



Government  
of South Australia

Department of Planning,  
Transport and Infrastructure



# **COUNCIL MEMBERS' PERSONAL INTERESTS**

## **DISCUSSION PAPER**

Proposals to Reform the 'Conflict of Interest'  
Provisions

*Local Government Act 1999*

December 2014

## **Acknowledgement**

The proposals contained in this Discussion Paper are based on the *Queensland Local Government Act 2009* and supporting papers. The Queensland Government and the Queensland Department of Local Government, Community Recovery and Resilience in particular, are acknowledged for this reason.

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# KEY PROPOSALS FOR CONSULTATION

## Introduction

This Discussion Paper has been prepared by the SA Office of Local Government and the Local Government Association of SA for the purpose of promoting discussion and ideas on the reform of the “Conflict of Interest” provisions of the *Local Government Act 1999*. The Discussion Paper is based on equivalent provisions in the Queensland *Local Government Act 2009* and comments are sought on whether:

- The approach contained in the Queensland Act is broadly appropriate for application in South Australia; and, if so,
- The provisions should be amended or adapted for South Australian conditions.

However, the proposals contained in the Discussion Paper do not have the formal endorsement of the Minister for Local Government or the Local Government Association of SA.

Consultation on this Discussion Paper will inform the preparation of a Local Government Act Amendment Bill for the Minister for Local Government in 2015. Submissions may wish to state whether the proposal is supported in full, not supported, or supported with amendments.

## Proposal 1 - The need for change

Reform of the “Conflict of Interest” provisions of the South Australian Local Government Act is required because of:

- Significant difficulties and confusion for council members in interpreting the current provisions of the Act regarding conflict of interest;
- Differing legal opinions on the interpretation of this part of the Act, including a recent District Court judgement;
- Repeated calls by the SA Ombudsman for the Act to be amended to improve transparency and greater disclosure of actual and potential conflicts of interest; and,
- The fact that the provisions have not been reviewed since 1999, and are out of step with contemporary public policy, and community expectations of public integrity.

## Proposal 2 - Importance of the “Public Interest”

This Discussion Paper is based on the fundamental principle that council members must always consider the public interest in any decisions or actions taken in their role as a council member. The private interests of the member must never prevail over the public interest.

### **Proposal 3 - Two Categories of “Interest”**

The proposed framework distinguishes between two major categories of council members’ personal interests: “**Material Personal Interest**” and “**Conflict of Interest**”.

#### **3.1 Material Personal interest**

This category of personal interest applies to more significant matters which require the council members to not only disclose the interest, but also to leave the council meeting room and not participate in debate or vote on the matter. Material personal interests relate to benefits or losses to the council member or related person or entity. Failure to disclose a material personal interest attracts a significant penalty (including a possible term of imprisonment).

#### **3.2 Conflict of Interest**

A conflict of interest (that is not a “material personal interest”) is a conflict between a council member’s personal interests and the public interest that might lead to a decision that is contrary to the public interest. A conflict of interest can be a **real conflict of interest** or a **perceived conflict of interest**. Conflicts of interest must be declared and recorded, but do not necessarily require the council member to leave the meeting and abstain from voting on the matter.

##### 3.2.1 Real conflict of interest

A *real conflict of interest* exists when the council member knows that she or he has a conflict of interest in the matter to be dealt with at the council meeting.

##### 3.2.2 Perceived conflict of interest

A perceived conflict of interest exists when an impartial, fair minded person (who knew nothing about the council member’s character or reputation) could form a reasonable opinion that the council member’s possible interest in the matter could influence the manner in which he or she would participate in the debate and/or vote on the matter. Regardless of the council member’s own views and knowledge, he or she is still required to consider if an impartial person could form a reasonable opinion that a conflict could exist.

### **Proposal 4 - Actions to be Taken by the Council Member**

In the case of a material personal interest, the council member must declare the interest, leave the meeting room and not participate in the meeting for the duration of that agenda item. The council member has no discretion.

In the case of a conflict of interest (real or perceived), the council member must disclose the interest, but is not necessarily required to leave the meeting. However, the council member must provide reasons if they choose to remain in the meeting and participate in the vote on the item, and these reasons must be recorded in the minutes of the meeting. Non-participation in the meeting is not the only way the councillor may appropriately deal with the real or perceived conflict of interest in a transparent and accountable way.

