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5 December 2014

Revd the Hon Fred Nile MLC
Committee Chairman
Legislative Council Committee on the Planning Process on Newcastle
and the Broader Hunter Region
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Dear Committee Chairman,

Reference is made to the request by the Committee to Council's Lord Mayor, Cr Nuatali Nelmes, at the Committee hearing held on Friday, 21 November 2014, for Council to provide a copy of the previous Lord Mayor's Pecuniary Interest Return for the year ended 30 June 2013.

Attached, for your information, is a copy of the NSW Information and Privacy Commission's (IPC) Guideline 1: For local councils on the disclosure of information contained in returns disclosing the interests of councillors and designated persons under the Government Information (Public Access) Act 2009 (NSW) (GIPA Act) dated July 2010. The Committee's specific attention is drawn to pages 3 and 4 of the Guideline which relevantly states that:

"the returns contain a significant amount of sensitive, personal information about the person concerned, and about third parties such as family members, business associates and creditors, that people are entitled to protect. Disclosing the information on a website could cut across this right, and could potentially expose a person to harassment, intimidation, or serious harm or identity theft...."

- *Local councils should note clearly on their website that the returns are available for inspection at council offices during ordinary business hours.*
- *Information contained in the returns should **not** be placed on the website of a local council." [Emphasis added]*

In the present circumstances of the Committee's request, Council is mindful of its obligations under the GIPA Act and the Privacy and Personal Information Act 1998 (NSW) and requests, in order to facilitate a copy of the requested return being supplied to the Committee, that the Committee should first approach Mr Jeff McCloy to obtain his written consent to a copy of his Pecuniary Interest Return being released for supply by Council to the Committee.

Subject to Mr McCloy's written consent being obtained and a copy provided to Council, it is also requested that the Committee agree that it will not publish a copy of the return on the Committee's website and that the Committee shall keep the return confidential for the very same reasons why the IPC recommends that Council not publish a copy of the return on Council's own website.

Alternatively, Committee Officers may inspect the former Lord Mayor's Pecuniary Interest Return at Council's office.

Yours sincerely

Frank Giordano
Manager Council & Legal Services

- ✓ **Attachment:** IPC Guideline 1: For local councils on the disclose of information contained in the returns disclosing the interests of councillors and designated persons developed under the Government Information (Public Access) Act 2009 (NSW) July 2010.



information
and privacy
commission
new south wales

Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the *Government Information (Public Access) Act 2009 (NSW)*

July 2010

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The Information Commissioner is empowered under sections 12(3) and 14(3) of the *Government Information (Public Access) Act 2009 NSW* ("GIPA Act") to issue guidelines to assist agencies regarding the public interests in favour of, or against, disclosure.

These Guidelines, made pursuant to those sections of the GIPA Act, are made to assist local councils to determine the public interest considerations for and against disclosure of information contained in the returns disclosing the interests of councillors and designated persons as required by Schedule 1, clause [1](2)(a) of the *Government Information (Public Access) Regulation 2009* (NSW) ('the GIPA Regulation').

These Guidelines supplement the provisions of the GIPA Act. Agencies must have regard to them in accordance with section 15(b) of the GIPA Act.

The Guidelines have been developed in consultation with the Division of Local Government, the Local Government Shires Association, the Local Government Managers Australia (NSW), union representatives and Privacy NSW. The operation and effectiveness of the Guidelines will be reviewed after twelve months.

Deirdre O'Donnell

Information Commissioner

1 July 2010

Overview

Section 449 of the *Local Government Act 1993* (NSW) ('the LGA') requires a councillor or a designated person to complete and lodge with the general manager, a return disclosing his or her pecuniary interests. That return contains personal information about each councillor and designated person, including his or her name, address and signature, as well as information about property and share holdings, gifts received, debts owed, other sources of income, and positions held in a trade union or business or professional organisation.

Before the commencement of the *Government Information (Public Access) Act 2009* (NSW) ('the GIPA Act'), section 12 of the LGA required that the returns be made available for public inspection free of charge. Most councils complied with this provision by having the returns available for inspection at council offices.

