

Gift, Benefit and Hospitality Policy



Policy type	Council
Adopted by	Council
Responsible General Manager	Corporate
Responsible officer	Manager Governance and Risk
Date adopted	24 March 2021
Scheduled for review	This policy will be reviewed four years from the date of adoption, or sooner if required.

PURPOSE

This policy is to provide clear guidance to Councillors and employees on responding to the acceptance, or otherwise, of gifts, benefits and hospitality from individuals or other entities external to Council.

Council must adopt a Councillor Gift Policy, which must include procedures for the maintenance of the gift register and any other matters prescribed by the regulations, under section 138 of the *Local Government Act 2020* (the **Act**).

SCOPE

This policy applies to all Councillors and employees, and gifts made to them or others as a consequence of their role.

This policy does not apply to gifts received by Councillors or candidates during the donation period of an election campaign or internal gifts received by Councillors or employees.

The Act sets out legislative requirements and Councillors and employees are responsible to familiarise themselves with the provisions contained in the Act and the requirements of this policy.

Nothing in this policy shall be construed to override the provision of the Act.

DEFINITIONS

Benefits	Something which is believed to be of value to the receiver, such as a service ie. access to sporting, cultural or social events, preferential treatment, privileged access, access to discounts and loyalty programs, accommodation, pleasure or vacation trips. The value of benefits may be difficult to define in dollars, but as they are valued by the Councillor or employee, they may be used to influence their behaviour.
Bribe	A bribe is an offer of money or other inducement made with the intention to procure action, decision of preferential treatment in favour of the giver or another person.

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Ceremonial/Official Gifts	<p>Official gifts provided as part of the culture and practices of communities and government, within Australia or internationally. Ceremonial gifts are usually provided when conducting business with official delegates or representatives from other organisations, community or foreign government.</p> <p>Ceremonial gifts are the property of Moira Shire Council irrespective of value and should be accepted on behalf of Council. The receipt of the ceremonial gift should be recorded in the register but does not need to be published.</p>
Conflict of Interest	
<i>General conflict of interest</i>	The public or a third party could reasonably form the view that the Councillors or employees private interests could improperly influence their decisions or actions.
<i>Material conflict of interest</i>	An affected person would gain a benefit or suffer a loss depending on the outcome of the matter.
Gifts (s3 LGA)	<p>Means 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 –</p> <ul style="list-style-type: none"> 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;
Gift explanation to support definition	Free or discounted items or services and any item or service that would be generally be seen by the public as a gift. These include items of high value ie. artwork, jewellery, or expensive pens, low value ie small bunch flowers, ie chocolates. Fundraising that is consistent with relevant legislations and polices is not prohibited under the minimum accountabilities.
Gift disclosure threshold	<p>A disclosable gift means one or more gifts with a total value of, or more than, \$500 or a higher prescribed amount that a relevant person received in the preceding 5 years if -</p> <ul style="list-style-type: none"> a) the relevant person was a Councillor, member of Council staff or member of delegated committee at the time the gift was received.
Hospitality	Hospitality is the friendly reception and entertainment of guests. Hospitality may range from light refreshments at a business meeting to expensive restaurant meals and sponsored travel and accommodation.
Legitimate business benefit	Gift, benefit or hospitality if it furthers the conduct of official business or other legitimate goals of Council.
Minimum accountabilities	Minimum accountabilities set by the Victorian Public Sector Commission for managing, gifts, benefits and hospitality.

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Monetary gift	Defined as cash, or a cash equivalent including any form of cheque, gift vouchers, direct deposits, lottery tickets or items which can easily converted into money.
Public register	Record of a summary of information contained in a register, for publication as required by the minimum accountabilities.
Register	Record of all declarable gifts, benefits and hospitality.
Token offer	Is of such a nature or minimal value (less than \$50) that it could not reasonably be regarded as a capable of influencing any actions or decision of the relevant person in relation to the matter. Does not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of their official duties. In the event that a gift might reasonably be perceived to influence or appear to influence the recipient, it cannot be defined as a Token Gift.
Non-token offer	Gift, benefit or hospitality that is, or may be perceived to be by the recipient, the person making the offer or by the wider community, of more than inconsequential value. All offers worth more than \$50 are non-token offers.

