic. The cost of acting typically exceeded the outcome that could be achieved.³¹

“The recent audit of returns was good for councillors to be reminded of the requirement of accuracy and full transparency. I suggest over the four years, random audits of accuracy and currency of some returns would be good to assist the officers in education and reemphasising the requirement to accurately complete the returns.”

– councillor

We considered the merits of a centralised model, under which returns would be submitted to a central agency, ideally using an electronic platform. A centralised model was suggested by both council staff and councillors in survey responses. The receiving agency could also perform checks on the submitted returns. Due to the resources required to establish and maintain such system, as well as privacy aspects, we concluded this model not desirable at the present. The main value of the information contained within the interests returns is at the local council level, where it could impact on decision making, therefore the information should continue to be collected by the council.

Instead, we have arrived at the view that most of the utility of a centralised system can be achieved through the creation of a common electronic form that provides a standardised template for councillors and selected council staff to complete. In light of this, we have recommended that Local Government Victoria investigate the feasibility of creating a common electronic form to be distributed to councils to incorporate into their IT platforms.³²

We believe that the LGI can deliver structured oversight through a continued review of interests returns, through:

- random sampling of returns (for example 10 per cent of councils or councillors each return period)
- formal checking of returns (a combination of high-level consistency checks and more detailed background checks)
- ongoing reviews across the council term ensuring all councils (councillors) are reviewed at least once.

The ongoing monitoring of personal interests returns would be greatly enhanced by mandatory reporting of breaches of the interests returns provisions³³ and a change in sanctions for breaches³⁴. Meanwhile, councils could gain efficiencies through the creation of an electronic submission platform that feeds the information back to councils.³⁵

31 See [6.2.1 Replacing some prosecutions with infringements](#)

32 See [Recommendation 11](#)

33 See [Recommendation 14](#)

34 See [Recommendations 12 and 13](#)

35 See [Recommendation 11](#)

7 Conclusion

The disclosure of personal interests by council decision-makers is legislated to ensure transparency in decision making in the local government sector. The twice-yearly disclosures aim to increase public confidence in the impartiality of decision-makers and ultimately the integrity of council decisions.

Our major review of personal interests returns under the 1989 Act showed a concerning level of non-compliance with the disclosure requirements. At least 51 per cent of the 650 councillors we reviewed did not fully comply with all legislative requirements regarding their returns submitted in the 2016–20 period.

We conducted a detailed review of 147 councillors which uncovered higher levels of non-compliance. This suggests that the true levels of non-compliance are even higher than 51 per cent.

This low level of compliance risks confidence in the integrity of our grassroots democracy.

In addition, our review of personal interest summaries under the 2020 Act showed that there is still a lack of transparency in the sector with three councils failing to publish any summary and another 13 councils had not published a summary for the last five months.

As part of our major review, we surveyed councillors and council staff about the personal interests returns process and this helped us identify issues with the process.

Councillors told us that they did not adequately understand the purpose or importance of disclosing interests in an honest and transparent manner. In addition, councillors lacked sufficient knowledge to adequately complete returns and council staff lacked the confidence to guide them in doing so.

The 2020 Act is still relatively new and now is a good time to consider ways to improve compliance and transparency across the sector.

A dedicated training program and improved guidance could help bridge the knowledge gap.

LGV must consult with the sector and the Inspectorate and finalise its guidance material, ensuring it is in plain English and includes real-life examples. The material should be easily accessible on the LGV website and must be promoted through its communication channels.

LGV should also provide more guidance to councils to help them with the new requirements to publish a summary of personal interests returns.

We also recommend that training on personal interests returns should be compulsory for councillors, which should include training on induction and annual refresher courses. Councils should also introduce training to support their staff who must fill out interests returns but also for governance staff who are often asked for guidance from councillors about how to complete returns.

We also propose a number of smaller changes, such as setting up an email helpdesk to respond to queries about personal interests returns, as well as regular communication about the importance of personal interests returns. Compliance could also be improved using automated systems.

