

Councillor Conduct Tribunal decision

6 February 2020

Key issue – Register of interests

The meaning and purpose of Item 17 on the approved form

A first-time councillor who was elected in 2016 had begun a relationship with a local business owner prior to taking office and was involved in various aspects of the business. This involvement continued after he was elected and included marketing of the business by the councillor himself.

On 5 May 2016 the councillor submitted his first Form 2 *Register of Interests as a Councillor*, which did not disclose any interest in his partner's business.

However, in July and October 2017 the councillor declared a material personal interest and left the room when a material change of use application relating to the business came before council.

In July 2018 the councillor bought the business from his then former partner and in August 2018 he updated his register of interests to reflect the purchase.

In a matter before the Councillor Conduct Tribunal (tribunal) it was alleged the councillor failed to record a financial or non-financial interest in his partner's business on his register of interests from the time he was elected in 2016 through to his purchase of the business in 2018. It was alleged the councillor's failure to make such disclosures contravened section 171B of the *Local Government Act 2009* (the Act), and that the details of this interest should have been captured in Item 17 of the approved form.

Section 171B of the Act places an obligation on councillors to record certain interests, and to update the approved form within 30 days should a change occur or a new interest arise.

At Item 17 of the approved form a councillor is required to report a "financial or non-financial interest of which the councillor is aware and which raises, appears to raise or could raise a conflict between the councillor's duty under the Act and the holder of the interest".

In this case, the councillor argued that his involvement in the business was gratuitous and, as no benefit was received by him, he did not consider that he was the holder of an "interest" within the meaning of Item 17.

However, the tribunal found:

- (1) the activities engaged in by the councillor directed towards the promotion, advancement and operation of the business were capable of constituting a non-financial interest in the business. Proof of a benefit in this context was not necessary.
- (2) The councillor's non-financial interest raised or appeared to raise or could raise a conflict with his duty under the Act.

- (3) Being aware of both the non-financial interest and his personal relationship with the business owner, the councillor was obligated to complete a register of interests form that included the particulars of his interest at Item 17 within 30 days from the commencement of his 2016 term in office.

In relation to the scope of Item 17 the tribunal noted:

The intended meaning of the word “interest” in schedule 5 section 17 means all other financial or non-financial interest that are not captured by the descriptions of the specific categories of interests contained in schedule 5 sections 2-26 and includes those interests of which the councillor is aware and that could raise or appear to raise a conflict between the councillor’s duty under the Act and the interest.

In relation to the legislative intent of register of interest provisions more generally, the tribunal noted:

The intention of the legislature in creating a register of interests is to promote transparency in governance and decision-making from the commencement of the councillor’s term of office...

The relevant provisions form part of a comprehensive legislative scheme requiring disclosures by councillors of relationships and personal interests by the provision of accurate and publicly available registers of interests; for the purpose of compliance with the requirements relating to conflicts of interests at meetings, and for the purpose of transparent decision-making.

The legislative intention of such provisions as to updating registers of interests has been held to be to provide “a means of identification of failures by members to disclose interests at meetings and recuse themselves from consideration of a matter in which they were interested ”.¹

Councillor Conduct Tribunal decisions can be found [here](#).

¹ Scaffidi v Chief executive Officer, Department of Local Government and Communities [2017] WASCA 222