



Department of  
Local Government, Sport  
and Cultural Industries

# Local Government Operational Guidelines

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December 2019

## Primary and Annual returns



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#### About DLGSC

The DLGSC works with partners across government and within its diverse sectors to enliven the Western Australian community and economy through support for and provision of sporting, recreational, cultural and artistic policy, programs and activities for locals and visitors to the State.

The department provides regulation and support to local governments and the racing, gaming and liquor industries to maintain quality and compliance with relevant legislation, for the benefit of all Western Australians. This publication is current at October 2019.

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# 1. Introduction

Council members, Chief Executive Officers (CEOs) and employees are expected to make decisions in the best interests of their community. To do this, they must consider each issue on its merits.

Decision-making could be influenced – or perceived to be influenced – in a number of ways, including through financial relationships, personal relationships and the receipt of gifts. The *Local Government Act 1995* sets out requirements for council members, CEOs and other employees to ensure transparency and accountability in decision-making.

This document gives an overview of the requirements of council members and certain employees to disclose personal financial information in two types of returns: primary and annual.

A relevant person is defined under section 5.74 of the *Local Government Act 1995* (the Act) as a person who is a:

- mayor or president;
- council member; and
- designated employee.

Designated employees include:

- CEO;
- employees with delegated powers and duties under Part 5, Division 4 of the Act;
- employees who are members of committees comprising elected members and employees; and
- other employees nominated by the local government.

Members of committees who are not elected members or employees of the local government are not required to complete returns.

A primary return is a snapshot of personal financial information as it exists upon the relevant person's start date and must be lodged within three months of the start date.

An annual return retrospectively discloses any changes to the information previously disclosed in the primary return or new interests accumulated for the period since completing the primary return or last annual return and must be lodged no later than 31 August in any year.

The start date for a council member is the day on which they made their declaration.

The start date for a designated employee is the day on which they became a designated employee.

Those persons required to disclose information in returns should always be aware of the link between the disclosure of information in a return and the possible need to disclose an interest when dealing with a matter at a meeting. Designated employees need to be aware of their responsibilities under

section 5.71 when exercising delegated authority or when preparing advice or report or undertaking administrative decision making.

Other related operational guidelines:

- Operational Guideline: Disclosure of gifts and disclosure of interests relating to gifts
- Operational Guideline: Disclosure of interests affecting impartiality

## 2. When are returns to be lodged?

### 2.1 Primary return [s5.75]

Council members and designated employees must lodge with the CEO a primary return in the prescribed form within three months of the start day.

CEOs must lodge their primary returns with the mayor or president within the same time period.

A relevant person is not required to complete a further primary return if they have lodged a return within the previous 12 months.

For example, a council member elected at an extraordinary election less than 12 months before the October ordinary elections, if re-elected at those October elections, would not have to lodge a primary return after the October election as a return had been lodged within the past 12 months.

A council member that completes a term of office and then is immediately re-elected **at the next election** to a new term of office, is also not required to provide a Primary Return, as they will have lodged an annual return within the past 12-months i.e. in July / August immediately prior to the October elections – Section 5.75(3).

However, a council member who was on Council several years ago but has not been a council member for several years and is then re-elected will be required to provide a primary return, as they would not have provided a return within the past 12-months.

Similarly, council members and designated employees are not required to complete a primary return if they have ceased to be a council member or designated employee within three months of the start day. Therefore, if a council member or designated employee resigns or otherwise loses his or her position within three months of the start day, no return is necessary.

#### Identify the Start Day and Calculate Due Date for Primary Returns

The Start Day will differ dependent on which type of relevant person you are:

Relevant Person Type	Start Day
Council Member	The day the Council Member completes their Declaration of Office under s.2.29.
Chief Executive Officer	The first day of employment under the CEO's contract of employment.

Employees with Delegated Powers / Duties under Part 5, Div.4 of the LG Act	<p>Either:</p> <ul style="list-style-type: none"> <li>• The day on which the employee commences in a position which has delegated authority; or</li> <li>• The day on which the CEO provides sub-delegation to that employee's position.</li> </ul>
Employees who are members of committees comprising elected members and employees	The date of the Council meeting at which the Council resolved to appoint the employee as a member or deputy member of the committee [s.5.10].
Other employees nominated by the local government	The day on which a Council resolution determines that the employee has been nominated as a 'designated employee' for the purposes of providing Primary and Annual Returns.