The GIPA Act repeals section 12 of the LGA on 1 July 2010. In its place, the mandatory proactive release provisions in the GIPA Act and the *Government Information (Public Access) Regulation 2009* (NSW) ('the GIPA Regulation') now apply to disclosure of information contained in the returns disclosing the interests of councillors and designated persons. The combined effect of the GIPA Act and the GIPA Regulation is that the information in the returns would need to be disclosed on the website of each local council, unless to do so would impose unreasonable costs on the council, or if the council determined there was an overriding public interest against disclosing the information.

In order to decide whether there is an overriding public interest against disclosure, councils would need to apply the public interest test, and weigh the considerations in favour of release against those that favour non-disclosure.

Under sections 12(3) and 14(3) of the GIPA Act, the Information Commissioner may make guidelines to assist agencies regarding the public interest considerations in favour of, or against, disclosure of information. These Guidelines are made under those sections to assist councils to determine how to disclose information in the returns in a way that promotes the public interest. Agencies are required to have regard to these Guidelines in accordance with section 15(b) of the GIPA Act.

The Guidelines recognise that disclosing the information in the returns furthers openness, transparency and accountability in local government. It also helps to flag potential conflicts of interests that might arise where councillors and other senior staff participate in decisions from which they may derive, or be perceived to derive, personal or financial benefit. However, the returns contain a significant amount of sensitive, personal information about the person concerned, and about third parties such as family members, business associates and creditors, that people are entitled to protect. Disclosing the information on a website could cut across this right, and could potentially expose a person to harassment, intimidation, or serious harm or identity theft.

Consequently, these Guidelines provide that the requirement in Sch 1, 2(a) of the GIPA Regulation that returns of councillors and designated persons be released as part of local councils' open access information should be interpreted as follows:

- The returns should be made publicly available for inspection free of charge
- Copies may be made in accordance with the GIPA Regulation Part 2 [4](b)

- Local councils should note clearly on their website that the returns are available for inspection at council offices during ordinary business hours
- Information contained in the returns should not be placed on the website of a local council

Releasing the information contained in the returns of councillors and designated persons in this manner facilitates the legitimate public interest in having access to the information, while protecting the individual's right to privacy and safety.

Part 1: Returns disclosing the interests of councillors and designated persons

What is a return?

- 1.1 Section 449 of the LGA states that a councillor or a designated person must complete and lodge with the general manager, within 3 months after becoming a councillor or designated person, a return disclosing:
- his or her pecuniary interests (see Appendix A). A designated person is defined in section 441 as:
 - the general manager
 - other senior staff of the council
 - any other staff member or delegate of the council who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under the LGA or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest
 - any other person who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions under the LGA or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.
- 1.2 Section 442 of the LGA defines a pecuniary interest as one involving a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind not required to be disclosed under section 448 of the LGA.
- 1.3 For the purposes of the LGA, a pecuniary interest is one held by the councillor and designated person, or his or her spouse, de facto partner, relative, partner or employer, or a company or other body of which the person, or a nominee, partner or employer of the person, is a member. However, a person is not taken to have a pecuniary interest in a matter:
- if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body; or
 - just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown; or
 - just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body (see section 443 LGA).

- 1.4 The returns are designed to promote openness and transparency in local government, and to avoid a conflict of interest on the part of councillors and senior council staff who exercise decision-making functions.

What information do the returns contain?

- 1.5 The Local Government (General) Regulation 2005 (NSW) Part 8 Division 1 states that returns must contain details about the following information:

- the address of each parcel of real property in which the person has an interest, and the nature of the interest;
- particulars of each disposition of real property by, or in arrangement with, the person under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property;
- a description of gifts received exceeding \$500 in value (including gifts of a lesser amount that total \$500 or more, made by the same donor within a 12 month period) and the name and address of the donor, unless the donor was a relative or the gift is a political donation required to be disclosed under the *Election Funding and Disclosures Act 1981* (NSW);
- the name and address of each person making a financial or other contribution to the councillor's or designated person's travel expenses, listing the dates and places of travel;
- the name, address and principal objects of each corporation in which the person has an interest or holds a position, whether remunerated or not, including the nature of the interest or the position held, subject to certain exceptions;
- the name of each trade union and professional or business association in which the person holds a position, whether remunerated or not, and a description of the position held;
- details of each source of income exceeding, or expected to exceed \$500, that the councillor or designated person reasonably expects to receive during the period covered by the return, including details of:
 - any occupation, and the name and address of the employer;
 - any partnership arrangements the person has entered into;
 - in relation to income generated from trusts, the name and address of the settlor and the trustee;
 - in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received;
- the name and address of each person to whom the councillor or designated person is liable to pay any debt in excess of \$500 for the return period, unless the debt is owed to a relative, or to an authorised deposit-taking institution lent in the normal course of business; or
- any other benefit, interest, advantage or liability whether pecuniary or not, that the person chooses to disclose (see Appendix A).

