



## COUNCIL POLICY

1.2.23

### Administration

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| <b>Title:</b>                    | <b>1.2.23 GIFT POLICY</b>   |
| <b>Adopted:</b>                  | 18 June 2025  |
| <b>Reviewed:</b>                 | Biannually (NEW)  |
| <b>Associated Legislation:</b>   | Local Government Act 1995<br>Local Government (Administration) Regulations 1996<br>Local Government (Elections) Regulations 1997  |
| <b>Associated Documentation:</b> | Code of Conduct for Council Members, Committee Members and Candidates<br>Code of Conduct for Employees, Volunteers and Contractors<br>Elected Member and CEO Attendance at Events<br>Gifts Registers<br>Gift and Benefits Declaration Form<br>DLGSC Operational Guideline – Disclosure of Gifts |
| <b>Review Responsibility:</b>    | Manager Governance and Community  |
| <b>Delegation:</b>               | Nil   |

Last Adopted: N/A

### PURPOSE

To provide clear guidance in relation to receiving, accepting and disclosing gifts, in accordance with statutory requirements and ensure the risk of influence (actual or perceived) is eliminated from the decision-making process.

### OBJECTIVE

To ensure transparency and accountability in local government decision-making.

### SCOPE

This policy applies to all Elected Members and Workers of the Shire of Mingenew.

### DEFINITIONS

Definitions related to this policy are provided in the table below:

| TERM                        | DEFINITION  |
|-----------------------------|---|
| Associated person           | a person who —<br>(a) is undertaking or seeking to undertake an activity involving a local government discretion; or<br>(b) it is reasonable to believe, is intending to undertake an activity involving a local government discretion. [r19AA] |
| Electoral gift              | means a disposition of property, or the conferral of any financial benefit, made by one person in favour of another. [r.30B]  |
| Interest relating to a gift | means an interest that a relevant person has because of the operation of section 5.60 when read with section 5.62(1)(ea), (eb) or (ec) of the Act.  |
| Gift                        | a conferral of a financial benefit (including a disposition of property) made by 1 person in favour of another person unless adequate   |

|                     |   |
|---------------------|---|
|                     | consideration in money or money's worth passes from the person in whose favour the conferral is made to the person who makes the conferral (including contribution to travel)<br>[s.5.74 LGA] |
| Travel contribution | means a financial or other contribution made by 1 person to travel undertaken by another person (travel includes accommodation incidental to a journey).                                      |
| Workers             | Includes all employees, volunteers, contractors and anyone else acting on behalf of the Shire of Mingenew.  |

## POLICY STATEMENT

As public officers, we work to serve our community every day and must always act with the highest level of integrity.

If we accept or provide gifts people may have a perception that we make decisions for personal gain. It might make people question our ability to make decisions that are honest, fair and in the best interests of the community we serve. This could damage our collective and individual reputation, lead to a misuse of public money or, ultimately, reduce community trust.

These risks are even higher if you are involved in activities such as decision making, procurement, regulation, licensing, approvals, grants and sponsorship.

Our Policy describes our expectations about how to make good decisions about gifts.

It is your responsibility to:

- read these documents and act accordingly
- know what offers you have to declare and record, on what forms and who has to approve these and by when
- know our rules around providing gifts, benefits and hospitality, and make sure any expenditure aligns with our purchasing and credit card policies
- seek advice from the CEO, Manager Governance and Community or WALGA if you are unsure about how to manage gifts.

### 1. Council Members and the CEO

Council members and the CEO must have regard to legislative provision relating to gifts, which are prescribed in the Local Government Act 1995 [s5.57, s5.87A, s5.87B, 5.87C and 5.89A] and Local Government (Administration) Regulations 1996 [r19AA-r19AF]. The Code of Conduct for Council Members, Committee Members and Candidates also indicates that a failure to comply may be considered a breach of the Rules of Conduct.

#### 1.1. Disclosing Gifts

Council Members and the CEO are obliged to formally disclose gifts that are worth over the value of \$300 (individually or accumulatively over a 12 month period).

Council Members and the CEO may voluntarily disclose the acceptance or refusal of gifts above and beyond the statutory gift disclosure requirements, such as the acceptance of one-off gifts that are valued at \$300 or less.

A Gifts Register is maintained and published on the Shire's website (excluding address detail, in accordance with s5.89A(5A) of the Act).