### **Proposal 5 - Ordinary Business Matters**

Council members should be able to fully participate, debate and vote on matters that are the statutory obligations of councils and form the basis of ongoing council operations. In the proposed framework, a council member does not have a material personal interest or a conflict of interest if the topic before the council meeting is an **Ordinary Business Matter** for the council. It is proposed that “ordinary business matters” will be prescribed in the Act and/or Regulations.

### **Proposal 6 - Other Exclusions**

A number of other exclusions for the requirement to declare a material personal interest or a conflict of interest are proposed and are set out in sections (4) and (5) of this Discussion Paper. More flexibility is provided for a conflict of interest than for a material personal interest.

### **Summary: Comparison with Current SA Provisions**

The South Australian legislation has only one category of interests that includes both material personal interests and real conflicts of interest and only one course of action for the council member after disclosure, that is, non-participation in that part of the meeting. This means that there is no explicit requirement in South Australia for members to disclose “perceived conflicts of interest”.

The key differences in the proposed model compared to the current situation are the separate categories of ‘personal interest’. The more significant material personal interests are subject to strict and deliberately inflexible procedures (notably non-participation in the meeting) and serious penalties as is currently the case for all matters in SA. This strict and inflexible approach current applies to almost all disclosures of interest in SA, that is, a “one size fits all” approach.

The proposed new approach would establish a second category of personal interest known as conflicts of interest which would still require disclosure and recording but leave open to the council member a range of options to manage the disclosed conflict, including participation in the meeting. The final key difference is that the proposed framework explicitly includes the concept of perceived conflict of interest in the second category of personal interests.

## 1. BACKGROUND

In South Australia, the *Local Government Act 1999* (the Act) establishes the legal framework governing the roles, duties and conduct of members of councils. In particular, Chapter 5, Part 4, Division 3 of the Act, titled *Conflict of Interest*, is the principal focus of this Discussion Paper.

While some parts of the Act have been subject to significant reform since 1999, this part has not. Also, since 1999, the public expectations and scrutiny, of councils generally, and council members in particular, has grown significantly. The increased level of scrutiny and investigation of councils and council members by the South Australian Ombudsman's office provides tangible evidence of this trend<sup>1</sup>. The introduction of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act) signalled an even sharper focus on ethical behaviour for public officials, including council members and council employees.

The *Local Government Act 1999* was also amended in 2012 to introduce mandated Codes of Conduct for council members and employees to be published by the Minister. Prior to this, councils were required to have Codes of Conduct but the actual content of the Codes was at the discretion of each council.

The Local Government Association of SA (LGA) has also been active in the promotion of governance, ethical behaviour and accountability in local government through, for example:

- Publication of Guidelines, Model Codes and similar tools to assist council members and staff in the exercise of their responsibilities;
- Extensive training and development programs<sup>2</sup>;
- Establishment of the Local Government Governance Panel to assist councils in the management of allegations of breached of codes of conduct.

Against this background, it is appropriate to thoroughly review the *Conduct and Disclosure of Interest* provisions of the Act because these should state as clearly as possible a council member's principal duty to act in the **public interest** (see part 2 of this Discussion Paper).

In addition to the need to review the provisions to make them more accurately reflect contemporary public policy, there are also practical imperatives driving the consideration of reforms. These imperatives include:

- Significant difficulties and confusion for council members in interpreting the current provisions of the Act regarding **Conflict of Interest**<sup>3</sup>;
- Different legal opinions on the interpretation of this part of the Act;
- A District Court judgement that provided a particular legal interpretation on one aspect of the provisions;

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<sup>1</sup> Refer Ombudsman Annual Reports: <http://www.ombudsman.sa.gov.au/publications/annual-reports/>

<sup>2</sup> Noting that the amendments to the Act were passed in October in 2014 to make certain training and development topics mandatory for council members

<sup>3</sup> *Local Government Act 1999* Section 73, 74 and 75 of the Act

- Repeated calls by the SA Ombudsman for the Act to be amended to provide for **“Perceived” Conflicts of Interest**;
- For the most part, the current provisions provide for only one outcome for the disclosure of a conflict, that is, the council member must leave the council meeting room and not vote on the matter. It can be argued that this is too onerous for conflicts that are minor, but which nevertheless should be disclosed and recorded for the public interest;
- Confusion about the application of the exclusion clauses in s73(1) of the Act, regarding interests shared in common with a “... substantial proportion of ratepayers, electors or residents ...” or other “... substantial class of persons ...”;
- The current provisions allow unhelpful speculation about possible conflicts of interest from other council members and members of the public.

