

POLICY IS COMPLIANT WITH THE CHARTER OF HUMAN RIGHTS LEGISLATION

PURPOSE

The purpose of the Gifts Received by Councillors policy is to:

- Ensure Statutory requirements and community expectations are met;
- Provide clear guidance and direction to Councillors; and
- address the offer or receipt of any “gift”, in a manner, which ensures that a high standard of probity and accountability is maintained, especially including the interests of the Councillor.

Gift means any gift, hospitality, entertainment, invitation or service offered (“gift”).

POLICY

Statutory Requirements

The Local Government Act 1989 as amended (The Act) has a number of obligations in relation to the receipt of “gifts” by Councillors.

1. A relevant person (Councillor) who is in receipt of an applicable gift/s as defined below, and is in a position where the Councillor would exercise a power, function or duty, or make a decision, will be defined by the provisions of The Act as having an Indirect Interest.

As such, the Councillor will have to vacate the Council or Special Committee Chamber or the Assembly of Councillors, and not exercise a power, function or duty, or make a decision on a matter as defined below, if the “gift/s” were given by a person, business, applicant, etc. for whom, the exercise of the power duty or function or decision to be exercised/made will benefit.

2. The relevant definitions extracted from The Act are noted:

(i) “Relevant person means a person who is a—

- (a) Councillor; or
- (b) Member of a Special Committee...”

(ii) “Applicable gift means one or more “gifts” with an accumulated total value of \$500 or more, received from a person or persons defined in (iv) (a), (b) or (c) under the definition of indirect interest below, in the 5 years preceding the decision or the exercise of the power, duty or function.”

(iii) “Matter means a matter with which a Council, special committee or a member of council staff is concerned and that will require—

- (a) A power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a Special Committee in respect of the matter;”

(iv) 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.”

3. Councillors who are in receipt of a “gift/s” therefore should:
 - (i) Keep a record of the value of “gifts” they have received to ensure that they are not in contravention of the requirements of The Act, in respect of having to declare an Indirect Interest at any time they have to exercise a power, duty or function or make a decision on a matter in which they are deemed statutorily to have an Interest.
 - (ii) Ensure that they do not exercise any power, function or duty or make any decision participate in instances where they are now statutorily deemed to have an Indirect Interest.

Council Requirements

1. Councillors must not seek or accept (directly or indirectly) from any person or body, any immediate or future gift, reward, inducement or benefit for themselves or any other person or body, relating to their status with the Council, or their performance of any duty or work relating to the Council.
2. If any gift, reward or benefit is offered by an external person or body, to a Councillor, then disclosure must be made in writing in a prompt and full manner to the Mayor.
3. In the event that a gift is received by a Councillor, then that Councillor must disclose in writing (via the Disclosure of gift received by Councillor form), the details and origins of the gift to the Mayor, who will pass on to the Executive Manager – Chief Executive’s Office for recording in the Councillors’ Gift Register.
4. The Executive Manager – Chief Executive’s Office is the authorised custodian of any gifts and shall determine whether it is appropriate for that gift to be retained by the Councillor, be allocated within the organisation or donated to a charitable organisation.
5. The Gift Register shall be maintained by the Governance Branch and shall be made available for public inspection following receipt of a written application.

The *Disclosure of Offer or Receipt of Gifts & Hospitality* form is available on Yarra’s intranet.