## 1.2. Responsibilities

The recipient of a gift must decide whether the gift is received in their capacity as council member or CEO. The questions to ask yourself are:

- Would the gift have been given to me if I was not a member of the council or CEO?
- And would a gift of that value be given to me if I was not a member of the council or CEO?

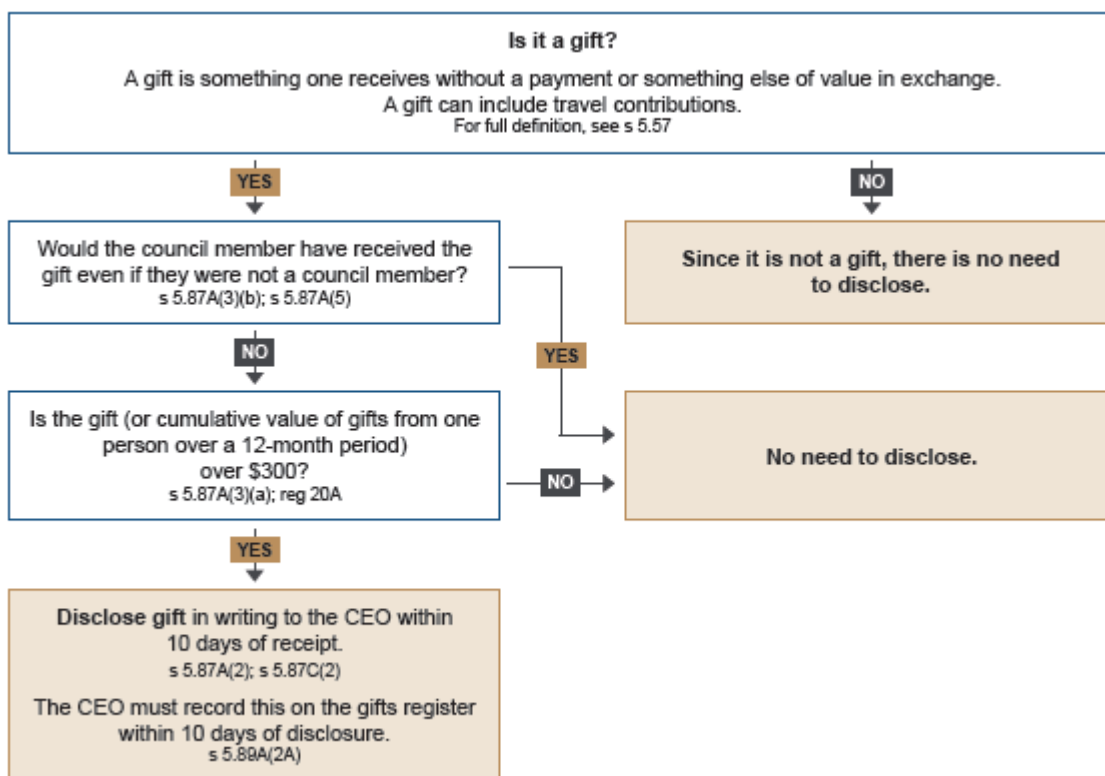
If the answer to either is no, the gift must be disclosed if the value of the gift (or the cumulative value of gifts from the same donor in a twelve-month period) is over \$300.

While the circumstances surrounding the provision of a gift or why people are invited to a celebration of an occasion may differ, examples of gifts that generally wouldn't have to be disclosed include:

- wedding or birthday gifts
- gifts from relatives
- gifts received through a will
- gifts received through your ordinary course of employment (for council members)
- the temporary loan of personal property belonging to a relative, acquaintance, neighbour etc.

In all cases, including those above, consider the nature of the relationship between you and the donor when forming your decision to disclose receipt of the gift. The onus is on you, as council member or CEO, to prove that you did not receive the gift in the capacity of council member or CEO if an allegation is made.

The flowchart below may assist a council member to determine their disclosure requirements (*source: Civic Legal – Gifts Disclosure: A Guide for Local Government Council Members*).