CEOs are encouraged to implement procedures to assist in monitoring and identifying employees who become or cease to be a relevant persons for the purposes of primary returns at the time they start or change their employment with the Local Government. Such procedures will help to ensure that primary returns are requested and lodged before the three month due date expires.

The calculation of the due date for a primary return to be lodged is subject to section 62(3) of the *Interpretation Act 1984 (WA)*:

- (3) If a period indicated in a written law is of 2, 3 or more months, it shall be reckoned from the date on which it is to begin to the date numerically corresponding, less one, in the second, third, or other successive month thereafter or, if there is no such corresponding date, to the last day of the latter month.

*For example:* a period of 6 months beginning on 15 August ends on 14 February and a period of 6 months beginning on 30 or 31 August ends on 28 February (or 29 February in a leap year).

If the return due date falls on a weekend or statutory public holiday, then the return due date becomes the next business day.

## 2.2 Annual return [s5.76]

Changes that have occurred to the status of information disclosed in a previous return and any new interests obtained during the return period must be disclosed in the annual return. This would include interests that may have been bought and sold during the return period.

The return period is the time between lodging the current annual return and the previous annual or primary return. If the last return you lodged was an annual return, the return period is the 12-month period ending on 30 June in the year you are lodging the annual return.

If the last return you lodged was a primary return, then the return period relevant to that return constitutes your “start day”. The primary return is only meant to cover that one day which for elected members is the day on which you made your declaration of office referred to in section 2.29 of the Act and for employees it is the day you are appointed to a designated employee position as defined under section 5.74 of the Act.

The completion and lodgement of a primary return for your start day, together with your annual return covering the period from the day after your start day to 30 June in that year, completes your obligations in respect to disclosing your interests in returns for that return period in accordance with the Act. The primary return is to be lodged within three months after the start day and the annual return is to be lodged by 31 August in that year.

As the annual return period does not conclude until 30 June, it is important that the annual return is completed after 1 July and not before.

After lodgement of the initial annual return, elected members and designated employees must lodge with the CEO an annual return in the prescribed form by 31 August of each subsequent year. CEOs must lodge their annual returns with the mayor or president.

A suggested procedure and time line for lodgement of an Annual Return is described on the following page (refer Figure 1).