## 2. THE PUBLIC INTEREST

The fundamental role of council members is to serve and represent the interests of the community in their council area as a whole, rather than those of any particular section or interest group.

Council decisions are taken by the majority vote of council elected members at council meetings (including council committee meetings). The collective will and decision-making of the council is paramount and individual council members' views and responsibilities are secondary to the majority view of council.

In particular, council members need to be mindful of serving and representing the overall public interest when making decisions for the benefit of their communities. In the event of a conflict between the public and private interests of a council member and/or their associates or 'related persons', **the overall public interest must prevail.**

In order to reinforce this fundamental principle of public office, the *Local Government (Governance) Amendment Bill 2014* was passed in the Parliament on 28 October 2014 to enable the Minister for Local Government to make Regulations to stipulate the declaration to be made by council members pursuant to section 60 of the Act. The Regulation, made on 20 November 2014, states the required wording of the declaration:

*"I, [insert full name of member of the council], having been elected or appointed to the office of a member of [insert full name of council], undertake to faithfully and **impartially** fulfil the duties of office **in the public interest**, to the best of my **judgement** and abilities and **in accordance with the Local Government Act 1999.**"<sup>4</sup>*

In addition, section 8 of the Act outlines the Principles to be observed by a council. Some extracts from section 8 pertaining to the primacy of the public interest are included below:

*"A council must act to uphold and promote observance of the following principles in the performance of its roles and functions—*

*(a) provide open, responsive and accountable government;*

*(b) be responsive to the needs, interests and aspirations of individuals and groups within its community;...*

*(g) manage its operations and affairs in a manner that emphasises the importance of service to the community;...*

*(j) achieve and maintain standards of good public administration;..."*

These principles to be observed by councils as the body corporate are also binding on individual council members.

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<sup>4</sup> *Local Government (General) Regulations 2013: Schedule 1, Form 2*

In summary, this Discussion Paper is predicated on the acceptance of the fundamental principle that council members must always consider the public interest in any decisions or actions taken in their role as a council member. A democratically elected group of council members, by their nature, tend to have different backgrounds, experiences and belief systems that will influence the council members' contributions to the debates and decisions of the council. Regardless, the private interests of the member must never prevail over the public interest.

The Register of Interests to be completed by council members as required by Chapter 5, Part 4, Division 2 of the Act is an important part of the overall framework to protect the public interest. These registers are kept to enhance the transparency of councils' decision making so that the community can have confidence that decisions are being made in the overall public interest and are not made for the benefit of individual council members or any related persons.

### 3. THE PROPOSED FRAMEWORK - OVERVIEW

The proposed framework for the reform of the *Conflict of Interest* provisions of the Act aims to distinguish between two major categories of council members' personal interests, largely based on the Queensland legislative model. A subtle but important change of language (see underlined words below) is used to describe the two categories of interest:

#### 3.1 Material personal Interest

This category of personal interest applies to more significant matters which require the council members to not only disclose the interest, but also to leave the council meeting room and not participate in debate or vote on the matter. Material personal interests relate to benefits or losses to the council member or related person or entity. See section 4 of this paper for details. Failure to disclose a material personal interest attracts a significant penalty (including a possible term of imprisonment for a maximum period of two years).

#### 3.2 Conflict of Interest

This is the generic term used in the Queensland legislation to describe council members' interests which require disclosure, but do not **necessarily** require the member to leave the room and not participate in debate. A conflict of interest can be "real" (although obviously not a material personal interest as above) or "perceived". See section 5 of this paper for definitions and details. There are significant disclosure requirements on the member and the council including a requirement for a record in the Minutes on the member's reasons and the member's vote on the item (if relevant). There are no separate or specific penalties listed for failure to disclose a conflict of interest in this category. The Queensland legislation also contains this 'saving clause':

*"To remove any doubt, it is declared that non-participation in the meeting is not the only way the councillor may appropriately deal with the real or perceived conflict of interest in a transparent and accountable way."<sup>5</sup>*

#### 3.3 Comparison with Current SA Provisions

The South Australian legislation has only one category of interests that includes both material personal interests and real conflicts of interest (as defined in Queensland) and only one course of action for the council member after disclosure<sup>6</sup>, that is, non-participation in that part of the meeting. There is no explicit requirement in South Australia for members to disclose "perceived conflicts of interest".