One of the biggest impediments to achieving full compliance of personal interests returns is the lack of appropriate enforcement measures. Currently the only means of enforcement available to us is the criminal justice system with its costs and lengthy delays. There is a lack of appropriate and scalable enforcement measures, which means only the most serious and persistent offenders are pursued. We propose that infringements and non-monetary sanctions be introduced into the legislation to allow for greater flexibility with enforcement.

We also consider that making the reporting of breaches mandatory and strengthening external scrutiny are key to increasing compliance.

There is still more work to be done by the Inspectorate, LGV and councils to increase compliance levels, and this report should be considered a first step on a journey to improve the outcome of the requirement.

We would like to thank the councillors and council staff who took the time to provide extensive feedback on the 1989 and 2020 schemes. This information gave us a valuable insight into the issues and problems councillors and council staff face.

We also commit to working with LGV and councils to improve the understanding of the importance of the requirement and supporting those who must comply with it.

Appendix 1 Detailed survey responses

Survey responses

Question	Councillor responses	Council officer responses ³⁶
Do you think collecting accurate information about the interests held by councillors is important?	<ul style="list-style-type: none"> • Yes – 90% • Somewhat important – 10% 	<ul style="list-style-type: none"> • Yes – 91% • Somewhat important – 9%
Why is it important?	<ul style="list-style-type: none"> • identify / avoid potential conflicts of interest which links to transparency (81%) 	<ul style="list-style-type: none"> • transparency (64%) • it assists with managing conflicts of interest (36%) • it increases integrity of council decisions and/or public confidence in those decisions (25%) • promotes accountability (16%)
What do you think council officers should be responsible for when it comes to councillor interests returns?	<ul style="list-style-type: none"> • administrative process (42%) • providing training, guidance, answer questions (33%) • check the returns (25%) 	<ul style="list-style-type: none"> • administrative process of sending out forms, information, sending reminders, collecting and storing the forms (86%) • providing training and guidance (21%) • nothing (4%)
What do you think councillors should be responsible for when it comes to their interests returns?	<ul style="list-style-type: none"> • complete forms accurately and submit on time (89%) • seek clarification if they don't understand something (5%) 	<ul style="list-style-type: none"> • being honest and disclosing interests accurately (91%) • timely submission of returns (79%) • educate themselves on the importance of and the requirements for disclosure, seek advice if necessary (14%)
What works well	<ul style="list-style-type: none"> • council officers providing forms and due date reminders (27%) • reliable and helpful staff, a go to person, providing previous returns (17%) 	<ul style="list-style-type: none"> • process working well overall (59%) • reminders (7%) • having a centralised process or central contact person (5%) • helping or having conversations if required (5%)
What doesn't work so well	<ul style="list-style-type: none"> • forms / legislation hard to understand – should be in plain English rather than 'legalese' (17%) • lack of sufficient guidance (in plain English) and education (25%) • paper based system (17%) • forms were often completed in a rush (for example at the start of a meeting) and thus councillors didn't pay sufficient attention to their declarations (3%) 	<ul style="list-style-type: none"> • accuracy of disclosure and/or timeliness of submission of returns (66%) • process is manual, labour intensive, inefficient (32%) • councillors are not taking their obligations seriously – they have no respect for the process, lack personal accountability (27%) • councillors don't understand the requirements (13%) • there is a lack of enforcement (11%)

³⁶ Percentages do not always add up to 100 per cent as respondents were able to provide multiple answers.

