

GIFTS AND BENEFITS POLICY



Responsible Department: General Manager's
Responsible Section: General Manager's
Responsible Officer: General Manager

Objective

Develop and maintain policy on the receipt of gifts and benefits consistent with the Local Government Act and Regulations as guided by the ICAC in maintaining accountability of the individual and the integrity of Council.

Policy

Public officials (including Councillors and employees of Council) have an obligation to carry out their duties conscientiously, honestly and objectively.

"Public officials and employees must:

- ***Never solicit gifts and benefits;***
- ***Never accept gifts of money;***
- ***Always consider the value and purpose of a gift or benefit before making any decisions about accepting it."***

If an employee becomes aware of a staff member soliciting gifts or benefits or accepting money, he or she must report it immediately to the General Manager. If an officer (or Councillor) is offered a gift of money (including offers of money to cover expenses for trips to view samples of work etc) it should be refused and the incident reported immediately to the officer's supervisor, the General Manager or, in the case of a Councillor, to the Mayor.

In deciding whether to accept a gift, consideration needs to be given to:

- The motive of the gift giver;
- The actual or perceived effect of the gift;
- The cost of the gift; and
- Other situational factors.

In circumstance where an offer of a gift is made which may constitute a bribe, or an attempt to bribe, it is not only appropriate that the offer be rejected, but it is also important that the fact that the offer was made be reported to the appropriate person within the Council (the General Manager or the Manager Administrative Services or the Mayor, if the offer is made to a Councillor) and to the ICAC. The ICAC's brochure on bribery details the steps to be taken should a public employee or Councillor be offered a bribe or otherwise suspects that bribery has occurred.

In deciding whether or not to accept a gift or benefit, the following matters must be considered:

I. The motive of the gift giver

Gifts can be given with varying motives and purposes. The purpose for which a gift is given, to a certain extent, affects how it should be managed. The following extract from the ICAC publication "Managing Gift and Benefits in the Public Sector - Toolkit" provides a brief overview of the various motives of gift givers:

"Gift of influence – a gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future.

Gift of gratitude – a gift offered to an individual or agency in appreciation of performing specific tasks or for exemplary performance of duties.

Gifts to staff who speak at official functions would be considered gifts of gratitude.

Token gift – a gift that is offered in business situations to an agency or public official representative of an agency. Such gifts are often small office or business accessories (eg. Pens, calendars, folders) that contain the company logo. They are usually products that are mass produced and not given as a personal gift.

Ceremonial gift – an official gift from one agency to another agency. Such gifts are often provided to a host agency when conducting official business with delegates from another organisation. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the agency, and therefore the gift is considered to be for the agency, not a particular individual."

Gifts of influence should never be accepted. Gifts of gratitude, token gifts and ceremonial gifts are acceptable under certain circumstances (see below).

a) The actual or perceived effect of the gift

"It is important to consider the intentions of the gift giver when deciding if it is appropriate to accept a gift. Often the intended recipient may not know the intentions or the intentions may be different from the public perception of the situation.

*If the **likely perception** of the gift-giving relationship is that the gift could influence the intended recipient or the intended recipient's performance of his or her official function, then the gift should not be accepted. This is despite the fact that such perceptions alone may not indicate an actual inappropriate influence."*

b) The cost of the gift (and nominal value)

One factor in determining whether a particular gift or benefit may be accepted is its value.

While it may sometimes be difficult to estimate the monetary value of a gift, nominal value in relation to gifts is considered to be \$50.00. Any gifts with an estimated value of more than \$50.00 are not considered 'nominal' and should be rejected or returned.

The following gifts and benefits would normally fall below the nominal value of \$50.00:

- inexpensive pens or stationery
- chocolates
- flowers
- modest bottle of wine.

By contrast, the following gifts and benefits would be likely to be more than the nominal value:

- tickets to sporting events
- jewellery
- works of art
- discounted products for personal use
- use of facilities such as gyms.

One-off gifts of less than nominal value and which are considered to be gestures of appreciation or ceremonial gifts (as opposed to gifts of influence) are able to be accepted, but must be recorded in Council's Gifts and Benefits Register.

An additional consideration of gifts and benefits of nominal value is whether it is a single occurrence or one of a series. A series of gifts received in any 12 monthly period that individually are of less than the nominal value, but which have an aggregated value that exceeds the nominal value are required to be reported and, depending on the circumstances, may need to be rejected or returned.

II. Other situational factors

Certain employees need to exercise greater care when considering accepting gifts or benefits.

Employees who have regulatory relationships with Council's customers (such as inspection and certification roles) and also employees involved in procurement and disposal need to exercise greater care when considering accepting gift or benefits. In these circumstances there is a greater likelihood that a gift or benefit may appear to have been offered in order to achieve a particular outcome, even if this is not the intention of the person who offered it.

What should I do if I am offered a gift or benefit?

All offers of **gifts and benefits of more than nominal value**, should be **rejected** and the offer should be reported orally to a supervisor immediately.

