

Policy is compliant with the Charter of Human Rights legislation

1. Purpose

- 1.1 The purpose of the Staff Gifts, Hospitality Disclosure Policy is to:
- (i) ensure legislative requirements and community expectations are met;
 - (ii) provide clear guidance, direction and protection to Council staff members; and
 - (iii) 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 Council staff member.
- 1.2 This policy applies to all Council staff members.

2. Scope

- 2.1 The Local Government Act 1989 (“the Act”) (section 95) requires that staff must:
- (a) act impartially;
 - (b) act with integrity, avoiding (real or apparent) conflicts of interest;
 - (c) accept accountability for results; and
 - (d) provide responsive service.
- 2.2 The Local Government Act 1989 (section 78C) out obligations in relation to the receipt of “gifts” by members of Council staff, and notes potential “Indirect Interest” as defined by Section 78C of the *Local Government Act* 1989. Key references from Section 78C are:
- (a) A **relevant person** (includes a member of Council staff) who is in receipt of an **applicable gift/s** as defined below, and is in a position where the member of Council staff 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 member of Council staff shall **not** exercise the 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.
 - (b) The relevant definitions extracted from the Act are noted:
 - (i) “**Relevant person** means a person who is a Member of Council staff”
 - (ii) “**Applicable gift** means one or more “gifts” with a total value of \$500 or more, received from a person or persons defined in (b) (iv) below, in the 5 years preceding the decision or the exercise of the power, duty or function, but does not include reasonable hospitality provided to a Mayor, Councillor or member of Council staff at any function or event:

that—
 - (a) conducted during those 5 years; and
 - (b) attended by the Mayor, Councillor or member of Council staff in an official capacity.”
 - (iii) “**Matter** means a matter with which a member of council staff is concerned and that will require a power to be exercised, or a duty or function to be

performed, or a decision to be made, by the member of Council staff in respect of the matter.”

- (iv) A person (includes a member of Council staff) has an indirect interest in a matter if the person has received an applicable “gift”, directly or indirectly, from:
- * a person who has a direct interest in the matter; or
 - * 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
 - * 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.”

2.3 Members of Council staff who are in receipt of a “gift/s” therefore must:

- (a) keep a record of the value of the “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.
- (b) 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.

2.4 The Executive has determined that reasonable hospitality shall be interpreted as:

- (a) in the instance of a meal, up to \$25.00;
- (b) in the instance of a reception/cocktails etc, up to \$20.00; and
- (c) and in the instance of invitations to entertainment, special events, shall continue to be declined.

3. Background Principles

3.1 A “gift” means a benefit of **any type or value whatsoever**. For the purpose of clarity, a “gift” could **include, but is not limited to** the following examples:

- (a) cash, or any item or object - (e.g. drink, coffee, chocolates, food item, flowers, ties, article, equipment, etc);
- (b) any hospitality - meals, cocktails, drink and nibbles, travel, accommodation, favours, or the like;
- (c) entertainment - attendance at sporting events, performances or the like;
- (d) services – attendance at “educational”, “training”, “promotional”, “networking” events or the like;
- (e) concessions or discounts to subscriptions, vouchers, memberships or costs of purchases of goods or services;

offered to or received by staff, or any relative or associate of the staff member and intended as a mark of appreciation for service, a Christmas or other celebratory occasion a straight gift, a business promotion exercise or any reason whatsoever.

3.2 “Gifts” are on occasions offered or to a Council staff member as a token of appreciation for advice or assistance provided in connection with a Council service or by way of a form of promotion or similar purpose.

- 3.3 Council staff members must take care to ensure that actions and decisions are not influenced by either **the offer or acceptance** of such “gifts”.
- 3.4 This policy underpins the following Yarra City Council Values:
Teamwork // Innovation // Accountability // Integrity // Respect.

4. Council Policy Requirements

Process when offered or presented with a “gift”

