

Gifts Policy

Policy – CP095

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1. The purpose of this policy is

To establish guidelines for appropriate conduct in circumstances where Councillors or staff are offered gifts, benefits, hospitality or are granted awards or win prizes, whether part of their official duties or while attending functions as Council representatives.

2. Policy Statement

This policy has been developed to ensure transparency and that the principles of good governance and accountability are practiced by Councillors and staff when receiving gifts in the course of their duties.

This policy is intended to highlight both the legal and ethical issues that should be taken into account in deciding whether to accept gifts, benefits or hospitality.

Mildura Rural City Council acknowledges that as part of business or cultural practices, Councillors and/or staff may be presented with gifts as a form of appreciation. While Council is appreciative of such gifts it is Council policy that gifts should not be accepted and politely refused. Should any gifts be received they will be recorded in Council's Gifts Register.

3. Principles

Gifts Received

Gifts may be offered in the course of a business relationship to express gratitude for assisting with a matter, however the general purpose may be to create a feeling of obligation in receipt. Such gifts may include alcohol, vouchers, food, flowers, tickets, invitations, entertainment or hampers.

- Gifts may be received by Councillors or staff (or their spouses and dependent children) only in accordance with these principles and procedures:
 - Gifts must not be accepted which give the appearance of a past, present or future conflict of interest; and
 - Gifts must not in any circumstances be accepted involving the transfer of money regardless of value (by cash, vouchers or loan) other than as part of an assistance program approved by Council.

- The offer of a gift to a specific person has the same implications for the purposes of Primary and Ordinary Returns, Conflict of Interest rules and this policy, even if the gift is not accepted, or is passed to the CEO for disposal. It should be noted that it is the intention of the person giving the gift that is the critical factor, regardless of what is done with it by the staff member or Councillor. Therefore if the gift is intended for that particular person it should be declared, even if not retained;
- If the gift is offered to Council or to a staff member/Councillor in their capacity as Council's agent, purely for redistribution by Council, this does not constitute a gift under this policy. When the gift is redistributed to another person(s) this would not fall under this policy or the conflict of interest rules. The gift to the final recipient(s) would be classed as coming from Council rather than the original donor;

Nominal Gifts

Nominal gifts and general hospitality may include:

- Gifts to the value of \$20 or less and infrequently offered
- Single bottles of reasonably priced alcohol as acknowledgement for giving a presentation or being a guest speaker
- Meals/beverages of a moderate nature when representing Council at work related event such as training, workshops or seminars
- Marketing or corporate mementos such as ties, pens, coasters, diaries
- Flowers
- Invitations to appropriate out of hours functions or social events organised by groups such as Council committees and community organisations

Gifts/Benefits of value

A gift or benefit of something more than a nominal value may include:

- Invitations to a corporate box at a sporting event or other entertainment
- Free or discounted tickets to sporting events, corporate hospitality, gyms, holidays homes or hampers
- Payment by suppliers to attend training seminars, conferences or other promotional or educational activities
- Free or subsidised meals/beverages provided by a potential supplier or contractor
- Free or subsidised meals/beverages provided infrequently and/or reciprocally, that have been arranged primarily for, or in connection with, discussion of official business

Gifts never to be accepted

The following gifts or benefits are considered inappropriate and should not be accepted:

- Money, regardless of the amount
- Access to confidential information
- Promise of a new job
- Preferential treatment (may include reciprocal favours)
- Disposition of property or bequest, not necessarily land can include goods and chattels (furniture, vehicles etc), by one person to another without payment
- Goods or services at rates that are not generally available

Acceptance of Gifts

- Where a gift is offered and it is appropriate for a Councillor or member of staff (or that person's spouse or dependent children) to accept the gift, the following must apply:
 - Any gift or property immediately becomes 'public property' and is disposed of in accordance with the procedure for **Disposal of Gifts** as set out below;
 - The recipient must complete a "Declaration of Official Gifts" form within 14 days of receiving the gift or, 14 days of the date of returning to Australia, if the gift was received overseas; and
 - The Chief Executive Officer must hold the declaration in the 'Gift Register'.
- If a gift is of particular significance regarding its historical, cultural or protocol value, or was given to a Councillor or member of staff by virtue of the discharge of that person's duties, it must be delivered to the Chief Executive Officer, no matter what the value. The Chief Executive Officer must determine whether the gift is to be retained, utilised or displayed; and