Disclosure under the LGA

- 1.6 Section 12 of the LGA required the current version of the return of interests of councillors and designated persons to be made available for public inspection free of charge. Most councils complied with this provision by having the returns available for inspection at council offices, and allow copies to be made.
- 1.7 The GIPA Act repealed section 12 and replaces it with the mandatory proactive disclosure provisions in sections 6 and 18 of the GIPA Act, and the GIPA Regulation (see Part 2).

Privacy protection under the LGA

- 1.8 Under section 739 of the LGA, a person may make a request to the general manager that any material that is available (or is to be made available) for public inspection by or under the Act be prepared or amended so as to omit or remove any matter that would disclose or discloses the person's place of living if the person considers that the disclosure would place or places the personal safety of the person or of members of the person's family at risk.
- 1.9 Section 739 is unaffected by the GIPA Act.

Part 2: Disclosure requirements under the GIPA Act and the public interest test

Mandatory disclosure requirements

- 2.1 Section 6 of the GIPA Act requires agencies to make certain information publicly available. This information is known as open access information. Section 18 contains a list of the open access information that all agencies must make publicly available. Further, Schedule 1 to the GIPA Regulation lists additional open access information relevant only to local councils. This includes the returns of the interests of councillors and designated persons (see Sch 1, 2(a)).
- 2.2 The GIPA Act states in section 6 that open access material must be made publicly available unless there is an overriding public interest against disclosure. Section 6(2) provides that the information is to be made publicly available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) and can be made publicly available in any other way that the agency considers appropriate. Part 2 [4](b) of the GIPA Regulation also provides that local councils must provide a copy of a record containing the information (or providing the facilities for making a copy of a record containing the information) to any person either free of charge or for a charge not exceeding the reasonable cost of photocopying.
- 2.3 The combined effect of these provisions is that information in the returns of the interests of councillors and designated persons would need to be made available on a council's website, unless there is an overriding public interest against such disclosure, or if placing it on the web would impose unreasonable costs on a council.

The public interest test

- 2.4 In order to determine if there is an overriding public interest against disclosing information in the returns of the interests of councillors and designated persons, councils need to apply the public interest test (see Appendix B for the provisions of the GIPA Act that relate to the public interest test).
- 2.5 The public interest test involves weighing the considerations in favour of disclosure against those in favour of non-disclosure. While section 12 states that any number of factors may be considered in favour of disclosing information, only those considerations listed in the Table in section 14 may be taken into account in deciding that information should not be disclosed. The considerations against disclosure must be such that they outweigh those in favour, overturning the general presumption in the GIPA Act in favour of disclosure (see section 5).
- 2.6 Under section 15(b) of the GIPA Act, agencies must have regard to any relevant guidelines issued by the Information Commissioner in determining whether there is an overriding public interest against disclosure. The public interest considerations for and against disclosing information contained in the returns of the interests of councillors and designated persons, and the Information Commissioner's view on how they information should be disclosed, are outlined in Part 3.

Part 3: How the information on returns should be disclosed

Public interest considerations in favour of disclosure

3.1 The 2008 Guidelines for the Model Code of Conduct for local councils provide as follows:

- The possibility of conflict between public duty and private interest is an ever-present risk for council officials. Sometimes, by virtue of their official status, position, functions or duties, council officials have the power to make decisions or act in ways that can further their own private interests. This may cause a real or perceived conflict between council officials' private interests and their public duty.
- As a general principle, no person should obtain a private benefit or advantage by virtue of their position as a council official. Additionally, no public official should misuse the power of authority of their position to unfairly influence or decide a matter where they have a real or perceived private interest (see para 4.2A).

3.2 Section 12 of the GIPA Act contains a number of factors that favour disclosure of information, including the following:

- Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance
- Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds
- Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.