- 4.1 Having regard to the legislation, community perceptions of “gifts” offered or received by a Council staff member and also to ensure protection to staff members and the Council, it is the policy and requirement of Council that, except in the strict circumstances outlined in clause 4.4, no Council staff member will accept any “gift” for himself or herself or for any other person or body for anything done by virtue of their employment with the Yarra City Council. Accordingly, the following shall apply:
- (a) **“Gifts” offered directly to Council Staff Member**
The required course for the Council staff member, is to politely decline the offer or acceptance of any “gift”. *(In this regard the staff member would advise the person offering the “gift” that is the Council’s strict policy that staff are not permitted to accept any “gift” and to politely extend appreciation for the gesture and kind thought, or similar words.)*
- (b) **“Gifts” not given directly to intended recipient**
In instances where a “gift” is left at the reception, delivered by mail or by another person other than the donor, it must be treated in the manner outlined in 4.2.
- (c) **“Gift” presented at a Public Presentation or similar**
Where a “gift” is presented to a Council staff member at a public function or similar, then the staff member **must** accept the “gift” on behalf of Yarra City Council, **making it clear** that the “gift” is being accepted on Yarra City Council’s behalf and not by the Council staff member personally. *(Acknowledging that cultural differences need to be respected as declining a “gift” may in some circumstances give offence to the “gift” giver.)* The staff member accepting the “gift” must follow the process outlined in 4.2.
- (i) All “gifts” whether declined or received **must be brought to the attention** of the relevant Director (for staff members) or the Chief Executive Officer (for Executive members), **and**
- (ii) **disclosed in writing** (via the attached Gift Disclosure Form), the details and origins of **any “gift” whether declined or received**, to the Executive Manager - Chief Executive’s Office for recording in the Council staff members’ Gift Register.
- 4.3 The Executive Manager – Chief Executive’s Office shall determine whether it is appropriate for any “gift” received, to be allocated, to be used to the benefit of the workplace **or** shared with branch or divisional staff **or** donated to a local charity **or** returned to the donor with an appropriate covering letter **or** just not taken up.
- 4.4 **Instances when “gifts” may be accepted by a Council staff member** include:
- (a) staff engaged in “direct service delivery staff” (i.e. Home Carers, Community Transport, Meals Drivers, Willow View staff, in the Aged and Disability Services Branch offered or presented with a “small gift” by their clients in appreciation for the services provided;
- (b) staff of engaged in the Community Development Unit of Yarra Leisure Services offered or presented from time to time with “small gifts” by their clients in appreciation for the services provided;

- (c) staff of engaged in the Child Care Centres, Kindergartens and Youth Services, Outside School Hours Care, Family Support and Maternal Child Health Branch offered or presented from time to time with small gifts by their clients in appreciation for the services provided;
- (d) staff engaged in the Economic Development Unit (EDU) who receive invitations to attend events which are directly related to their official duties. *(In this regard it is specifically noted that the EDU staff are required as part of their prescribed duties, to liaise with business contacts, promote business development and training opportunities, attend functions which could include business breakfasts, lunches, receptions, promotional launches or like events. The business sector operate using such processes and it is necessary for the EDU staff to accept such an arrangement to enable it to participate and undertake it duties, albeit with a degree of discretion.)*

4.5 “Small gifts” are defined as inclusive of items valued up to \$50.

4.6 Any “gifts” accepted pursuant to clause 4.5, must still be formally declared by the recipient staff member to the Executive Manager – Chief Executive’s Office in accordance with clause 4.2.

Process when offered a “bribe”

4.7 If a staff member believes they have been offered a bribe, a corrupt inducement to reward, it is important that they immediately act to minimise any potential for negative consequences by taking the following steps:

- (a) terminate the interaction with the person;
- (b) keep a clear record of the events by making notes about what you saw and heard, using terminology such as “I said....”, “he said.....” to ensure accuracy;
- (c) report the matter to their Direct Supervisor with all details and as a matter of priority, confirm what action he/she will take. In the event your direct supervisor is involved in the incident, the matter must be reported to the next level of management;
- (d) prepare a formal report to include: date, time place of the incident, circumstances of the offer (bribe), what involved, what you believe intended to achieve, who offered the bribe, your details of what you/they said, any other relevant information and finally your signature and date;
- (e) discuss with your Direct Supervisor (or Manager) exactly how future relations should be conducted with the person offering the bribe; and
- (f) confirm that your Direct Supervisor has informed the line manager and if not you should do that.

5. Accountabilities

Accounting for Gifts Offered or Received

5.1. The Executive Manager – Chief Executive’s Office is the authorised custodian of all “gifts” received /offered which:

- (a) must be recorded in the Gifts Register; and
- (b) secondly, **may** be allocated or distributed for the benefit of the staff of the Branch or Unit **or** distributed as prizes at staff functions throughout the year (e.g. Yarra Idol or staff Christmas party), **or** donated to a local charity **or** returned to the donor with an appropriate covering letter of explanation, **or** just not taken up in the instance of entertainment/meals/etc, having regard to the nature of the “gift”.

Public Perceptions of Gifts Offered or Received:

- 5.2 A guiding principle in this Policy is, if you believe that you would be unable to explain the receipt of the “gift” to the media, the community and/or an official Investigator, then it should not be accepted. Accordingly:
- (a) any offer or receipt of a “gift” would likely be perceived as potentially an attempt to either then or in the future, interfere with any act, matter or thing to be done or performed by Council or a member of Council staff:
 - (i) being aimed at a particular outcome by the person or body making the offer; or
 - (ii) to influence the Council staff member in the proper performance of their duties.
 - (b) whilst hospitality such as meals and cocktails and invitations to events, including those promoted as “educational”, “training” or “networking” (all deemed as “gifts” by the statute) can be an important part of maintaining corporate relationships, they would likely be perceived as inappropriate by the wider community.
 - (c) there is always potential risk that the integrity of a Council staff member may be detrimentally impacted by the acceptance of any “gift”.