As stated earlier, in the current South Australian scenario, council members who are uncertain about whether they may have a conflict often exercise caution, disclose a conflict and leave the room for minor matters. This is reinforced in guidance material provided to council members and the often used adage "... if in doubt, get out!"

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<sup>5</sup> (Queensland) *Local Government Act 2009*: section 173(10)

<sup>6</sup> Note: there are some minor exclusions to this general rule: *Local Government Act 1999* section 74(4b)

In summary the key differences in the proposed framework compared to the current situation are the separate categorisations of 'personal interest'. The more significant material personal interests are subject to the strict and deliberately inflexible procedures (notably non-participation in the meeting) and serious penalties. This strict and inflexible approach current applies to almost all disclosures of interest in SA, that is, a "one size fits all" approach.

The proposed new approach would establish a second category of personal interest known as conflicts of interest which would still require disclosure and recording but leave open to the council member a range of options to manage the disclosed conflict, including participation in the meeting. The disclosure and transparency requirements for conflicts of interest can be significant because the council member has to provide reasons if they wish to continue to participate in the meeting and the voting details must also be recorded in the Minutes. The final key difference is that the proposed framework explicitly includes the concept of perceived conflict of interest in the second category of personal interests.

### 3.4 Ordinary Business Matters Exclusion

Regardless of how it is worded in different legislation, it is clearly the policy intention that council members should be able to fully participate, debate and vote on matters that are the statutory obligations of councils and form the basis of ongoing council operations. The most obvious example of this is the council's annual cycle of approving annual budgets and general rates. It must be recognised that a council member may experience a "loss" as an individual (if they are a ratepayer for the area) if the council makes a decision that results in the council member being liable for higher rates. However, it is clearly inappropriate that the council member be required to disclose an interest in this decision about general rates that impact on all ratepayers.

In South Australia, the Act deals with this issue in what can be argued is a relatively clumsy way. The following separate provisions are relevant in this context:

- Section 73(1) states that the council member does **not** have an interest if a benefit or detriment meets the following condition:

*"(not being a benefit or detriment that would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the area or a ward or some other substantial class of persons)."*

- Section 74(4a)(a) relieves a council member from disclosing an interest and taking any subsequent action in the following circumstances:

*"(i) to questions relating to allowances or benefits that a council is empowered to pay to, or confer on, members, their spouses, domestic partners or members of their families; or*

*(ii) to matters of a class exempted by regulation from the provisions of those subsections; or*

*(iii) to matters in relation to which the Minister has granted an exemption from the provisions of those subsections;"*

In the proposed framework, this issue is dealt with in a much more direct and unambiguous way. In short, a council member does not have a material personal interest or a conflict of interest if the topic before the council meeting is an **Ordinary Business Matter** for the council<sup>7</sup>.

“Ordinary Business Matter” is defined as follows:

**“ordinary business matter means—**

- (a) the remuneration of councillors or members of a local government committee; or*
- (b) the provision of superannuation entitlements or accident insurance for councillors or local government employees; or*
- (c) the terms on which goods, services or facilities are to be offered by the local government for use or enjoyment of the public in the local government area; or*
- (d) the making or levying of rates and charges, or the fixing of a cost-recovery fee, by the local government; or*
- (e) a planning scheme, or amendment of a planning scheme, for the local government area; or*
- (f) a resolution required for the adoption of a budget for the local government; or*
- (g) a matter that is of interest to a person merely as—*
  - (i) an employee of the State or a government entity; or*
  - (ii) an elector, ratepayer or resident of the local government area; or*
  - (iii) a beneficiary under a policy of accident insurance, public liability or professional indemnity insurance held, or to be held, by the local government; or*
  - (iv) a user of goods, services or facilities supplied, or to be supplied, by the local government (whether under a contract or otherwise) as a member of the public in common with other members of the public; or*
  - (v) a candidate for election or appointment as a mayor, deputy mayor or member of a committee of the local government; or*
  - (vi) a member of a non-profit, charitable or religious organisation involving no personal financial gain or loss to the person.”<sup>8</sup>*

The definition of “Ordinary Business Decision” would need to be adapted to meet the requirements of the legislative requirements and other conditions for the South Australian Local Government sector.

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<sup>7</sup> (Queensland) *Local Government Act 2009*: sections 172(1)(b) and 173(1)(b)

<sup>8</sup> (Queensland) *Local Government Act 2009*: Schedule 4: Dictionary pp271-2

## 4. MATERIAL PERSONAL INTEREST

The proposals in this section of the Discussion Paper are based on section 172 of the Queensland *Local Government Act 1999*. The Material Personal Interest provisions of the Queensland Act resemble the current “Conflict of Interest” provisions of the South Australian Act<sup>9</sup> and cover the higher threshold matters and sanctions. Section 5 of this paper discusses the provisions for lower threshold matters that exist in the Queensland Act.