All **gifts of influence**, should be **rejected** and the offer should be reported orally to a supervisor immediately.

The reporting of acceptance of a gift/benefit obliges the employee's supervisor to take appropriate action, which may include:

- Return the gift
- Donate the gift to a local charity
- Contact the gift giver and explain Council's policy in relation to gifts & benefits.

Other gifts need to be considered in the context of this policy.

Options for dealing with the receipt of gifts that are unable to be returned

There are several options for the disposal of gifts that, for one reason or another, are unable to be returned.

There will be circumstances where a gift that is unacceptable under this policy may not be able to be returned or may not easily be returned.

Examples of this are:

Gifts accepted for protocol or other reasons, where returning it would be inappropriate

Anonymous gifts (received through the mail or left without a return address)

A gift received in a public forum where attempts to refuse or return it would cause significant embarrassment.

Options for disposing of gifts that are unable to be returned include:

- Sharing the gift amongst all staff (for example a computer printer that could be networked)
- Holding a fundraiser with the gift(s) as the prize
- Donating the gift to an appropriate charity
- Holding an auction with the proceeds going to a charity.

In instances such as this, the matter should be reported to the employee's supervisor who will determine how to dispose of the gift. Caution should be exercised when the gift giver has a continuing business relationship with the Council.

Gifts and Benefits Register

The Gift Register acts as a record of any gifts or benefits received by Council or its staff, and is available to the public. It includes details of the nature and value of the gift, who gave it, and what decision was made about the use or disposal of the gift. Therefore, if any issues arise later, there is a record proving that Council has been open and transparent in dealing with the gift.

It is in your interest to register any gift or benefit with the Gift Register because it can help to protect you from any subsequent accusations that you misused your position or were dishonest about declaring a gift.

Note however that registering the acceptance of a gift on the Gift Register does not necessarily mean that it is ethical or appropriate to accept the gift in the first place. You can register the acceptance of a gift by completing the Gifts & Benefits Register Form and hand the completed form to the General Manager's Administration Officer.

Anyone who is concerned about the offer of any gift/benefit should not be accepting the gift at all.

Relevant case studies and examples

Relevant case studies and examples in relation to what is/is not acceptable in relation to the acceptance or otherwise of gifts and benefits can be found in:

Independent Commission Against Corruption (ICAC). Managing **Gifts and Benefits** in the Public Sector - Toolkit. ICAC. Sydney. 26 June 2006. [This document is available for viewing/downloading at – www.icac.nsw.gov.au].

Related Policies

Council's Code of Conduct states that:

"Personal Benefit

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

Gifts or benefits

You must not:

- seek or accept a bribe or other improper inducement
- by virtue of your position acquire a personal profit or advantage which has a monetary value, other than one of a token value.

You must not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence you to:

- act in a particular way (including making a particular decision)
- fail to act in a particular circumstance
- otherwise deviate from the proper exercise of your official duties.

You may accept gifts or benefits of a nominal or token value that do not create a sense of obligation on your part.

Token gifts and benefits

Generally speaking, token gifts and benefits may include:

- gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)
- free or subsidised meals, of a modest nature, and/or beverages provided infrequently (and/or reciprocally) that have been arranged primarily for, or in connection with, the discussion of official business free meals, of a modest nature, and/or beverages provided to council officials who formally represent their council at work related events such as training, education sessions, workshops refreshments, of a modest nature, provided at conferences where you are a speaker
- ties, scarves, coasters, tie pins, diaries, chocolates, flowers and small amounts of beverages
- invitations to appropriate out of hours "cocktail parties" or social functions organised by groups, such as, council committees and community organisations.

Gifts of value

You must **never** accept an offer of money, regardless of the amount.

"You must avoid situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind, is securing or attempting to influence or secure a favour from you or the council. You must also take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that could appear to an impartial observer to be an attempt to influence or secure a favour. Immediate family members ordinarily include parents, spouses, children and siblings.

Councillors and designated persons must by law disclose a description of any gift or gifts totalling a value exceeding \$500 made by the same person during a period of 12 months or less. (required to be included in the disclosure of interests returns)."

"Political donations and conflict of interests

- 6.3** Councillors should take all reasonable steps to identify circumstances where political contributions may give rise to a reasonable perception of influence in relation to their vote or support."

References

- Independent Commission Against Corruption (ICAC). Managing **Gifts and Benefits** in the Public Sector Toolkit. ICAC. Sydney. 26 June 2006 [www.icac.nsw.gov.au]
- Independent Commission Against Corruption (ICAC). Bribery, corrupt commissions and rewards. ICAC. Sydney. June 2006. [www.icac.nsw.gov.au]

Measure of Success

- Measure by the adherence to the Policy and Procedure outlined in the Policy.
- A Gifts and Benefits register is kept as a record.

History

MINUTE NUMBER	MEETING DATE	DESCRIPTION OF CHANGE
266/2006	16 May 2006	Adopted
26/2012	21 February 2012	Reviewed
58/2013	5 February 2013	Reviewed