Question	Councillor responses	Council officer responses ³⁶
What do you think is the main cause of the problems you identified?	<ul style="list-style-type: none"> legislation / forms hard to understand, not in plain English (27%) process not given the attention it would require – there is a lack of understanding the importance of it, and it is often rushed (25%) lack of training, guidance and support by council officers (17%) there are no consequences for non-compliance (3%) 	<ul style="list-style-type: none"> councillors don't understand the importance of their obligations regarding interests returns (40%) lack of education, guidance – legal terms are hard to understand, simplification and examples would be required from LGV (21%) councillors are generally busy (9%) process is manual and paper-based (9%) lack of consequences / enforcement of rules (7%)
What do you think could be changed to improve the system?	<ul style="list-style-type: none"> online portal or electronic lodging system, for example a state-wide app (22%) better resources required: clearer forms and instructions, examples to increase understanding, advice hotline, video training (19%) compulsory training (14%) provide previous returns, council officers to perform cross-checks on disclosed interests (11%) sit down with officers when completing returns (5%) Concerns were raised by 8% of respondents about the privacy and safety of councillors who did not want information about their residential address be made public 	<ul style="list-style-type: none"> education/training, e.g. an online training module (18%) forms and guidance in plain English, guidance detailed and including examples (18%) consequences – enforcement, requirement to report non-compliance to LGI, random audits (14%) automating the process: having an online portal or electronic system (13%) having a centralised system for submission (to the Inspectorate, the minister) (11%) 5% stressed that it is important to protect personal information for safety reasons
What do you think could be changed to promote transparency?	<ul style="list-style-type: none"> make disclosed interests/returns available online (11%) increase what needs to be disclosed, for example, include family members' interests (5%) 	<ul style="list-style-type: none"> publishing summary online (16%)
Do you think there is sufficient guidance available to councillors on this topic?	<ul style="list-style-type: none"> No/more would be helpful (75%) Yes (19%) No opinion (6%) 	<ul style="list-style-type: none"> (question not asked)

Appendix 2 Personal interests returns sample checklist

Melbourne City Council has provided sample emails and the following checklist which can be used as part of the personal interests returns process. The checklist and emails are available to download, along with this report, on [our website](#).

Note – Sections 132-136 of the Local Government Act 2020 set out a process for managing personal interests returns. The Act requires a specified person, being a Councillor, a member of a delegated Committee who is not a Councillor, a Chief Executive Officer or a nominated officer, to lodge an initial Personal Interests Return and thereafter a biannual Personal Interests Return (March and September).

For nominated officers, the CEO (delegate is Director Governance) will determine which staff are ‘nominated’ and therefore required to submit an initial Personal Interests Return. Council staff have 30 days to submit from the day they are advised that their position has been designated as a nominated officer and therefore requires them to submit a Personal Interests Return.

The following checklist has been developed to provide guidance on managing the Personal Interests Return process³⁷ for nominated officers, as this is the area that is the most resource intensive to manage, due to position or organisational changes that may occur from time to time.

There is a linkage between the *Local Government Act 2020* and the *Local Government (Governance and Integrity) Regulations 2020* and an organisations staff Code of Conduct and/or terms and conditions of employment. That is because there are penalties for failing to complete and submit a return within the prescribed period and an officer’s terms and conditions of employment/staff Code of Conduct, may stipulate that failure to comply with a statutory requirement may also lead to disciplinary action.

For further information, please refer to the guidance material prepared by Local Government Victoria. Prior to commencing the initial or biannual Personal Interests Return process, you should refer to the guidance material in case the guidance has changed.

Prior to nominated officer commencement or return period commencing

Step	Action	Completed (Yes / No)	Notes
1	2–4 weeks prior to requesting completion of a personal interests return, confirm the list of Nominated Officers. Nomination is to a position and the person occupying the position may have changed since the last communication.		Section 132 and 133 of the Local Government Act 2020 sets out the definition of a nominated officer and the requirement to lodge an initial and subsequently biannual personal interests return. The Director Governance, as delegate of the CEO, has developed specific criteria, expanding on the legislation, to guide the process of determining which position should be ‘nominated’. (EDMS ³⁸ reference 123456789)
2	2–4 weeks prior to requesting completing a personal interests return, ensure the form is consistent with the details provided for in the Regulations.		Refer to Local Government Victoria’s website for the template.
3	2–4 weeks prior to requesting completing a personal interests return, update the FAQ document for nominated officers to support them in completing it.		The FAQ document is available on the intranet. (EDMS reference 123456789)
4	Throughout the year, if a new staff member commences and that position is a nominated officer, confirm the start date with either the Executive Assistant of the area or People, Culture and Leadership. See step 5 below.		Arrangements are in place for People, Culture and Leadership to advise Governance of changes to nominated officers.