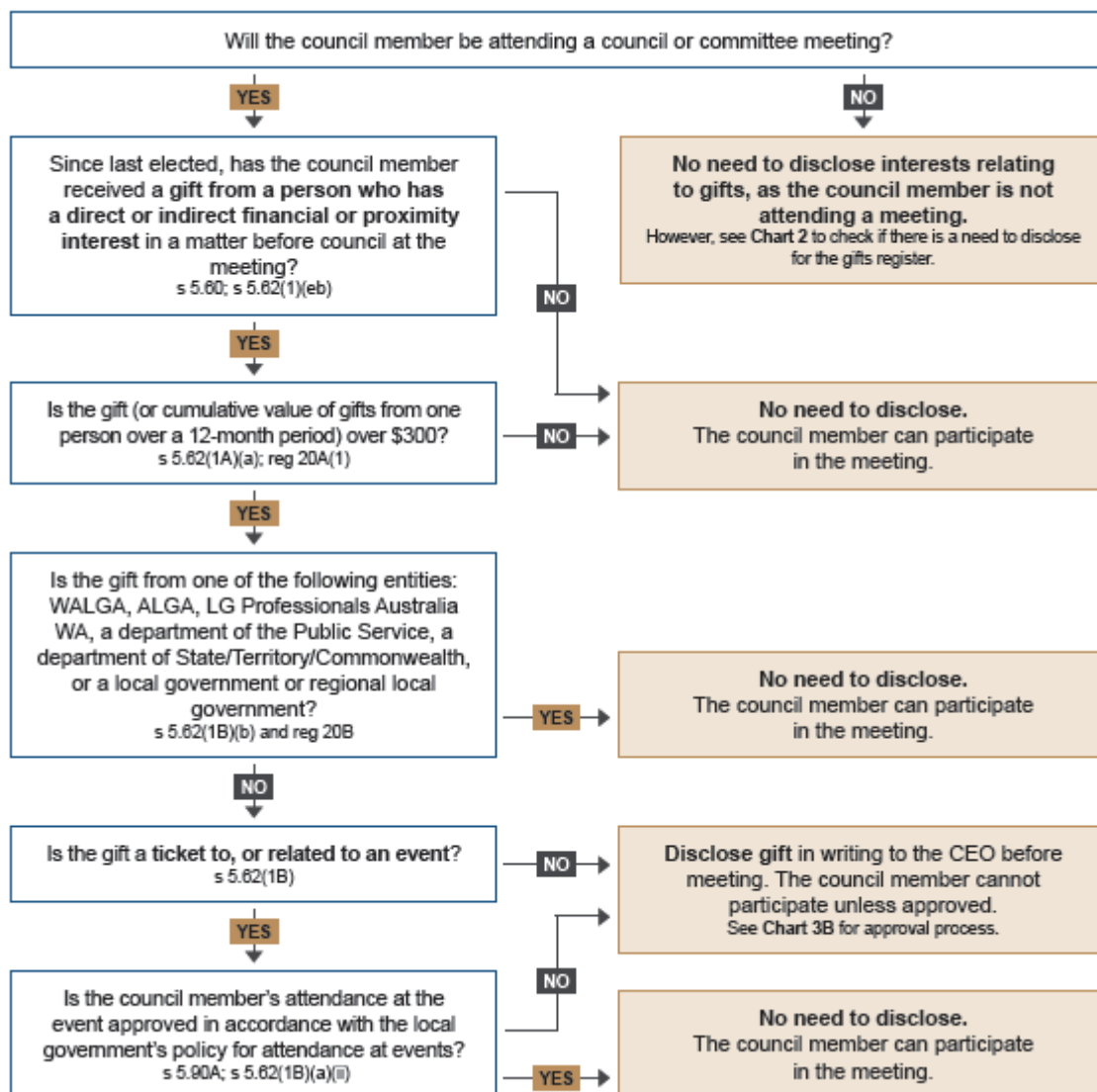


### 1.3. Interests in matters before council

The interest relating to gifts provisions recognise that a relationship is created between the donor and a recipient of a gift which could be perceived to affect decision-making. It is irrelevant why the gift was received - whether in the person's capacity as a council member or CEO or some other capacity. What is critical is that there is a matter before council from which the donor could benefit or suffer detriment.

The basic principle is that the council member is not to participate in any part of the meeting dealing with the matter (section 5.67). They must be absent from any deliberations. If the council member has such an interest, in accordance with section 5.65, they must disclose this interest in writing to the CEO before the meeting or immediately before the matter is discussed.

The flowchart below may assist a council member to determine if it is appropriate to participate in a meeting and disclosure requirements (*source: Civic Legal – Gifts Disclosure: A Guide for Local Government Council Members*).