3.3 Disclosure of the returns of the interests of councillors and designated persons promotes all of these public interest considerations. It furthers openness, transparency and accountability in local government. Disclosing the returns also protects the integrity of councils' decision-making processes by flagging potential conflicts of interests that would arise where councillors and other senior staff participate in decisions from which they may derive, or be perceived to derive, personal or financial benefit.

3.4 To assist members of the public to have confidence that potential conflicts of interest are avoided, they should have sufficient information about the areas of conflict. In this respect, disclosure of the information contained in the returns is an important element in promoting public accountability.

Public interest considerations against disclosure

3.5 Councillors and designated persons are required to disclose a significant amount of sensitive personal information in the returns. In addition to their names and addresses, the returns include details about each of their property and share holdings, debts and family business interests, as well as their signatures.

- 3.6 Section 14 of the GIPA Act lists as a consideration against disclosure the fact that information may reveal someone's personal information, or would contravene an information privacy principle under the *Privacy and Personal Information Protection Act 1998* (NSW). An individual has a right to protect the privacy of their personal information. Given the amount of information contained in the returns, its sensitive nature and the potential for misuse, special care should be taken to protecting this right.
- 3.7 A further consideration against disclosure listed in section 14 is where release of the information may expose a person to a risk of harm or of serious harassment or serious intimidation. It is foreseeable that disclosing the type and combination of information contained in the returns on a website could result in harassment and intimidation, and potentially serious harm or identity theft.

Conclusion

- 3.8 Disclosure of information contained in the returns of the interests of councillors and designated persons is an important public accountability measure. However, disclosure of the information on a website does not sufficiently protect individual privacy and opens the potential for serious harassment or harm to occur.
- 3.9 Therefore, the requirement in Sch 1, 2(a) of the GIPA Regulation that returns of councillors and designated persons be released as part of local councils' open access information should be interpreted as follows:
- The returns should be made publicly available for inspection free of charge
 - Copies may be made in accordance with the GIPA Regulation Part 2 [4](b)
 - Local councils should note clearly on their website that the returns are available for inspection at council offices during ordinary business hours

Information contained in the returns should not be placed on the website of a local council.

- 3.10 The right of councillors and designated persons under section 739 of the LGA to ask that certain personal information be removed from the returns before they are made publicly available would remain unaffected. This is consistent with section 6(4) of the GIPA Act which states that agencies may delete matter contained in a record to facilitate disclosure of open access information if inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record, and it is practicable to delete the matter.
- 3.11 Releasing the information contained in the returns of councillors and designated persons in this manner facilitates the legitimate public interest in having access to the information, while protecting the individual's right to privacy and safety.

Appendix A

Local Government Act 1993 (NSW)

449 Returns disclosing interests of councillors and designated persons

- (1) A councillor or designated person must complete and lodge with the general manager, within 3 months after becoming a councillor or designated person, a return in the form prescribed by the regulations.

(1A) A person must not lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- (2) A person need not lodge a return within the 3-month period after becoming a councillor or designated person if the person lodged a return in that year or the previous year or if the person ceases to be a councillor or designated person within the 3-month period.
- (3) A councillor or designated person holding that position at 30 June in any year must complete and lodge with the general manager within 3 months after that date a return in the form prescribed by the regulations.
- (4) A person need not lodge a return within the 3-month period after 30 June in a year if the person lodged a return under subsection (1) within 3 months of 30 June in that year.
- (5) Nothing in this section prevents a councillor or designated person from lodging more than one return in any year.
- (6) Nothing in this section or the regulations requires a person to disclose in a return lodged under this section an interest of the person's spouse or de facto partner or a relative of the person.

739 Protection of privacy

- (1) A person may request that any material that is available (or is to be made available) for public inspection by or under this Act be prepared or amended so as to omit or remove any matter that would disclose or discloses the person's place of living if the person considers that the disclosure would place or places the personal safety of the person or of members of the person's family at risk.
- (2) A person who may make a request under this section includes a person who is entitled to be enrolled as an elector.
- (3) The request is to be made to the general manager or, in the case of the residential roll for an area, the Electoral Commissioner.
- (4) The request is to be in the form prescribed by the regulations, to give particulars of the relevant risk and to be verified by statutory declaration by the person making the request or by some other person.
- (5) The person to whom the request is made may grant the request if satisfied that disclosing or continuing to disclose the matter would place or places the personal safety of the person or of members of the person's family at risk.