POLICY

Management of offers of gifts, benefits and hospitality

Councillors or employees must

- Not solicit, demand or request gifts or any personal benefit for themselves or another person by virtue of their position;
- Not accept any gift, benefit or hospitality that could influence, or reasonably be perceived to influence them in the performance of their public or professional duties;
- Not accept any gift, benefit or hospitality where they are likely to make decisions including current and prospective suppliers;
- Not accept any gift, that may adversely affect their standing as a Councillor or employee or which may bring Moira Shire Council into disrepute;
- Ensure that a person, company or organisation is not placed in a position in which they feel obliged to offer gifts, benefits or hospitality in order to secure or retain Council business;
- Avoid circumstances where the offer of a gift, benefit or hospitality could be interpreted as having been made with the objective of securing, or in return for, a favour or preference;
- Under no circumstances accept or receive a monetary benefit, supplier's goods or services at no cost or at a non-commercial discount;
- Be fully accountable and responsive for their actions and ensure that the methods they use to arrive at decision are beyond reproach, do not create a conflict of interest and can withstand audit process and proper scrutiny; and
- Report any incidences where a bribe or inducement is offered.

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Acceptance of Gifts, Benefits or Hospitality

Official Gifts

Councillors or employees may be involved in conferences or social, cultural, community, industry events where official gifts are presented or exchanged. Where it would appear to be impolite or inappropriate to decline the offer, it is reasonable for official representatives to accept official gifts on behalf of Council.

A Gift, Benefit and Hospitality Declaration Form must be completed and the gift be recorded in Council's Gift Register but does not need to be included in the Public Register.

The gift would normally be considered the property of Council and where suitable, the official gift may be displayed in an appropriate and secure location for public viewing.

Gifts of appreciation

Councillors or employees are not to accept a gift of appreciation that has a significant monetary value (more than \$50). Where such gifts are offered, the Councillor should politely refuse the offer explaining that is against the Council's policy to accept such a gift.

If such a gift is offered in an open or public or public forum and refusal would be obviously discourteous or acceptance would cause any potential perceived or conflict of interest, the gift may be accepted but it is referred to the Chief Executive Officer for a decision as to the appropriate treatment.

While one gift of \$50 or less may be considered insufficient to cause concern that the recipient is deviating from Council policy, the sum of multiple gifts may be considered sufficient to do so.

A Gift, Benefit and Hospitality Declaration Form must be completed and the gift recorded in Council's Gift Register. In the event that the gift is used for purposes other than Council purposes, a record will be made in the Register.

Hospitality

Councillors or employees in the normal course of their duties, will from time to time receive invitations of hospitality to attend various functions and events.

Where such hospitality is modest in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations. Where practical, approval should be obtained prior to the attendance.

If, however, acceptance of the hospitality is likely to create the impression of compromised impartiality of the Councillor or employee or could be perceived as a conflict of interest, the offer of hospitality should be politely declined.

Any hospitality estimated to be in excess of \$50 must be reported in the same manner as a gift.

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Token Gifts

Council may accept token gifts (valued less than \$50) without approval or declaring the offer on the Gift Register, provided they do not create a real or perceived sense of obligation that may lead to a perception of preferential service.

However, should the combined total made from a single source in a 12-month calendar year exceed \$200, these gifts need to be declared.

Note: No token gifts are to be accepted from those in relation to whom the Councillor or employee acting on behalf of Council is likely to make decisions including current and prospective suppliers.

Door prizes and raffle prizes at a functions or conferences are not considered a gift if the individual has personally paid for their attendance, or where the individual has paid for the raffle ticket.

Non-token Offers

Councillors or employees can only accept non-token offers if they have a legitimate business benefit. A Gift, Benefit and Hospitality Declaration Form must be completed.

All non-token offers (valued at \$50 or more) of gifts, benefits and hospitality (whether accepted or declined) must be declared on Council's Gift Register.

Donations and Bequests of Gifts to Council

Council may be offered or bequested gifts or donations. Such gifts could include:

- Real Property
- Donations
- Art work
- Free Training & Services.

Council does not encourage and will not automatically accept a gift or donation. Given the potential of a vast range in terms of quality, relevance and the ongoing responsibility and maintenance requirements. Council reserves the right to decline the offer.

Bequests

In relation to Bequests, consideration will be given to:

- The expressed wishes and intentions of the bequestor, as outlined in the Will, are paramount in determining the purpose for which the gift will be used.
- Where Council is unable to honour the intentions of the Will, all appropriate legal measures will be taken to determine a purpose for the gift that most closely aligns to the bequestor's intentions.