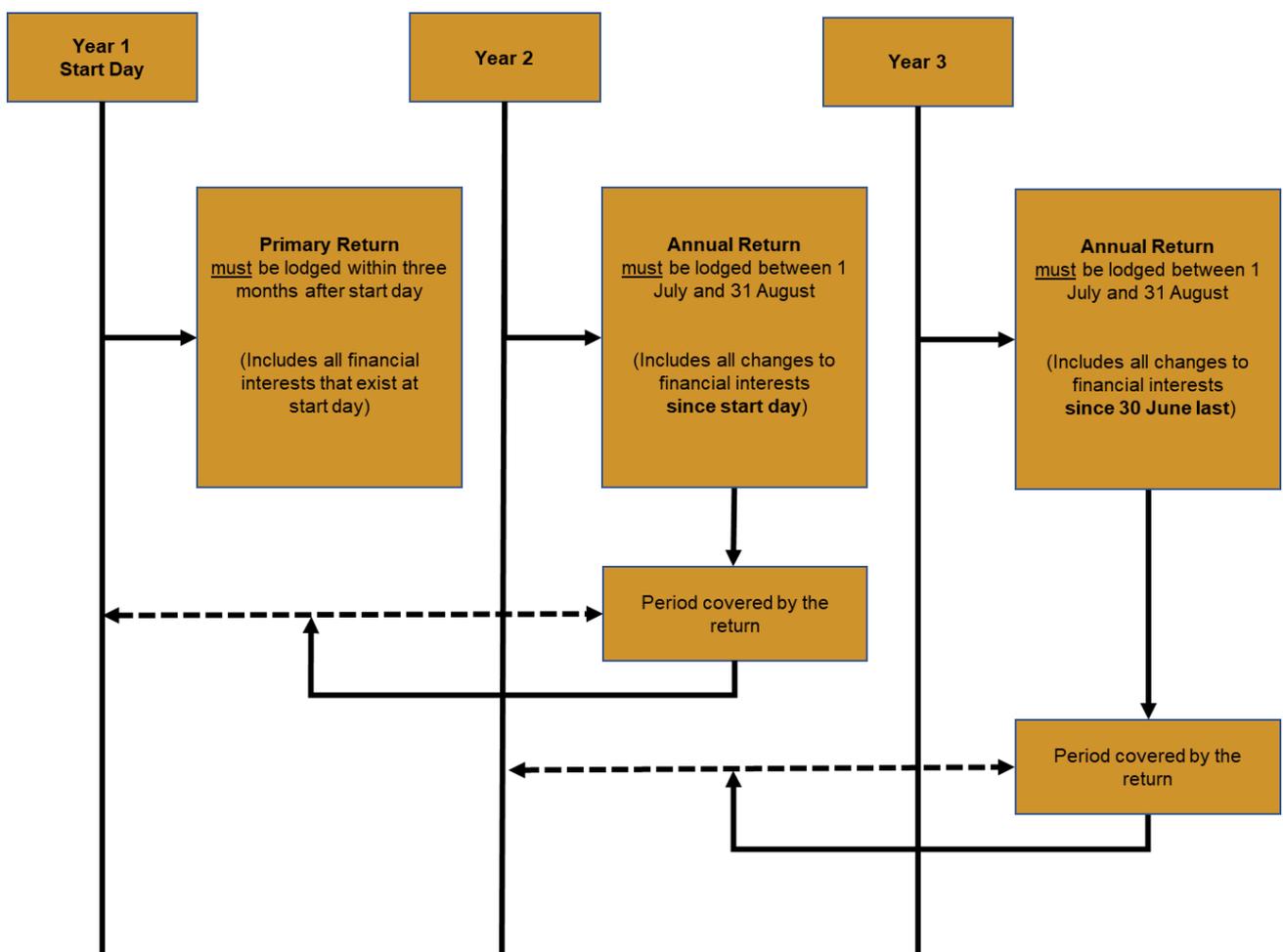


Figure 1: Section 5.75 and 5.76 of the *Local Government Act 1995* Annual (financial interest) Returns.

## 2.3 Separate returns required for regional local government council members

A council member that is appointed by their local government as a member of a regional local government council will be required to lodge separate primary and annual returns to their substantive local government and the regional local government.

The contents of each return may however be different as the requirements for disclosure, particularly for real property disclosures, may be affected by the regional local government including local government districts for all member local governments and extending to local governments with adjoining boundaries to all member local government districts.

## 3. What information is to be disclosed in returns?

The information you must disclose in returns relates to you personally. You do not have to disclose any information relating to your spouse, children or any other person.

The value, amount or extent of any asset, income, debt or disposition does not have to be disclosed.

Example:

If you have shares in a company you are required to disclose the fact that you own those shares but not the value or amount of the shares (eg your disclosure might read 'shares in XYZ Company').

Returns must be in the form of Forms 2 and 3 as prescribed in the *Local Government (Administration) Regulations 1996*.

It is important that each section on both the primary and annual returns is completed with a disclosure relevant to your interest. If you have no interests to disclose under a question, indicate on the return that the question is not applicable or was answered in a previous return. Failure to complete a question can lead to claims of non-disclosure that have to be investigated.

### 3.1 Real property [s5.79]

Real property refers to land or things attached to land. For example, a house, shed or jetty. An interest includes, but is not limited to, a financial interest, a right to occupation, a right or power of attorney for someone who is elderly or if you hold shares in the property.

You do not however, need to disclose your interest in real property if you are the executor of a deceased estate or a trustee as part of your occupation or by way of security for a debt.

You are required to disclose the street address or the particulars of title of each parcel of real property in which you had an interest and the nature of that interest.

For example, under 'Address' on the return you might write 'Lot 123 on Deposited Plan 12345'. Under 'Nature of Interest' you might write 'owner' 'joint owner' or 'lessee'.