- (6) The person to whom the request is made must notify the person concerned of the decision to grant or refuse the request.
- (7) The Electoral Commissioner must not include in the residential roll for an area the address of an elector whose request under this section is granted by the Electoral Commissioner.
- (8) The general manager, in relation to:
 - a) the non-residential roll and the roll of occupiers and rate paying lessees for the area; and
 - b) any other material that is available (or is to be made available) for public inspection by or under this Act;
 - c) must not include in the roll or other material the address of a person whose request under this section is granted by the general manager. However, in the case of material other than a roll, the general manager may include the address of a person if the name of the person is excluded from the material.

Local Government (General) Regulation 2005 (NSW)

Part 8 Honesty and disclosure of interests

Division 1 Preliminary

180 Definitions

In this Part and Schedule 3:

address means:

- (a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- (b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- (c) in relation to any real property, the postal address of the property or particulars of title of the property.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- (a) the allotment of shares in a company;
- (b) the creation of a trust in respect of property;
- (c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property;
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property;
- (e) the exercise by a person of a general power of appointment over property in favour of another person;

- (f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

gift means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

interest means:

- (a) in relation to property—an estate, interest, right or power, at law or in equity, in or over the property; or
- (b) in relation to a corporation—a relevant interest (within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth) in securities issued or made available by the corporation.

listed company means a company that is listed within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth.

occupation includes trade, profession and vocation.

professional or business association means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

property includes money.

travel includes accommodation incidental to a journey.

181 Return dates and periods

- (1) A reference in this Part or in Schedule 3 to the return date for a return made by a person under section 449 (1) of the Act is a reference to the date on which the person became the holder of a position required to make such a return.
- (2) A reference in this Part or in Schedule 3 to the return period for a return by a person under section 449(3) of the Act in a particular year is a reference to:
 - (a) if the last return made by the person was a return under section 449 (1) of the Act, the period commencing on the first day after the return date and ending on 30 June in that particular year; or
 - (b) if the last return made by a person was a return under section 449 (3) of the Act, the period commencing on the expiration of the period to which that return relates and ending on 30 June in that particular year.

182 Matters relating to the interests that must be included in returns

- (1) Interests etc outside New South Wales

A reference in this Part or in Schedule 3 to a disclosure concerning a corporation or other thing includes a reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.

(2) References to interests in real property

A reference in this Part or in Schedule 3 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.

(3) Gifts, loans etc from related corporations

For the purposes of this Part and Schedule 3, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

Division 2 Pecuniary interests to be disclosed in returns

183 Real property

(1) A person making a return under section 449 (1) of the Act must disclose:

- (a) the address of each parcel of real property in which he or she had an interest on the return date; and
- (b) the nature of the interest.

(2) A person making a return under section 449 (3) of the Act must disclose:

- (a) the address of each parcel of real property in which he or she had an interest at any time since the last return under Part 2 of Chapter 14 of the Act was made; and
- (b) the nature of the interest.

(3) An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:

- (a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy; or
- (b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to his or her duties as the holder of a position required to make a return.

(4) In this clause, interest includes an option to purchase.

184 Gifts

(1) A person making a return under section 449 (3) of the Act must disclose:

- (a) a description of each gift received since the last return under Part 2 of Chapter 14 of the Act was made; and
- (b) the name and address of the donor of each of the gifts.

(2) A gift need not be included in a return if:

- (a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less; or
- (b) it was a political contribution disclosed, or required to be disclosed, under Part 6 of the *Election Funding and Disclosures Act 1981*; or

(c) the donor was a relative of the donee.

(3) For the purposes of this clause, the amount of a gift other than money is an amount equal to the value of the property given.

185 Contributions to travel

(1) A person making a return under section 449 (3) of the Act must disclose:

- (a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person since the last return under Part 2 of Chapter 14 was made; and
- (b) the dates on which the travel was undertaken; and
- (c) the names of the States and Territories, and of the overseas countries, in which the travel was undertaken.

(2) A financial or other contribution to any travel need not be disclosed under this clause if it:

- (a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles); or
- (b) was made by a relative of the traveller; or
- (c) was made in the ordinary course of an occupation of the traveller that is not related to his or her functions as the holder of a position requiring the making of a return; or
- (d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12 month period or less; or
- (e) was a political contribution disclosed, or required to be disclosed, under Part 6 of the *Election Funding Act 1981*; or
- (f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable the traveller to represent the party within Australia.