³⁷ It is assumed that the Governance team is managing this process.

³⁸ An EDMS, or electronic document management system, is software designed to centralise an organisation’s relevant documents.

Commencement of nominated officer or biannual Return period starts

Step	Action	Completed (Yes / No)	Notes
5	Email a link or a copy of the Initial Personal Interests return on the day the nominated officer commences in the role or has been designated a nominated officer. Or Email a link or a copy of the Initial Personal Interests Return on the first day the Return period.		For example: Email sent to Bob Smith on 1 September 2021 at 9.05am (EDMS reference 123456789)

Day 14, 21 and 28 – if required

Step	Action	Completed (Yes / No)	Notes
6	If the Initial Return has not been received by day 14, day 21 or day 28, send a reminder email to the nominated officer with the deadline.		For example: First reminder email sent to Bob Smith on 15 September 2021 at 9.05am (EDMS reference 123456790)

Day 30 – if required

Step	Action	Completed (Yes / No)	Notes
7	Contact the nominated officer to remind them that the Initial Personal Interests return must be completed and submitted by close of business on this day. Follow up with an email.		For example: Final reminder sent to Bob Smith on 30 September 2021 at 9.05am (EDMS reference 123456791)

Upon receipt

Step	Action	Completed (Yes / No)	Notes
8	Send an acknowledgement email to confirm receipt of the Initial Personal Interests Return.		Indicate the Return is being reviewed.
9	Review the Personal Interests Return. <ul style="list-style-type: none"> Have all fields been completed? Is the information provided clear? 		<p>Have they entered information into all the fields? If they had nothing to declare, has that been stated? Is the information provide clear? Check for acronyms and obvious issues such as data in the wrong field, information that does not need declaration etc.</p> <p>Has the nominated officer made a note that disclosure would place the personal safety of this person at risk or disclosure would unreasonably expose a business, commercial or financial undertaking to no advantage? If yes, ask the nominated officer to also make a formal request in writing to the CEO, as the CEO needs to consider, based on the application of the Officer, whether to publish the information in the summary</p> <p>Has it been signed by the nominated officer?</p> <p><i>Note: It is not the role of the Governance team to verify the property details, company details etc. Your role is to ensure all fields are completed and the information provided makes sense.</i></p>

Step	Action	Completed (Yes / No)	Notes
10	Accept / preliminary: check that all fields have been completed and the content is clear, send an email to the nominated officer to confirm status – if all fields are complete and information is clear, advise submitter that Return has been accepted.		It is the responsibility of the nominated officer to fully complete the form. <i>Note: It is not the role of the Governance team to verify the property details, company details etc. Your role is to ensure all fields are completed and the information provided makes sense.</i>
11	Return / to be completed: if there are fields that have not been completed, return to the nominated officer, with an explanation as to what part(s) of the form need to be completed/updated. Ask that they return this as soon as possible. Review and if okay, then approve.		It is the responsibility of the nominated officer to fully complete the form. <i>Note: It is not the role of the Governance team to verify the property details, company details etc. Your role is to ensure all fields are completed and the information provided makes sense.</i>


Summary


Step	Action	Completed (Yes / No)	Notes
12	Prepare a summary of the information disclosed in the nominated officer's personal interests return, with only the mandatory details that are required to be made public.		You can commence the preparation of the summary as returns are submitted.
13	Forward a copy of the summary to the nominated officer to review prior to publishing. Check and make sure the nominated officer is comfortable with the details that will be published on-line.		Ensure that the nominated officer is aware, at the start of the process, the information that must be disclosed in the summary and there are only limited circumstances where information will not be published. If a nominated officer expresses concerns about the information that will be published, have a conversation with them around the legislative constraints and ask them to apply to the CEO for certain information not to be published.
14	Publish the summary onto the Council website.		Ideally publication should occur within 30 days of the date of submission.


Local Government Inspectorate

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