Addresses	Nature of Interest
<b>Lot 123 on Deposited Plan 12345</b>	Owner, joint owner or lessee

A post office box number is not adequate since the purpose is to identify the actual land or property.

Only property in which you hold an interest that is located in your local government district and the neighbouring local government district with which your local government has a common boundary must be disclosed. For example, if you lived in Gosnells and also owned or had an interest in property in Armadale.



Council members who are also members of a regional local government council are required to disclose in primary and annual returns to the regional local government any interests in real property that is located in the district of a local government which is a member council of the regional local government together with any adjoining local government districts.

For example, if the regional local government membership is made of four local governments in the region the Council member of one of those member local governments who has an interest in real property in any of the other four-member local government's districts or adjoining local government districts will need to disclose that property in their Annual and Primary Returns.

In the case of the primary return, the interests in real property to be disclosed are those existing on the start day. In the case of an annual return, the interests to be disclosed are those that existed at any time during the return period; for example, details of a property bought and sold during the return period with the period that the property was owned would have to be disclosed in an annual return.

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## 3.2 Source of income [s5.80]

Where a reference is made to a disclosure concerning any income, it includes but is not limited to any income received from rental properties, employers, partnerships and interest accrued from corporate shares – even income derived from outside of Western Australia.

In a primary return you must disclose each source from which you reasonably expect to receive income during the period from the day after your start day to the next 30 June.

In an annual return you must disclose each source from which income was received any time during the return period (usually previous 12 months) as described under “When are returns to be lodged” section of this guideline.

You are not required to disclose in either return the source of any income if the amount of the income received or likely to be received did not (or is not expected to) exceed \$500.

Disclosure of the source of income relating to your occupation is to include a description of your occupation and the name and street address of your employer (For example, public servant, Department of Local Government, Sport and Cultural Industries, Gordon Stephenson House, 140 William Street, Perth, WA 6000).

If you are the holder of an office, you must give a description of the office (For example, Executive Chairman of the ABC Group).

If you have entered into a partnership, disclosure should include the name (if any) under which the partnership is conducted (For example, Partner in Maritime Building Supplies, 5 Ocean Rd, Fremantle, WA 6160).

Income from a source that must be disclosed is income within the meaning of the *Income Tax Assessment Act 1936* (Cth); that is, income you would disclose in an income tax return.

For the purposes of a primary and annual return only, income does not include fees, reimbursement of expenses or allowances paid to you by the local government.

For the source of income received or likely to be received from a trust, you must disclose the name and street address of the settlor and the trustee of the trust. A settlor is the person with the responsibility for the settlement of the property under the terms of the Trust.

In relation to any other income you must disclose a description sufficient to identify the person from whom, or the circumstances in which, the income was received or is likely to be received.

The street address to be disclosed in relation to a person other than a corporation is the last residential or business address that you know of for the person.

In relation to a corporation, the address of the registered office or principal place of business of the corporation in the State should be disclosed. Where there is no such office or place the address of the principal office or place of business of the corporation where it is incorporated should be recorded.

### **Examples of income sources — Section 5.80 of the Act**

**Income from an occupation**

Description of the occupation	Name and address of the employer	Description of office held	Name of the partnership
Member of the Local Government Advisory Board	Department of Local Government, Sport and Cultural Industries 140 William Street, Perth, WA 6000	Member	Not Applicable
Public servant	Department of Local Government, Sport and Cultural Industries 140 William Street, Perth, WA 6000	Employee	Not applicable

You are not required to disclose in a return any information that you have disclosed in a previous return. Therefore, information you include in your primary return does not have to be repeated in the subsequent annual return unless there are changes in your circumstances.

**Income from a trust**

Name of trust	Name and address of settlor	Name and address of trustee
<b>Jones Family Trust</b>	John Jones 11 Main Street Tinsel Town	Thomas Smith 12 Main Street Tinsel Town

**Sources of other income**

<b>Identity of persons</b>
<b>Bank of Australia, Tinsel Town Branch, deposit.</b>
<b>Describe circumstances</b>
<b>Income from deposit.</b>

## Examples of income sources — in the following year Annual return

### Income from an occupation

Description of the occupation	Name and address of employer	Description of office held	Name of the partnership
See primary return for 2017.			