Educational, Training” or “Networking” Presentations

- 5.3 In circumstances where an invitation is defined as an “educational”, “training” or “networking” event and is considered to be of value to the organisation or Council staff members the following process shall apply:
- (a) the invitation/offer must be:
 - (i) brought by the recipient staff member, to the attention of the relevant Director (for staff members) or the Chief Executive Officer (for Executive members) together with formal request for approval to accept, and
 - (ii) **disclosed in writing** (via the attached Gift Disclosure Form), including the details and origins of the “gift” to the Executive Manager – Chief Executive’s Office for recording in the Council staff members’ Gift Register, and
 - (b) the determination to approve the acceptance of “gift” as noted in clause 5.3 is **conditional**:
 - (i) upon establishing that attendance at the event by the Council staff member is of value to the organisation; and
 - (ii) subject to the Council actually making a payment to the “gift” provider, to cover the costs of the staff member attending the event.
 - (c) such applications shall be determined as follows:
 - (i) by the Executive Manager – Chief Executive’s Office where the value of attending the event is up to \$200; or
 - (ii) by the Divisional Director where the value of attending the event exceeds \$200.

Some examples could be:

- (a) One of the Council’s legal services contractors is presenting an “educational”, “training” or “networking” session on a subject which the Council frequently deals with and the intention is to assist in equipping Council staff members with improved knowledge or skills to undertake their duties, In the instances that attendance is determined to be of value to the Council as an organisation, an application by the staff member should be submitted to for consideration of approval.
- (b) A software company which is **not a current contractor** is offering an “educational”, “training” or “networking session could be perceived having the principle intention of marketing its product. Therefore acceptance of such an invitation would not be approved.

Coffees

- 5.4 Instances of a staff member being invited to discuss an issue over “coffee” are acknowledged, however, frequency of such activities become important. Staff should complete a “Gift Declaration” form and note the cumulative value of such gifts from a single donor in compliance with the Local Government Act provisions. Instances of regular “gifts” of coffee from a single donor must be avoided. (e.g. refer Case study No. 1).

Planning Branch Staff and Community Amenity Branch Staff

- 5.5 Under no circumstances must staff members from the Planning Branches or the Community Amenity Branch accept any “gift” whatsoever, including coffees. Any such acceptance could later place the staff member in a compromising position. (*refer Case Study No 1 below*).

Case Studies

- 5.6 The following Case Studies are noted to assist in the understanding of potential outcomes from accepting a “gift”. They also tend to reflect the position being taken by the Victorian Ombudsman in recent situations. The case studies noted are from the publication of the Independent Commission Against Corruption, June 2006, “Managing Gifts and Benefits in the Public Sector”.

Bribery case study 1

In 1997 the ICAC investigated the activities of a businessman who had a history of offering bribes in both public and private sector contexts. During the investigation the businessman revealed the tactics he used to make public officials more receptive to bribery.

First he would invite them out for a social drink, where he would use his charm to befriend them. Then, through casual conversation, he would try to establish whether the public official had any particular needs or wants – especially for his or her family.

In the early stages of the relationship he would choose small, thoughtful gifts that the public official could easily rationalise accepting. The businessman believed that once the public official had accepted one gift he or she was compromised and would request a significant favour. The businessman had estimated that he could corrupt at least six out of every 10 public servants.

In the case investigated by the ICAC, the businessman received \$170,000 worth of public assets for an outlay of \$30,000 in bribes. The businessman's tactic was to trick public officials into compromising themselves by initially offering small gifts. Even though the gifts were small and insignificant, the officials were compromised immediately they accepted them, especially if they subsequently gave a favour in return. Once a gift is accepted, the giver may allege that the gift was solicited, which can then be difficult to the recipient to disprove.

Bribery case study 2

The ICAC investigated the activities of an employee of the NSW Department of Housing who was responsible for the sale of departmental properties. Part of his job involved appointing real estate agents to sell those properties for a commission.

The ICAC investigation revealed that the employee had developed a friendship with a real estate agent he had appointed to sell numerous properties and had also accepted gifts and benefits from him, including two holidays at Queensland resorts. Under the Department's Code of Conduct the employee was required to disclose such a friendship to his manager, and decline offers such as gifts and benefits, but he failed to do so.

There was no evidence of any express agreement between the real estate agent and employee to the effect that the holidays were provided in return for the employee showing favouritism towards the real estate agent in relation to his official functions. Nevertheless, the Commission found that the holidays were offered by the real estate agent, and accepted by the employee, as corrupt inducements or rewards. It made findings of corrupt conduct against both men and referred the matter to the Director of Public Prosecutions for consideration of prosecution under section 249B on the Crimes Act.