

Title	Councillors Gift Disclosure Policy
Description	Council's gift policy as required by section 138 of the Local Government Act 2020.
Category	Governance
Type	Policy
Approval authority	Council
Responsible officer	Group Manager, Chief Executive's Office
Approval date	30 June 2017, Revised 23 March 2021
Review cycle	Every four years
Review date	23 March 2025
Document Reference (Trim)	D09/51567
Human Rights compatibility	This policy has been assessed and is compatible with the Victorian Charter of Human Rights and Responsibilities

1. Purpose

The purpose of the Councillors Gift Disclosure 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").

2. Policy

Statutory Requirements

The Local Government Act 2020 as amended (The Act) has a number of obligations in relation to the receipt of "gifts" by Councillors.

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 a Material Conflict of Interest.

As such, the Councillor will have to vacate the Council or Delegated Committee Chamber or the Meeting under the auspices of the Council, 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.

The relevant definitions extracted from The Act are noted:

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"affected person"	means	<ul style="list-style-type: none"> (a) the relevant person; (b) a family member of the relevant person; (c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body; (d) an employer of the relevant person, unless the employer is a public body; (e) a business partner of the relevant person; (f) a person for whom the relevant person is a consultant, contractor or agent; (g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee; (h) a person from whom the relevant person has received a disclosable gift.
"relevant person"	means	<p>a person who is a—</p> <ul style="list-style-type: none"> (a) Councillor; or (b) Member of a delegated committee
"disclosable gift"	means	<p>one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of this subsection, the prescribed amount, received from a person in the 5 years preceding the decision on the matter—</p> <ul style="list-style-type: none"> (a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or (b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation— <p>but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.</p>
"matter"	means	<p>a matter with which a Council, delegated committee, community asset committee or a member of Council staff is concerned and that will require—</p> <ul style="list-style-type: none"> (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council, delegated committee or community asset committee in respect of the matter; or (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Council staff in respect of the matter;

Section 128 – Material Conflict of Interest

- (1) Subject to section 129, a relevant person has a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.
- (2) The benefit may arise or the loss incurred—
 - (a) directly or indirectly; or
 - (b) in a pecuniary or non-pecuniary form.

Councillors who are in receipt of a gift/s” therefore should:

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 a Material Conflict of 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.

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 a Material Conflict of Interest.

Council Requirements

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.

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.

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 Group Manager – Chief Executive’s Office for recording in the Councillors’ Gift Register.

The Group 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.

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 and Hospitality form is available on Yarra’s intranet.