The Material Personal Interest requirements specifically apply to all council meetings and council committee meetings, unless the exclusions in 4.2 apply.

### 4.1 Definition of “Material Personal Interest”

A council member has a **material personal interest** in the matter if any of the following persons stands to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of the consideration of the matter at the meeting:

- the council member;
- a spouse of the council member;
- a parent, child or sibling of the council member;
- a partner of the council member;
- an employer (other than a government entity) of the council member;
- an entity (other than a government entity) of which the council member is a member;
- another person prescribed under a regulation.

The use of the words “Material” and “Personal” is considered significant to bring focus to the more serious interests, rather than the more generic term, “conflict of interest” used in South Australia. While the word “Material” is not defined in the Queensland legislation, its dictionary meaning<sup>10</sup> provides a clear indication that it relates to matters of substance, not trivia.

### 4.2 Exclusions

The Material Personal Interest provisions do not apply in the following circumstances:

- The matter to be discussed is an **ordinary business matter** for the council (see 3.4 above).
- The council member has no greater personal interest in the matter than that of other persons in the local government area.
- The definition that relates to “parents, children or siblings” only applies to a council member if the council member knows, or ought reasonably to know, that their parent, child or sibling stands to gain a benefit or suffer a loss.

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<sup>9</sup> Sections 73 - 75

<sup>10</sup> “of substantial import or much consequence”: Macquarie Concise Dictionary: Third Edition

- Written approval is provided by the Minister, including any conditions specified in that approval.<sup>11</sup>

#### **4.3 What the Council Member Must Do**

If a council member has a material personal interest in a matter under 4.1 and the exclusions under 4.2 do not apply, the council member must:

- inform the meeting of their material personal interest in the matter; and
- leave the meeting room (including any area set aside for the public), and stay out of the meeting room while the matter is being discussed and voted on.

#### **4.4 Penalties**

Two penalty thresholds are proposed if a councillor fails to take the necessary action under section 4.3:

- A more severe maximum penalty (significant fine or imprisonment) if the council member votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or someone else defined in 4.1 above.
- A less severe fine for any other breach of the section.

#### **4.5 Recording Requirements**

The following information must be recorded in the minutes of the meeting, and on the council's website:

- the name of the council member who has the material personal interest, or possible material personal interest, in a matter;
- the nature of the material personal interest, or possible material personal interest, as described by the council member; and
- whether the councillor took part in the meeting, or was in the chamber during the meeting, with the written approval of the Minister (refer 4.2 above).

#### **4.6 Interpretation of the Word “Matter”**

Both the Queensland and current South Australian legislation use the word “matter” to identify the particular aspect of business that may give rise to a material personal interest.

A recent judgement in the South Australian District Court found that the word “matter” was to be interpreted narrowly so that the council member’s benefit or detriment had to be attached only to the specific item of business at the particular meeting where the matter was discussed (and not some subsequent action or resolution of the council related to the “matter”). Please refer to the citation in the footnote to access the full judgement.

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<sup>11</sup> The Queensland Act cites possible ground for Ministerial approval being:

- the number of council members caught by the provision might “obstruct the conduct of the meeting”; and/or
- it appears to the Minister to “be in the interests of the local government area” to grant the approval

It is proposed to seek legal advice on whether or not consideration should be given to amending the Act in the light of this judgement and/or whether the proposed inclusion of a category of **perceived conflict of interest** (see section 5) might adequately deal with the issues raised in the case.

## 5. CONFLICT OF INTEREST

The second part of the Queensland scheme, also proposed for adaptation to South Australia, is set out in section 173 of the Queensland Act and is termed “Conflict of Interest”. The Conflict of Interest requirements specifically apply to all council meetings and council committee meetings, unless the exclusions in 5.2 apply. In contrast to Material Personal Interests dealt with in section 4, this category of interest includes the lower threshold matters.

### 5.1 Definitions

A **conflict of interest** is a conflict between a council member’s personal interests and the public interest that might lead to a decision that is contrary to the public interest.

A conflict of interest can be a **real conflict of interest** or a **perceived conflict of interest**.