### Income from a trust

Name of trust	Name and address of settlor	Name and address of trustee
See primary return for 2017.		

### Sources of other income

Identity of persons
Bank of Australia deposit – see primary return for 2017.
Describe circumstances
See annual return for 2017.

## 3.3 Trusts [s5.81]

You must disclose in your primary return and annual return the name and address of the settlor and the trustee of:

- any trust in which you hold a beneficial interest; or
- any discretionary trust of which you are a trustee or object, other than a trust disclosed as a source of income.

A discretionary trust is a trust under which the trustee has a discretion in respect of the objects or purposes of the trust.

In the case of a **primary return**, disclosure is required for those trust interests existing on the start day. In the case of an **annual return**, the interests to be disclosed are those that existed at any time during the return period.

### Examples of trusts — Section 5.81 of the Act

#### Trusts in which the relevant person holds a beneficial interest

Name of trust	Name and address of settlor	Name and address of trustee
The ABC Trust	John Trustworthy 10 Black Street West Perth WA 6005	William Truscott 21 White Street Nedlands WA 6009

### 3.4 Interests and positions in corporations [s5.84]

You are to disclose in a primary return and in an annual return the name of each corporation of which you:

- are (or were) a member of;
- otherwise had an interest; or
- held any position (whether remunerated or not).

In the case of a **primary return**, the interests disclosed are those you held on the start day. In the case of an **annual return**, you must disclose any interests that you held at any time during the return period.

You must also disclose:

- the nature of the interest; or
- the description of the position held; and
- the corporation's address and a description of its principal business (except where the company is listed for quotation on a stock market in Australia).

An interest in a corporation means a relevant interest in any shares or debentures, any unit in any such shares or debentures and any prescribed interest (currently none are prescribed in regulations) made available by a corporation. A relevant interest exists where a person has entered into an agreement, has a right or has an option with respect to an issued share.

Among other things, corporations are defined as a company or body corporate whether incorporated within or outside the State (For full details see *Corporations Act 2001* (Cth)) but do not include the following:

- a corporation sole (being a body having perpetual succession constituted in a single person);
- a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown;
- a society or credit union that is an authorised deposit-taking institution under the *Banking Act 1959* (Cth);
- a co-operative registered under the *Co-operative Act 2009* (such societies would be cooperative businesses established in rural towns); or

- an association, society, institution or body incorporated under the *Associations Incorporation Act 2015* (such organisations are formed for religious, cultural, sporting, political or other purposes and must not have the intent of securing a financial profit for the members).

Share income from self-managed superannuation funds is not required to be disclosed where the fund is managed by a financial advisor or fund manager and you are not privy to the information concerning the investments.

### Example of interests and positions in corporations — Section 5.84 of the Act

#### Position held

Name and address of corporation	Nature of interest/ position held	Principal business (if required)
XYZ Corporation 20 Brown St Perth WA 6000	Executive Director	Mining Exploration

#### Nature of interest (for shares not quoted on prescribed financial market in Australia)

Name and address of corporation	Nature of interest/ position held	Principal business (if required)
XYZ Corporation 20 Brown St Perth WA 6000	Director	Mining Exploration

## 3.5 Debts [s5.85]

You must disclose in a **primary return** and an **annual return** the name and address of each person or organisation to whom you are liable to pay any debt arising from the loan of money or the supply of goods or services.

In the case of a primary return, you must disclose the debts you held on the start day.

In the case of an annual return, you must disclose the debts you held at any time during the return period. This applies whether or not the amount to be paid (or has been paid), or any part of it, was due and payable on the start day or at any time during the return period.

There is no requirement for you to disclose in a return a liability to pay a debt if the amount to be paid did not exceed \$500 on the start day or at any time during the return period.

However, you must disclose the relevant details for each debt that was one of two or more debts which you were liable to pay to one person on the start day (or at any time during the return period) and the sum of the amounts to be paid exceeded \$500.

