

POLICY



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Policy title: GIFTS, ENTERTAINMENT AND GRATUITIES
Directorate: ORGANISATIONAL SERVICES
Branch: CORPORATE GOVERNANCE
Policy objective: To provide guidelines to employees and councillors in relation to dealing with "gifts" received, as part of their "official duties".

Policy scope:

This policy applies to all councillors and employees.

This policy does **not** address the "**election gift**" requirements under the *Local Government Act 2009* for councillors.

Definitions:

TERM	DEFINITION
Gift ("non-election" gifts for councillors)	<p>Gift definition and disclosure requirements for a councillor</p> <p>In this policy the term "gift" for councillors includes hospitality and travel. Under schedule 5, section 12 of the Local Government Regulation 2012 a gift for a councillor is—</p> <ol style="list-style-type: none"> 1. The particulars required for each gift, or all gifts totalling, more than \$500 in amount or value given to a relevant person by another person (a donor) are—(a)the donor’s name; and(b)a description of the gift. 2. Subsection (1) does not apply to a gift from a donor who is— <ol style="list-style-type: none"> (a) a person who is related to the relevant person; or (b) someone else who is related by blood or marriage to the relevant person; or (c) the relevant person’s friend. 3. However, the relevant person must be satisfied there can not be the perception of a conflict of interest, financial or otherwise, relating to the gift that could conflict with a duty the person has under the Act. 4. For a councillor, a gift is— <ol style="list-style-type: none"> (a) the transfer of money, other property or other benefit <ol style="list-style-type: none"> (i) without consideration; or (ii) for a consideration substantially less than full consideration; or (b) a loan of money or other property made on a permanent or indefinite basis, other than an overdraft facility. <p>A councillor would review the gift against this policy and if the gift is assessed as being acceptable; disclose receipt of a gift via a letter (detailing the above requirements) to the Corporate Governance Manager for inclusion in their register of interests and published on Council's website.</p>

Term	Definition
Gift (employees)	<p><u>Gift definition for employees</u></p> <p>For the purposes of this policy, the definition of the term "gift" is the receipt of a benefit or item and includes:</p> <ul style="list-style-type: none"> • the transfer of money • the transfer of property of a presentational or charitable nature or otherwise • the provision or use of property, equipment or services free of charge, at a reduced rate, for a period of time or an unspecified period (e.g. use of holiday unit) • loans of money, including provision of overdraft facilities (e.g. credit card) or guarantor for a loan • the sale of virtual property with a sale price below proper valuations • hospitality, including meals, entertainment and accommodation • travel (all overseas travel requires disclosure) • any "bargain deal". <p>The term "gift" includes:</p> <ul style="list-style-type: none"> • Gifts or benefits offered or given by other Council employees or councillors. <p>The term "gift" does not include:</p> <ul style="list-style-type: none"> • items which can be regarded as mementos such as ties, cuff-links, pens, stationery and the like, the "fair current market price" of which did not exceed Gift Declaration Limits at the time of purchase and at the place of purchase; • gifts received from family members or personal friends (except where they are a Council employee and/or councillor) offered in a purely personal capacity. Although extreme care needs to be taken in relation to disclosure of any actual or perceived conflict of interest e.g. I have a personal friend that I have known for years and now they are supplying a service to Council, I therefore must disclose a gift over "Gift Declaration Limits"; and • Items provided by Council to employees or councillors under approved reward programs. e.g. years of service recognition or bonus performance payments etc. <p>If a gift over Gift Declaration Limit does not need to be disclosed under this policy, but the gift may give rise to an actual or perceived conflict of interest it must be disclosed via the Council's "conflicts of interest disclosure" process. That is, the local government principles for transparent and effective processes, decision making in the public interest and ethical and legal behaviour of councillors and local government employees direct us to always be pro-disclosure. For information about conflicts of interest disclosure, please refer to the Code of Conduct for Staff.</p> <p>The term "gift" includes multiple gifts which have been made by one person or organisation in any one financial year where the aggregate value, of the individual gifts, exceeds Gift Declaration Limit.</p>
Gift (employees) con't	<p>The valuation of a gift or "fair current market price" must not be established by the recipient or supplier of the gift, but by an uninvolved party, unless clear advertised prices can be established i.e. attach a copy of the advertisement to the disclosure.</p>

Gift declaration limits	<p>Gifts must be disclosed by the following positions and for the following value amounts:-</p> <ul style="list-style-type: none"> • Chief Executive Officer and councillors over \$500 • directors over \$450 • managers over \$350 • all other staff over \$300.
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Policy statement:

1. This policy does **not** address the "election gift" disclosure requirements for councillors. For further advice on this matter contact the Corporate Governance Manager.
2. All gifts over the specified dollar amount (as defined in this policy) received by employees and councillors, as part of their official duties, **are the property of Council**. As such, a gift over the specified Gift Declaration Limits can only be retained or disposed of in accordance with the policy.
3. Consistent with the *Local Government Act 2009*, the *Public Sector Ethics Act 1994* (integrity principle) and the Council's code of conduct, Council employees and councillors **must not ask for** money, gifts, gratuities or excessive entertainment from any person or business. This includes articles for personal use, gift certificates, etc.
4. In relation to Fringe Benefit Tax (FBT) the following should be noted:
 - (a) entertainment is to be restricted to that which is customarily accepted in the conduct of business affairs and is within the limits of accepted or legitimate commercial practice
 - (b) generally, FBT will be payable by Council on gifts, benefits and entertainment that is declared and above \$300 in value.
5. It is critical in developing an understanding of what is considered "within the limits of good taste" to review the **context** under which the gift is received. That is, **you must carefully examine:-**
 - (a) **Who** is giving the gift - do I have an on-going business relationship and how will I manage the on-going conflict of interest created by accepting a gift.
 - (b) **What** type of gift is given - for example, the custom of some cultures is to give people "lucky money", this would always be inappropriate.
 - (c) **When** the gift is given and how openly it was given - before the delivery of a decision or service is always inappropriate. For example, it would be inappropriate to receive a gift from someone who is also submitting a tender for consideration. Also, a gift given discreetly (or "under the counter") is more suspicious than gifts given publicly.
 - (d) **Why** was the gift given, does the gift giver expect something in return? (**the receipt of a gift has been shown to have a subconscious effect on us, that is, we want to reciprocate.**) Therefore, how the gift is given can have an effect on whether we believe we have been placed under an obligation to provide a favour in return.
 - (e) **How** the gift would be likely to be perceived by the community - would the community, or sections of it, see the gift as inappropriate and likely to unduly influence a Council decision? That is, creating a conflict of interest.

Policy administrative procedure:

The following procedure is to be undertaken for this policy:

1. From time to time, Council employees and councillors may be offered gifts from a fellow employee, councillor, customers, suppliers or contractors and also, may receive invitations to entertainment or hospitality provided by a fellow employee, councillor, suppliers or contractors.
2. **All gifts, entertainment and gratuities, regardless of value, must be appropriate before accepting.** Therefore gifts must **not** be accepted if they can be seen to be a "kick-back", corrupt payment or give rise to an actual or perceived conflict of interest.
3. Gifts meeting the Gift Declaration Limits received by employees, as part of their official functions (e.g. gift from a Council client, customer, community group, service provider or supplier), are to be disclosed via the "Declaration of Official Gifts" form (ID: 6516810).
4. In relation to the declared gifts, the following options will be considered, but the outcome will be based on what is in the public interest:-
 - surrender the gift for disposal and/or use by Council
 - purchase the gift by the employee or councillor
 - retention of the gift (at no cost) for personal consumption and/or use.
5. **All tangible and/or physical gifts meeting the gift declaration limits must be surrendered during the review/assessment of the gift.**

Councillors are only required under schedule 5, section 12 of the Local Government Regulation 2012 to disclose items and/or services above \$500 value amounts to the Chief Executive Officer via the Corporate Governance Manager who will update the Register of Interests. Councillors will need to consider the appropriateness of the gift in terms of this policy and the local government principles contained within the *Local Government Act 2009*, to determine whether to "surrender" or "retain" the gift. For gifts that are retained, a disclosure by councillors will be made via a letter to the Corporate Governance Manager. Councillors need to refer to the definition section of this policy for details of what information needs to be contained in the "disclosure letter".
6. Council views gifts, entertainment and gratuities, meeting the definition of a "gift" under this policy and over the specified dollar amount, **offered or won, as Council property.** For example, a lucky-door prize (i.e. no ticket purchased) won at a seminar or conference where Council paid for the employee's or councillor's attendance is Council property.
7. The Chief Executive Officer under this policy has the discretion, subject to the *Local Government Act 2009* for the disposal of high value asset provisions, to make a decision on the appropriate method of retention or disposal of these disclosed gifts.
8. **PLEASE NOTE** - It must be noted that disclosures made under this policy must not be confused with meeting or fulfilling other statutory and/or tax related requirements.
9. Offers of bribes are to be refused and a written report is to be made to the Chief Executive Officer immediately.
10. If you wish to provide gifts, gratuities or entertainment, this must be provided in accordance with Council's policy titled "Entertainment or Hospitality Expenditure".
11. All gifts meeting the Gift Declaration Limits for employees will be registered in a gifts register. For councillors gift over \$500 will be registered in their "register of interests" and appear on Council's website.

Areas of uncertainty

Where it is not immediately clear that an activity or function relates to official duties or there is doubt about the validity of incurring particular expenditure then guidance can be sought from Council's Code of Conduct for Staff and/or further discussion with the relevant manager/director.

Related policies/legislation/other documents:

DOC ID	DOCUMENT TYPE	DOCUMENT NAME
	Legislation	<i>Local Government Act 2009</i>
	Legislation	<i>Public Sector Ethics Act 1994</i>
5979417	Policy	Code of Conduct for Staff
6034391	Guidelines	Guidelines for completing Declaration of Official Gifts disclosure form
6516810	Form	Declaration of Official Gifts
https://lccintranet.logan.qld.gov.au/org-structure/governance/Pages/ConflictsOfInterest.aspx	Intranet site	Guidance on conflicts of interest