If it is the CEO who has the interest due to receipt of a gift, they are not to provide advice to council or prepare reports for council, either directly or indirectly (section 5.71A).

Certain gifts are specifically excluded from the conflict of interest provisions (section 5.62(1B)). These are gifts relating to attendance at an event where attendance has been approved by the council in

accordance with the Council Member and CEO Attendance at Events Policy, and gifts from specified entities (see gift exclusions in Definitions table).

#### 1.1 Approval to participate where there is an interest

The receipt of a gift over \$300 (or the cumulative value of gifts from the same donor in a twelve-month period) prevents a council member or CEO from participating in, or providing advice or report on, the matter to be discussed (unless approval has been given).

As council is in the best position to determine whether the receipt of a gift is likely to affect the person's decision-making, in accordance with section 5.68, council can allow a council member to participate if they have received a gift valued at up to \$1,000 but only where they decide:

- that the interest is so trivial or insignificant it is unlikely to influence the disclosing member conduct in relation to the matter; or
- the interest is common to a significant number of electors or ratepayers in the case of disclosure by a council member.

If it is the CEO which has the interest relating to a gift, and the gift is valued at up to \$1,000, the council can allow the CEO to provide advice or a report, if they believe the nature of the interest is unlikely to influence the CEO. If the council decides that the interest is not trivial or insignificant and could be perceived to influence, the CEO should make arrangements for another employee to provide the advice or report.

The decisions to permit participation and the council's reasons for making that decision must be recorded in the minutes of the meeting.

#### 1.2 Ministerial approval to participate or provide advice

For an interest created by a gift(s) over \$1,000 in a twelve-month period, only the Minister can make a decision to allow participation or the provision of advice or a report.

The Minister can only decide to allow a council member to participate if:

- a quorum is needed; or
- the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.

The Minister may also allow a CEO to provide advice or a report, if the Minister is of the opinion the interest is unlikely to influence the CEO in the provision of the advice or report. An application for the CEO to provide advice or report must be made by the council and not the CEO.

An application made to the Minister must include: the nature of the interest and any other information required by the Minister to enable the Minister to make a decision.

If the Minister allows a council member to participate or the CEO to provide advice or report, the Minister's decision and the reasons for it must be recorded in the minutes when the matter is considered by council.

## 2. **Employees**

### 2.1 Gift value threshold

The threshold amount for a prohibited gift is \$300 or a lessor amount as determined by the CEO, as per Regulation 19AF of the *Local Government (Administration) Regulations 1996*.

The Chief Executive Officer has made a determination, under Regulation 19AF, not to set a lesser amount than the prescribed amount (\$300). This means that staff are prohibited from accepting a gift or gifts of a cumulative value of \$300 or more if received from the same donor within a 12 month period.

Individual employees are responsible for monitoring gifts received from the same donor, and accumulated value to ensure compliance with this Policy.

An associated person, as defined, is considered to include all entities that have or could reasonably believe intend to have a commercial relationship with the Shire through a contract, or supply of goods or services, or an entity seeking a licence, planning approval or authorisation, or similar.

The offer of a gift above the prescribed threshold (prohibited gift) from an associated person should be recorded in a 'Gift and Benefits Declaration Form' and must be declined or returned to the donor as soon as practicable. If a gift of this nature cannot be declined or returned, it must be disposed of by the CEO.

All employees are encouraged to disclose all gifts above \$50 in value by completing the relevant disclosure form.

## 2.2 Notification of accepting a gift or gifts

As outlined in the Code of Conduct, employees are to provide notification of the acceptance of a gift in writing and include the following information:

- (a) the name of the person who gave the gift; and
- (b) the date on which the gift was accepted; and
- (c) a description, and the estimated value, of the gift; and
- (d) the nature of the relationship between the person who is an employee and the person who gave the gift; and
- (e) if the gift is one of two or more accepted from the same person within a period of one year:
  - i. a description;
  - ii. the estimated value; and
  - iii. the date of acceptance,of each other gift accepted within the one-year period.

The Shire's Code of Conduct for Employees, Volunteers and Contractors outlines that the acceptance of gifts over the value of \$300 are prohibited.

Gifts accepted under the value of \$300 or any offered but rejected gift over \$300 should be disclosed in a Declaration Form and published in a register.

Details of gifts received by Officers no longer employed at the Shire are removed from the notifiable gift register.