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Attempts to Bribe

A Councillor or employee who receives a gift offer that they believe is an attempted bribe must refuse the offer. They must:

- Immediately notify the Chief Executive Officer or the Public Interest Disclosure Coordinator and lodge a Gift, Benefit and Hospitality Declaration Form, so their refusal can be properly recorded.
- Report the matter to the Chief Executive Officer or the Public Interest Disclosure Coordinator (who should report any criminal or corrupt conduct to Victoria Police or the Independent Broad-based Anti-corruption Commission).
- A Councillor or employee who believes another person within the Council may have solicited or been offered a bribe which they have not reported, must notify the Chief Executive Officer or the Public Interest Disclosure Coordinator or report the matter as a public interest disclosure in accordance with Councils Public Interest Disclosure Policy.

G.I.F.T. Test

In deciding whether to accept an offer, Councillors or employees should first consider if the offer could be perceived as influencing them in performing their duties or lead to reputational damage. The more valuable the gift, the more likely that a conflict of interest or reputational risks exists.

Developed by the Victorian Public Sectors Commission the G.I.F.T. test is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality.

G	Giver	<p>Who is offering the gift, benefit or hospitality and what is their relationship to me?</p> <p>Does my role require me to select contractors, award grants, regulate industries or determine government policies? Could the person or organisation benefit from a decision I make?</p>
I	Influence	<p>Are they seeking to gain an advantage or influence my decisions or actions?</p> <p>Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy or a token of appreciation or valuable non-token offer? Does its timing coincide with a decision I am about to make or my endorsement of a product or service?</p>
F	Favour	<p>Are they seeking a favour in return for the gift, benefit or hospitality?</p> <p>Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 12 months? Would accepting it create an obligation to return a favour?</p>
T	Trust	<p>Would accepting the gift, benefit or hospitality diminish public trust?</p> <p>How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think?</p>

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Compliance

Anonymous gifts

Councillors must not accept, directly or indirectly, a gift for the benefit of the Councillor anonymously. Section 137 of the Act details the requirements if this occurs and any penalties that may apply.

Declaration Form

A Gift, Benefit and Hospitality Declaration Form must be completed within fourteen (14) days from the date it was offered, or if the gift, benefit or hospitality was offered overseas, within fourteen (14) days of returning to Australia whether the offer was accepted or declined. Once completed the form should be provided to the Governance Department for including on the gift register.

Disclosure requirements

- A Councillor must disclose any gift valued at \$500 or more in their biannual personal interest return, unless the gift is from a family member;
- A Councillor who has conflict of interest as a result of receiving a gift or gifts from an entity must disclose the conflict of interest in accordance with the procedures outlined in the Governance Rules;
- Gifts above the gift disclosure threshold that are election campaign donations must be disclosed in the election campaign donation return;
- Gifts must be disclosed in the Council Gift Register.

Breaches

Where a Councillor fails to comply with this policy, the issue shall be dealt with in the same manner a disputes arising under the Councillor Code of Conduct.

When an employee fails to comply with this policy, the issue shall be dealt with in the same manner as a breach of the Employee Code of Conduct.

Gift, Benefits and Hospitality Register

The Governance Department maintains the Gift Register for all gift declarations.

Gifts accepted or declined over \$100 will be included in the public Gift Register. The public register is a summary of gifts, benefits and hospitality received which will contain the following information:

- Recipient details
- Provider's details
- Date received
- Description
- Estimated value
- Whether the gift was retained or declined

In accordance with Moira Shire Council Public Transparency Policy, the public Gift Register will be available on Councils website.

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Consideration will be given to monitor the Gift Register and report six monthly to the Corporate Management Team on any identified systematic pattern of gifts offered and accepted to ensure that unacceptable cultures do not develop within sections of the Council.

A report is to be presented annually to the Audit & Risk Committee.

ATTACHMENTS

Appendix A - Gift, Benefit and Hospitality Declaration Form

RELATED LEGISLATION

Local Government Act 2020

Charter of Human Rights & Responsibilities Act 2006

Regulations

REFERENCES

Councillors Code of Conduct

Employee Code of Conduct

Fraud Prevention and Control Policy

Procurement Policy

Moirá Shire Council Governance Rules

Department Environment Land Water and Planning - Model policy

Victorian Public Sector Commission's (VPSC) Gifts Benefits and Hospitality Policy Guide

IBAC - Local Government Integrity Frameworks review – March 2019

Moirá Shire Council

ABN: 20 538 141 700

Post: PO Box 578, Cobram, Vic 3643

DX: 37801, Cobram

Cobram Administration Centre:

44 Station Street, Cobram

Yarrowonga Service Centre:

100 Belmore Street, Yarrowonga

Phone: 03 5871 9222

Fax: 03 5872 1567

NRS: 133 677

Email: info@moira.vic.gov.au

moira.vic.gov.au