Disposal of Gifts

- The Chief Executive Officer may dispose of gifts by any of the following methods:
 - Return to the original recipient;
 - Return to sender;
 - Disposal by resolution of Council;
 - Transfer to other public agencies or authorities;
 - Transfer as a gift to a recognised charitable, aid or non-profit organisation;
 - Archival action by the Victorian Museum or State Library;
 - Reduction to scrap; or
 - Destruction.
- If a gift does not have a public value or is not of particular significance regarding its historical, cultural or protocol value, or was given to a Councillor or member of staff by virtue of the discharge of that person's duties, the recipient may, at the discretion of the Chief Executive Officer, buy the gift from Council. The purchase price must be the manufacturer's wholesale value of the gift in the place of origin at the time of purchase as determined by the Chief Executive Officer, less \$500. If there is difficulty in assessing the value, a valuation must be obtained by Council from an appropriately experienced person or body.

Awards and Prizes Won at Conferences/ Seminars

- Prizes or awards valued at over \$500 that are won at functions attended at Council's expense, must immediately become the property of Council. The Supreme Court has ruled that such prizes or awards are owned by the person/organisation providing 'consideration' for the attendance. Councillors and staff attending functions as Council representatives, and who make no financial contribution to the attendance, lose entitlement to any award or prize won as a result of attending the function;
- Circumstances in which a person may be entitled to keep a prize or award over \$500 are where personal payment has been made for the attendance, or the person pays for a raffle ticket that wins a prize. In each case the recipient has provided consideration for the prize/award and may lay legal claim to its title; and

- From an ethics point-of-view, recipients of such prizes could potentially be seen as being influenced by the sponsor of the prize. Prizes and awards valued at over \$500 must therefore be reported as soon as possible to the Chief Executive Officer, who must determine the ownership of the item and the appropriate action to be taken, as per this policy.

Benefits

- A Councillor or member of staff must not knowingly accept travel or hospitality (including meals and accommodation) sponsored wholly or partly by any person, organisation or business, where such acceptance implies an obligation on the recipient. However, reasonable hospitality may be accepted in circumstances where it is:
 - Approved by the Chief Executive Officer;
 - Provided at a function or event where the person is acting in an official capacity on behalf of Council;
 - Provided at rates that are openly available to people other than Councillors or staff; or
 - Of value less than \$500 and by reason of its triviality could not be constructed as creating an obligation.

Campaign Donation Returns

- Division 9 of the *Local Government Act* 1989 outlines the requirements in relation to Campaign Donation Returns
 - Section 62B – Certain gifts not to be accepted
It is unlawful for a Councillor or Candidate or a person acting on behalf of a Councillor or Candidate to receive during the donation period a gift made to or for the benefit of the Councillor, being a gift the amount or value of which is equal to or exceeds the gift disclosure threshold unless:
 - (a) the name and address of the person making the gift are known to the person receiving the gift; or
 - (b) at the time when the gift is made
 - (i) the person making the gift gives to the person receiving the gift the person's name and address; and
 - (ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.

Conflict of Interest

- As outlined in Section 78C of the *Local Government Act* 1989 a Councillor or member of staff has an indirect interest because of receipt of an applicable gift if:
 - One of more gifts with a total value (or more than) over the gift disclosure threshold (\$500 over a five year period) are received from a person in the five years preceding the decision or exercise of the power, duty or function, this does not include:
 - (a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, Councillor, member of Staff or member of a Special Committee;
 - (b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, member of Staff or member of a Special Committee.

- A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from:
 - (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gives the applicable gift to the person on behalf of a person, company or body, that has a direct interest in the matter.

4. Who is responsible for implementing this policy?

General Manager Corporate.

5. Definitions

Gift

Section 3 of The *Local Government Act 1989* defines a gift as meaning any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including –

- (a) the provision of a service (other than volunteer labour); and
- (b) the payment of an amount in respect of a guarantee; and
- (c) the making of a payment or contribution at a fundraising function

For the purposes of this policy, the definition of 'gift' includes:

Generally all goods or services intended for a specific person and valued at over \$500, specifically;

- Hospitality, including meals, entertainment and accommodation other than attendance in an official capacity on behalf of Council;
- Travel;
- Campaign donations;
- Tickets to functions or events that invite a named person;
- 'Season' tickets or a book of tickets that may or may not be used in full;
- Transfer or gift of money or vouchers – cannot be accepted;
- The transfer of property of a presentational or charitable nature or otherwise – cannot be accepted by Councillors or staff;
- The provision of services or goods free of charge or at a reduced or discounted rate not generally available – cannot be accepted;
- Loans of money in capacity of Council employee or Councillor – cannot be accepted; and
- The sale of virtual property with a sale price below proper valuation – cannot be accepted.