Individual employees are responsible for monitoring gifts received from the same donor, and accumulated value to ensure compliance with this Policy.

## **3. Electoral gifts**

All candidates are subject to the electoral gift requirements of the *Local Government (Elections) Regulations 1997*, including candidates who are current Council members.

An electoral gift must be disclosed if the value of the gift is \$300 or more, or the 2 or more gifts received by one person within the period set out in r.30C (from 6 months prior to election day and 3 days after

election day – for unsuccessful candidates, or for successful candidates, on the start day for financial interest returns).

Electoral gifts do not include the provision of volunteer labour, gifts by will, gifts not relevant to the candidate's candidature, or gifts by a relative (as defined by section 5.74(1) of the Act and r.30A(5) of the Electoral Regulations).

Details of gifts received by unsuccessful candidates are removed from the electoral gift register in accordance with regulation 30G(3) of the *Local Government (Elections) Regulations 1997*.

#### **4. Risk Management of Gifts**

There are minimum expectations that must be considered by all gift recipients:

- Recipients should never expect to receive anything extra for doing what they are paid to do.
- Recipients should never use their role to solicit gifts, benefits and hospitality for themselves or others.
- Recipients should never accept:
  - offers of cash and items easily converted to cash such as gift vouchers and shares
  - bribes and inducements to act in certain ways
  - offers provided to family members and associates on their behalf
  - offers from people and organisations they are making a decision in relation to.

Common risks that can arise if recipients accept gifts that should be considered include:

- introducing a conflict of interest and calling into question their ability to make fair and impartial decisions
- encouragement to 'return the favour'
- creating a culture of entitlement where personal interests are prioritised
- signalling to customers, suppliers and stakeholders this is 'how things get done'.

#### **5. Accepting and Declining Gifts - Guideline**

##### **5.1 Determining value of the gift**

The onus is on the recipient to establish the value of the gift, based on the market value on the day the gift was received. How this can be established will depend on the nature of the gift received. For example, the price of a bottle of wine can be established through an internet search or a piece of artwork through contacting the artist. Hospitality can be determined by contacting the restaurant or caterers directly or from an internet search.

##### **5.2 Anonymous gifts**

Recipients must not accept anonymous gifts under any circumstances.

Regulations require the name and donor to be disclosed

Recipients should use the GIFT tool for determining whether it would be appropriate to accept or decline a gift:

##### **5.3 GIFT Tool**

The following questions may assist a recipient of a gift to determine the appropriateness of a gift and disclosure obligations:

G – Giver

- Who is providing the gift, benefit or hospitality and what is their relationship to me?
- Does my role require me to select contractors, award grants, regulate industries or determine government policies?
- Could the giver (person or organisation) benefit from a decision I make?

#### I – Influence

- Is the giver seeking to influence my decisions or actions?
- Is the gift, benefit or hospitality being offered to me publicly or privately?
- Is it a courtesy, token of appreciation or highly valuable?
- Does its timing coincide with a decision I am about to make?

#### F – Favour

- Is the giver seeking a favour in return for the gift, benefit or hospitality?
- Is the gift, benefit or hospitality being offered honestly?
- Has the giver made several offers to me or people in my business area over the last 12 months?
- Would accepting it create an obligation on me to return a favour?

#### T – Trust

- Will public trust be enhanced or diminished?
- Could I publicly explain why I am accepting the gift, benefit or hospitality?
- What would my colleagues, family, friends and associates think?
- Have I made good records on accepting the gift, benefit or hospitality in accordance with reporting and recording procedures?

### **6. Exclusions to Gift**

Council members and staff are encouraged not to enter competitions and door prizes when attending events in an official capacity unless it is in relation to attendance at an event hosted/facilitated by **one** of the below organisations.

The following situations are specifically excluded where the event or function ticket (gift) is received from one of the following organisations:

- WALGA (but not LGIS);
- Local Government Professionals Australia (WA);
- Australian Local Government Association;
- A department of the WA public service;
- A government department of another State, a Territory or the Commonwealth; or
- A local government or regional local government.

Explain how the receipt of unexpected gifts, such as promotional materials and gift baskets, are managed.

### **Consequences of Non-Disclosure and/or Misrepresentation of Value**

Failure to disclose a gift where required may result in a breach of the relevant Code of Conduct and/or penalties as prescribed in the relevant legislation.