You need not disclose debts if they are to be paid to a relative or arise from a loan you were liable to pay to a bank, building society, credit union or other person (whose ordinary business includes

the lending of money) and the loan was made in the ordinary course of the lender's business. These debts would include housing loans, business loans and overdrafts with banks, building societies and credit unions.

In the case of debts arising from the supply of goods or services, the debts need not be disclosed if the goods or services were supplied in the period of 18 months immediately preceding the start day or were supplied during the return period.

Examples of such debts would be:

- money owing on credit or store cards;
- outstanding accounts for telephone or utility services etc; or
- the amount owed to a plumber who has undertaken work for you on your home.

Similarly, debts arising from the supply of goods or services that were supplied in the ordinary course of your occupation (which is not related to your duties as an elected member or employee) need not be disclosed. For example, a tradesman or farmer who receives goods from a supplier and is given time to pay.

#### Example of Debts — Section 5.85 of the Act

Name of lender/creditor	Address of lender/creditor
JB Enterprises	10 Loan Court South Perth WA 6151

### 3.6 Dispositions of property [s5.86]

You are to disclose in an **annual return**, particulars of any dispositions of real property which occurred during the return period and by which you retained (either wholly or in part) the use and benefit of the property or the right to reacquire the property at a later time.

Disposition of real property means any conveyance, transfer, assignment, settlement, payment or other alienation of real property, and includes:

- the creation of a trust in respect of real property;
- the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in respect of real property;
- the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract, chose in action or any other interest in respect of real property;
- the exercise by a person of a general power of appointment over real property in favour of any other person; and
- any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his or her own real property and to increase the value of the property of any other person.

Additionally, in an **annual return** you must disclose particulars of each disposal of real property in which you had an interest, by any person other than yourself under arrangements made by you and by which disposal you obtained, either wholly or in part, the use and benefit of the property.

Disclosures need only be made for property located in the district or in an adjoining district.

### Example of disposition of property — Section 5.86 of the Act

#### Section 5.86(1)

Address of property	Manner of disposition	Date of disposition	Nature of interest retained
50 Terrace Rd Kiara WA 6054	Sale by private treaty	28 February 2019	none

#### Section 5.86(2)

Address of property	Person by whom property disposed	Person to whom property disposed	Manner of disposition	Date of disposition	Nature of interest obtained
10 Logan Court Kulin WA 6365	Donald Johnson Johnson's Real Estate	John Owens	By public auction	15 March 2019	50% Share Tenant in common

### 3.7 Discretionary disclosures generally [s5.87]

You may disclose in any return any direct or indirect benefits, advantages or liabilities (whether financial or not) which are not required to be disclosed under the Act.

You might choose to do this if you believe that a conflict exists or might appear to exist between your private interests and your duty as a council member (or a designated employee) or for any other reason.

#### Example of discretionary disclosures – Section 5.87 of the Act

\$400 Debt to John Smith of 120 Green St Bayswater WA 6943 as loan for carpet cleaner  
Treasurer of the Ninja Turtle Cricket Club

## 4. Do returns need to be acknowledged by a receipt? [s5.77]

The Act requires that the CEO, mayor or president on receipt of a return, give the person submitting the return written acknowledgment of having received the return.

It is important that you ensure that you receive a written acknowledgment as the penalties for failing to submit a return are severe (a maximum penalty of \$10,000 or imprisonment for two years).

A sample acknowledgement letter for both a Primary and Annual Return are provided in **Attachment A** of this guideline.

## 5. Do returns need to be kept in a register? [s5.88]

The CEO is to keep all primary and annual returns lodged in the Register of Financial Interests.

As soon as is practicable after a person ceases to be a person who is required to lodge a return, the CEO is to remove from the register all returns relating to that person.

Section 5.88(4) requires the records to be kept for at least five years after the person who lodged the return ceased to be a council member or designated employee. Returns lodged and removed from the register are to be kept as a local government record in accordance with the local government's record keeping plan.

## 6. Is the financial interest register available for inspection? [s5.94]

Any person can attend the office of a local government during office hours and free of charge inspect the register of financial interests. A person inspecting the register may request a copy of any information in the register and the local government is to ensure that copies are made available. A charge can be made for the copies, provided it does not exceed the cost of providing the copies.