(3) For the purposes of this clause, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

186 Interests and positions in corporations

(1) A person making a return must disclose:

- (a) the name and address of each corporation in which he or she had an interest or held a position (whether remunerated or not) on the return date (in the case of a return under section 449 (1) of the Act) or at any time since the last return under Part 2 of Chapter 14 of the Act was made (in the case of a return under section 449 (3) of the Act); and
- (b) the nature of the interest, or the position held, in each of the corporations; and
- (c) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.

(2) An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

- (a) formed for the purpose of providing recreation or amusement or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose; and
 - (b) required to apply its profits or other income in promoting its objects; and
 - (c) prohibited from paying any dividend to its members.
- (3) An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

187 Positions in trade unions and professional or business associations

A person making a return must disclose:

- (a) the name of each trade union, and of each professional or business association, in which he or she held any position (whether remunerated or not) on the return date (in the case of a return under section 449 (1) of the Act) or at any time since the last return under Part 2 of Chapter 14 was made (in the case of a return under section 449 (3) of the Act); and
- (b) a description of the position held in each of the unions and associations.

188 Dispositions of real property

- (1) A person making a return under section 449 (3) of the Act must disclose particulars of each disposition of real property by the person, at any time since the last return under Part 2 of Chapter 14 of the Act was made, under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
- (2) A person making a return under section 449 (3) of the Act must disclose particulars of each disposition of real property to another person, since the last return under Part 2 of Chapter 14 of the Act was made, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

189 Sources of income

- (1) A person making a return must disclose:
- (a) in the case of a return under section 449 (1) of the Act—each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June; and
 - (b) in the case of a return under section 449 (3) of the Act—each source of income received by the person since the last return under Part 2 of Chapter 14 of the Act was made.
- (2) A reference in subclause (1) to each source of income received, or reasonably expected to be received, by a person is a reference to:
- (a) in relation to income from an occupation of the person:
 - (i) a description of the occupation; and
 - (ii) if the person is employed or the holder of an office, the name and address of his or her employer or a description of the office; and
 - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted; or

- (b) in relation to income from a trust, the name and address of the settler and the trustee; or
 - (c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
- (3) The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

190 Debts

- (1) A person making a return must disclose the name and address of each person to whom the person was liable to pay any debt:
- (a) in the case of a return under section 449 (1) of the Act – on the return date; or
 - (b) in the case of a return under section 449 (3) of the Act – at any time since the last return under Part 2 of Chapter 14 of the Act was made.
- (2) A liability to pay a debt must be disclosed by a person in a return whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be.
- (3) A liability to pay a debt need not be disclosed by a person in a return if:
- (a) the amount to be paid did not exceed \$500 on the return date or at any time since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be, unless:
 - (i) the debt was one of two or more debts that the person was liable to pay to one person on the return date or at any time since the last return was made, as the case may be; and
 - (ii) the amounts to be paid exceeded, in the aggregate, \$500; or
 - (b) the person was liable to pay the debt to a relative; or
 - (c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender; or
 - (d) in the case of a debt arising from the supply of goods or services:
 - (i) the goods or services were supplied in the period of 12 months immediately preceding the return date or were supplied since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be; or
 - (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to his or her duties as the holder of a position required to make a return.

191 Discretionary disclosures

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Part.

Appendix B

Government Information (Public Access) Act 2009 (NSW)

12 Public interest considerations in favour of disclosure

- (1) There is a general public interest in favour of the disclosure of government information.
- (2) Nothing in this Act limits any other public interest considerations in favour of the disclosure of government information that may be taken into account for the purpose of determining whether there is an overriding public interest against disclosure of government information.

Note: *The following are examples of public interest considerations in favour of disclosure of information:*

- (a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.
 - (b) Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.
 - (c) Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.
 - (d) The information is personal information of the person to whom it is to be disclosed.
 - (e) Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.
- (3) The Information Commissioner can issue guidelines about public interest considerations in favour of the disclosure of government information, for the assistance of agencies.