The term 'gift' does not include:

- Goods or services valued at under \$500;
- Reasonable hospitality for attendance in an official capacity;
- Goods or services intended for Council's distribution;
- Any tickets or invitations sent to Council and passed on to others to attend on behalf of Council;
- Items which can be regarded as mementoes, such as ties, cuff-links, pens, stationery and the like, the manufacturer's wholesale value of which did not exceed \$500 at the time and place of purchase; and

- Gifts received from family members or personal friends offered in a purely personal capacity. These may however come under the ambit of the Conflict of Interest rules (Local Government Act 1989 s78c) regarding indirect conflicts due to receipt of applicable gifts.

Register of Interest Returns

These are completed by nominated officers, Councillors, and members of special committees to declare any interests they may have (eg property owned, gifts over \$500 received) as required by the Local Government Act 1989. The Primary return is completed initially, followed by Ordinary returns twice yearly.

6. Legislation and other references

6.1 Legislation

Local Government Act 1989

Note: In addition to the requirements of this policy it remains the responsibility of staff and Councillors to maintain their own records of applicable gifts received in order to comply with Section 78c of the Local Government Act 1989.

Additionally, all 'nominated officers', Councillors and members of special committees must declare any gifts received, to the value of \$500 and above, on their Ordinary Register of Interest returns for any gifts received during the period of the return. (Section 87(7)e of the Local Government Act).

6.2 Documents

Local Government Victoria – Conflict of Interest booklet.

Local Government Victoria – Register of Interests Guide.

6.3 Risk Assessment Reference

Please tick the corporate risk(s) that this policy is addressing.

Risk Category	✓	Risk Category	✓
Asset Management		Financial Sustainability	
Committees		Human Resource Management	✓
Compliance – Legal & Regulatory	✓	Leadership & Organisational Culture	
Contract Management		Occupational Health & Safety	
Contract Tendering & Procurement		Organisational Risk Management	
Corporate Governance	✓	Project Management	
Environmental Sustainability		Public Image and Reputation	✓

DECLARATION OF OFFICIAL GIFTS

by Councillors and Staff of Mildura Rural City Council

Declarations made using this form will be held maintained by the Chief Executive Officer in Council's Gifts Register. This form must be completed with 14 days of receiving the gift or benefit or, if was received overseas, within 14 days of returning to Australia.

Full name _____

Type of Gift

<input type="checkbox"/> Transfer of money <input type="checkbox"/> A loan of money <input type="checkbox"/> Travel <input type="checkbox"/> Hospitality (meals, entertainment, accommodation)	<input type="checkbox"/> Transfer of property of a presentational or charitable nature or otherwise <input type="checkbox"/> The sale of property with a sale price below proper valuation <input type="checkbox"/> Provision of services free of charge or at a reduced rate <input type="checkbox"/> Other (please state)
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Full description of gift

Gift was received from _____ **on (date)** _____

Value of the gift _____

Has the gift been independently valued by an appropriately experienced person or body?

Yes **Name of person/body valuing gift** _____ **No**

Do you wish to purchase the gift?

Yes **No**

Was the gift handed to the Chief Executive Officer?

Yes **Date** _____
 Reason

<input type="checkbox"/>	It has a historical value
<input type="checkbox"/>	It has a cultural value
<input type="checkbox"/>	It has a protocol value
<input type="checkbox"/>	It was given to me by virtue of the discharge of my duties

Do you wish to retain the gift in your designated work area?

Yes **No**

Signature _____ **Date** _____

OFFICE USE ONLY		Gift disposed of as follows:	
<input type="checkbox"/>	Transfer to other public agencies or authorities	<input type="checkbox"/>	Disposal by resolution of Council
<input type="checkbox"/>	Retention by recipient	<input type="checkbox"/>	State Museum or State Library
<input type="checkbox"/>	Sold to recipient (value less \$200)	<input type="checkbox"/>	Destroyed
<input type="checkbox"/>	Transfer as a gift to a recognized charitable, aid or non-profit organisation	<input type="checkbox"/>	Archival action
<input type="checkbox"/>	Reduction to scrap	<input type="checkbox"/>	Returned to sender
CEO Signature		Date	