Returns removed from the register will not be available for public inspection under this section of the Act.

## 7. What are the penalties for failing to comply?

### 7.1 Failure to lodge a return [s5.75, s5.76]

Failure to lodge a primary return within three months of the start day or an annual return by 31 August in any year carries a maximum penalty of \$10,000 or imprisonment for two years.

### 7.2 Failure to disclose information in a return [s5.78]

Failure to comply with the requirements for disclosing information in a primary or annual return carries a maximum penalty of \$10,000 or imprisonment for two years.

### 7.3 Offence to give false or misleading information [s5.89]

Providing information in written form in a primary or annual return that the person knows to be false or misleading in a material particular or likely to deceive in a material way carries a maximum penalty of \$10,000 or imprisonment for two years.

### 7.4 Reporting any breaches of financial interest [section 28 *Corruption, Crime and Misconduct Act 2003*]

The CEO as the principal officer of a local government has the legal duty and responsibility to report any breaches under Part 5, Division 6 of the Act in accordance with section 28 of the *Corruption, Crime and Misconduct Act 2003*.

If a relevant person does not lodge a completed return within the prescribed period for any reason, including in circumstances such as extended medical leave, long service leave or maternity leave, then the non-compliance must still be reported to the relevant regulatory authorities, including an explanation of the reasons for non-compliance as this will assist in determining if any other action is needed.

The relevant return should also be completed and lodged as soon as possible and a note included in the register detailing reasons for late lodgement.

## 8. Is it an offence to publish information in certain cases? [s5.90]

A person must not publish any:

- information derived from a register of financial interests unless that information constitutes a fair or accurate report or summary of information contained in the register and is published in good faith; or

- comment on the facts set forth in a register of financial interests unless that comment is fair and published in good faith.

The maximum penalty for such an offence is \$5,000 or imprisonment for one year.

The meaning of “publish” has the same meaning as that term in the law of tort (as modified by the *Defamation Act 2005*) relating to defamation.

For written text, “publishing” is (including via social media):

- the exhibiting of that text in public,
- causing it to be read or seen,
- showing or delivering it,

with a view to its being read, seen or viewed by any person other than the one to which the text refers.

## 9. Concluding remarks

The disclosures required in returns are not onerous and much of the information disclosed will be available on other public documents.

The penalties are severe for non-disclosure and false disclosure.

Persons required to complete returns are encouraged to consider closely what must be disclosed and check to make sure that the information disclosed is accurate.

There are no penalties for over disclosure.

Guidance on how returns are to be completed should be provided to council members and employees in addition to the forms. In the case of designated employees, this should also include an explanation of why a return is required.

For new employees who are required to complete returns, this information should be incorporated into their induction process.

The onus is on you to complete the required return and submit it by the due date. There is no requirement for the CEO or any other person to remind you.

The CEO does have a legal responsibility to report anyone who fails to submit a return by the due date. A suggested process for the follow up of returns is outlined in attachments B and C.

For your protection ensure that when you lodge your return you obtain written confirmation of the lodgement in the form of a receipt.

It is also recommended that you retain a copy of your return for your own records.

## 10. Attachment A

### 10.1 Sample Acknowledgment Letter – Annual Return

Dear XXXXX

In accordance with section 5.77 of the *Local Government Act 1995*, I wish to acknowledge receipt of your Annual Return for the period: RETURN PERIOD .

The return was received on RECEIPT DATE . Section 5.76 of the Act requires that you submit an Annual Return prior to August 31 of each year.

The return will be placed in the Financial Interests Register in accordance with section 5.88 of the Act. This register is available for public inspection.

Yours sincerely

Chief Executive Officer / Mayor / President

DATE

### 10.2 Sample Acknowledgment Letter – Primary Return

Dear XXXXX

In accordance with section 5.77 of the *Local Government Act 1995*, I wish to acknowledge receipt of your Primary Return.

The return was received on RECEIPT DATE . Section 5.75 of the Act requires that you submit a Primary Return within 3 months of your start date.

The return will be placed in the Financial Interests Register in accordance with section 5.88 of the Act. This register is available for public inspection.