13 Public interest test

There is an overriding public interest against disclosure of government information for the purposes of this Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

14 Public interest considerations against disclosure

- 1) It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1.
- 2) The public interest considerations listed in the Table to this section are the only other considerations that may be taken into account under this Act as public interest considerations against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information.
- 3) The Information Commissioner can issue guidelines about public interest considerations against the disclosure of government information, for the assistance of agencies, but cannot add to the list of considerations in the Table to this section.

15 Principles that apply to public interest determination

A determination as to whether there is an overriding public interest against disclosure of government information is to be made in accordance with the following principles:

- (a) Agencies must exercise their functions so as to promote the object of this Act.
- (b) Agencies must have regard to any relevant guidelines issued by the Information Commissioner.
- (c) The fact that disclosure of information might cause embarrassment to, or a loss of confidence in, the Government is irrelevant and must not be taken into account.
- (d) The fact that disclosure of information might be misinterpreted or misunderstood by any person is irrelevant and must not be taken into account.
- (e) In the case of disclosure in response to an access application, it is relevant to consider that disclosure cannot be made subject to any conditions on the use or disclosure of information.

Table

1. Responsible and effective government

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) prejudice collective Ministerial responsibility;
- (b) prejudice Ministerial responsibility to Parliament;
- (c) prejudice relations with, or the obtaining of confidential information from, another government;
- (d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions;
- (e) reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency;
- (f) prejudice the effective exercise by an agency of the agency's functions;
- (g) found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence;
- (h) prejudice the conduct, effectiveness or integrity of any audit, test, investigation or review conducted by or on behalf of an agency by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

2. Law enforcement and security

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant;

- (b) prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law;
- (c) increase the likelihood of, or prejudice the prevention of, preparedness against, response to, or recovery from, a public emergency (including any natural disaster, major accident, civil disturbance or act of terrorism);
- (d) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person,
- (e) endanger the security of, or prejudice any system or procedure for protecting, any place, property or vehicle;
- (f) facilitate the commission of a criminal act (including a terrorist act within the meaning of the *Terrorism (Police Powers) Act 2002*);
- (g) prejudice the supervision of, or facilitate the escape of, any person in lawful custody;
- (h) prejudice the security, discipline or good order of any correctional facility.

3. Individual rights, judicial processes and natural justice

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) reveal an individual's personal information;
- (b) contravene an information protection principle under the Privacy and Personal Information Protection Act 1998 or a Health Privacy Principle under the Health Records and Information Privacy Act 2002;
- (c) prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings;
- (d) prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness;
- (e) reveal false or unsubstantiated allegations about a person that are defamatory;
- (f) expose a person to a risk of harm or of serious harassment or serious intimidation;
- (g) in the case of the disclosure of personal information about a child—the disclosure of information that it would not be in the best interests of the child to have disclosed.

4. Business interests of agencies and other persons

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market;
- (b) reveal commercial-in-confidence provisions of a government contract;
- (c) diminish the competitive commercial value of any information to any person;

- (d) prejudice any person's legitimate business, commercial, professional or financial interests;
- (e) prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

5. Environment, culture, economy and general matters

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) endanger, or prejudice any system or procedure for protecting, the environment;
- (b) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge;
- (c) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any animal or other living thing, or threaten the existence of any species;
- (d) damage, or prejudice the ability of the Government or an agency to manage, the economy;
- (e) expose any person to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Government or an agency.

6. Secrecy provisions

- (1) There is a public interest consideration against disclosure of information if disclosure of the information by any person could (disregarding the operation of this Act) reasonably be expected to constitute a contravention of a provision of any other Act or statutory rule (of this or another State or of the Commonwealth) that prohibits the disclosure of information, whether or not the prohibition is subject to specified qualifications or exceptions.
- (2) The public interest consideration under this clause extends to consideration of the policy that underlies the prohibition against disclosure.

7. Exempt documents under interstate Freedom of Information legislation

- (1) There is a public interest consideration against disclosure of information communicated to the Government of New South Wales by the Government of the Commonwealth or of another State if notice has been received from that Government that the information is exempt matter within the meaning of a corresponding law of the Commonwealth or that other State.
- (2) The public interest consideration under this clause extends to consideration of the policy that underlies the exemption.
- (3) In this clause, a reference to a corresponding law is a reference to:
 - (a) the *Freedom of Information Act 1982* of the Commonwealth; or
 - (b) law of any other State that is prescribed by the regulations as a corresponding law for the purposes of this clause.

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