A *real conflict of interest* exists when the council member knows that she or he has a conflict of interest in the matter to be dealt with at the council meeting.

A *perceived conflict of interest* exists when the council member could reasonably be taken to have a conflict of interest in the manner. Put another way, the council member is required to consider **whether an impartial, fair minded person** (who knew nothing about the council member’s character or reputation) **could form a reasonable opinion** that the council member’s possible interest in the matter could influence the manner in which he or she would participate in the debate and/or vote on the matter. Note the bolded words in this paragraph regarding *perceived conflict of interest*. Regardless of the council member’s own views and knowledge, he or she is still required to consider if an impartial person could form a reasonable opinion that a conflict could exist.

Because *conflict of interest* does not include *material personal interests* (as this must be dealt with under the strict rules summarised in section 4), there is no specific reference to relatives, business partners, employers etc in relation to conflict of interest. However, these associations would still need to be taken into account by the council member when determining if they had a real or perceived conflict of interest in a matter.

### 5.2 Exclusions

The conflict of interest provisions do not apply in the following circumstances:

- The matter to be discussed is an ordinary business matter for the council (see 3.4 above);
- A conflict of interest does not necessarily arise merely because of:
  - an engagement with a community group, sporting club or similar organisation undertaken by the council member in his or her capacity as a council member; or
  - membership of a political party; or

- membership of a community group, sporting club or similar organisation if the council member is not an office holder for the group, club or organisation; or
- the councillor's religious beliefs; or
- the council member having been a student of a particular school or the councillor's involvement with a school as parent of a student at the school; or
- A conflict of interest does not arise if the council member has no greater personal interest in the matter than that of other persons in the local government area;
- A council member who is nominated by a council to be a member of a board of a corporation or other association does not have a personal interest merely because of the nomination or subsequent appointment as the member.

### 5.3 What the Council Member Must Do

If a council member has a conflict of interest in a matter under 5.1 and the exclusions under 5.2 do not apply, the minimum requirements are that the council member must inform the meeting of:

- the council member's personal interest in the matter; and,
- **if the council member participates in the meeting** in relation to the matter, how the council member intends to deal with the real or perceived conflict of interest. For example, the council member could:
  - make a personal statement; and/or
  - remain in the meeting and vote on the matter; or
  - remain in the meeting but leave before the vote is taken on the matter;

**Note:** It is also still open to the council member to declare the conflict of interest, leave the room and not vote on the matter, if the member believes this is the most appropriate mechanism to manage the conflict.

### 5.4 Penalties

There are no **separate or specific penalties** for a breach of this part in the Queensland legislation.

If this model is adopted in SA, any alleged breach of the conflict of interest provisions would be considered as an alleged breach of the "general duties"<sup>12</sup> of a council member and/or an alleged breach of the council members' code of conduct<sup>13</sup> under Chapter 5, Part 4, Division 1 of the Act.

Such allegations must be investigated by the Ombudsman<sup>14</sup> who may make recommendations to the council about appropriate "penalties"<sup>15</sup> for the council member(s) where allegations are substantiated by the Ombudsman's investigation.

<sup>12</sup> Section 62 of the SA Act

<sup>13</sup> Section 63 of the SA Act

<sup>14</sup> Section 263A of the SA Act

<sup>15</sup> Section 263B(1) of the SA Act.

In the more serious cases this can include the laying of a complaint about the council member in the District Court which could result in penalties including fines, suspension from office and disqualification<sup>16</sup>.

## **5.5 Recording Requirements**

If a council member discloses a real or perceived conflict of interest, the following information must be recorded in the minutes of the meeting and on the council's website:

- the name of the council member who has the real or perceived conflict of interest;
- the nature of the personal interest, as described by the council member;
- how the council member dealt with the real or perceived conflict of interest;
- if the council member voted on the matter, how she or he voted;
- how the majority of persons who were entitled to vote at the meeting voted on the matter.

## **5.6 Transparency versus non-participation**

As stated in section 3.2 of this Discussion Paper, the proposed model places a much greater emphasis on the disclosure and recording of real and perceived conflicts of interest, including the public recording of the council members management of their interest and the way they voted on the matter. This is reinforced by the following clause from the Queensland legislation:

*“To remove any doubt, it is declared that non-participation in the meeting is not the only way the councillor may appropriately deal with the real or perceived conflict of interest in a transparent and accountable way”.*<sup>17</sup>

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<sup>16</sup> Section 267 of the SA Act

<sup>17</sup> Section 173(10) Queensland Act