Yours sincerely

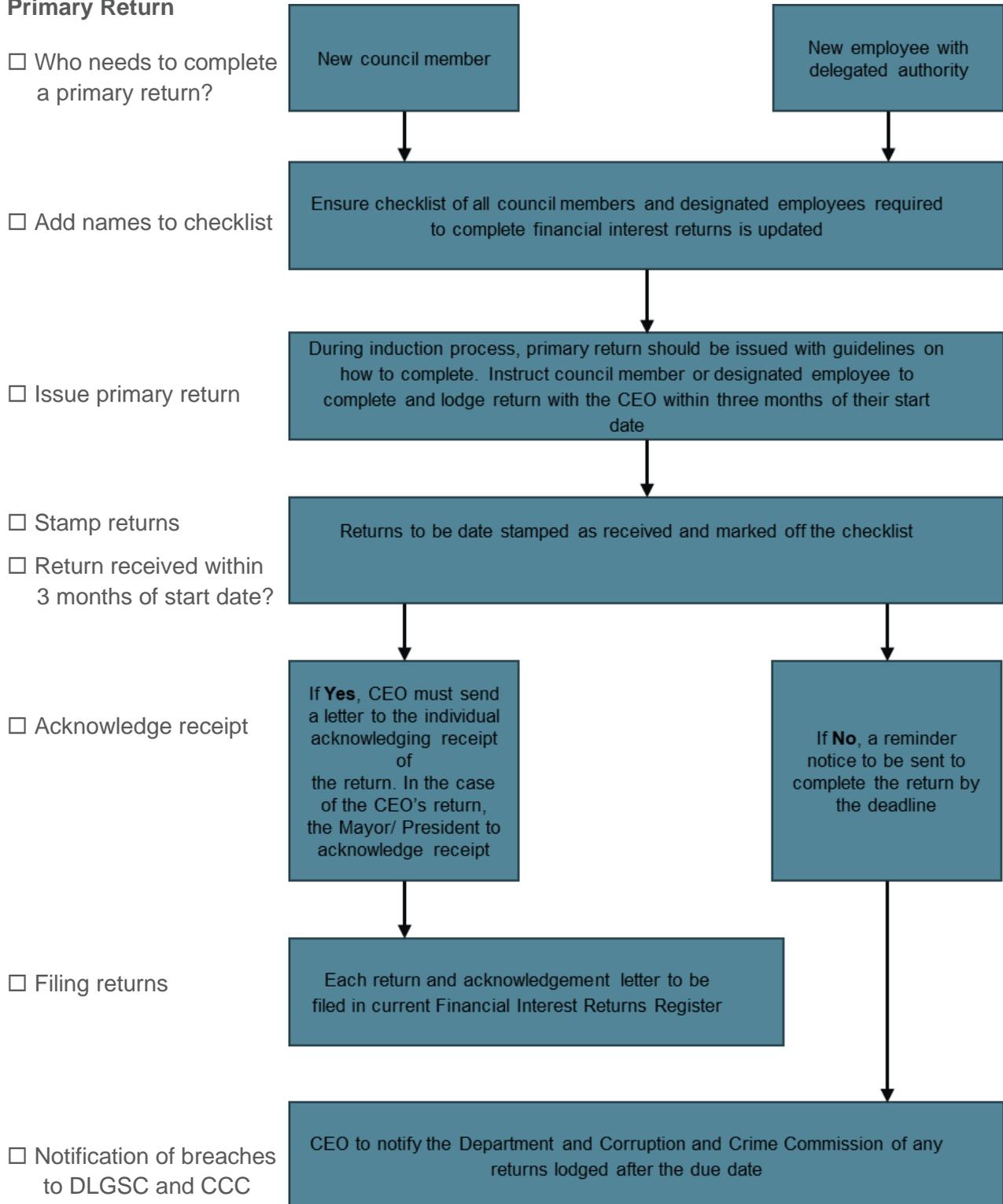
Chief Executive Officer / Mayor / President

DATE

# 11. Attachment B

Suggested procedure and timeline for lodgement of financial interest returns.

## Primary Return



## 12. Attachment C

Suggested procedure and timeline for lodgement of financial interest returns.

### Annual Return

