

## 7. Gifts

### 7.1 Simplifying the gift provisions

#### Background

Councillors and local government employees, as everyone does, occasionally receive gifts. Given the important role of council members and many local government employees as decision-makers in positions of power, the public has a reasonable expectation that the important decisions that a local government makes are free from improper influence.

There is nothing inherently wrong with accepting gifts when they are offered. It is critical, however, that their receipt is openly and transparently acknowledged and recorded, and that those records are made freely available to the community. Non-disclosure of gifts that may have an effect on, or could be perceived as possibly having an effect on, the decision-making of elected members runs the risk of damaging the reputation of the local government sector and the trust placed in elected members by their communities. In extreme cases this could leave councils unable to perform their primary function of providing for the good government of people in their districts.

The rules concerning the declaration of gifts must also be sensible and not create an unreasonable burden or compromise the council member's rights to maintain a private life beyond their service as a councillor.

Gifts and contributions to travel are regulated under the Act and three sets of Regulations – the *Local Government (Administration) Regulations 1996*, *Local Government (Elections) Regulations 1997* and *Local Government (Rules of Conduct) Regulations 2007*. Each regulation has a different framework for declaring gifts and contributions, which has led to confusion in the sector. Attachment 2 outlines the provisions currently applying in Western Australia.

It is widely acknowledged that current approach to gifts is overly complex and requires reform. Acknowledging the need for change, in September 2016 a gift working group was established with representatives from the Department of Local Government, WALGA, LG Professionals WA, the Department of the Premier and Cabinet, the Mayor of Armadale, Shire President of Morawa and the CEOs of the Cities of Swan and Vincent.

Prior to the formation of the working group WALGA, as the peak body representing the sector, prepared a policy position based on consultation with its members. While the working group did not accept all of these positions, the document formed the basis for the discussion and the working group's initial recommendations. Following

consideration of the matter, the individual working group member's positions have been refined.

With the review of the Act it is timely to consider the recommendations of the group to ensure that the proposed way forward is aligned to public expectations of accountability and transparency.

## Across Australia

A summary of local government gift disclosure requirements across Australia is provided below:

| State                        | Threshold   | Exemptions   |
|------------------------------|---|--|
| New South Wales              | \$500 gift, \$250 travel  | <ul style="list-style-type: none"> <li>• Relatives</li> <li>• Political donation captured under other legislation.</li> <li>• Travel from public funds, political parties, relatives</li> </ul>  |
| Victoria                     | \$500   | <ul style="list-style-type: none"> <li>• Relatives</li> <li>• Reasonable hospitality.</li> <li>• Gifts received more than 12 months prior to becoming an elected member or employee (not including election campaign donations)</li> </ul>       |
| Queensland                   | \$500 gift, travel considered a "sponsored hospitality benefit" | <ul style="list-style-type: none"> <li>• Relatives</li> <li>• Someone else related by blood or marriage.</li> <li>• Friends</li> <li>• Sponsored hospitality benefits where there could not be a perception of a conflict of interest</li> </ul> |
| South Australia              | \$750 in annual return, \$100 in register of interests          | <ul style="list-style-type: none"> <li>• Hospitality of reasonable value</li> <li>• Relatives by blood or marriage or family members</li> </ul>  |
| Tasmania                     | N/A   | Not set at state-wide level  |
| Northern Territory           | N/A   | Not set at a state-wide level  |
| Australian Capital Territory | N/A   | N/A  |

It is clear there is no “one size fits all” solution for the disclosure of gifts in the local government sector.

**Current situation**

The current framework for the disclosure of gifts and travel is outlined in detail in Attachment 2 and is summarised below:

| <b>Elements of Disclosure</b>                           | <b>Current requirements</b>   |
|---|---|
| Gift disclosure   | ✓   |
| Travel disclosure                                       | ✓   |
| Prohibited gifts  | ✓   |
| Notifiable gifts  | ✓   |
| Election gifts  | ✓   |
| Monetary threshold                                      | <ul style="list-style-type: none"> <li>• \$50 for a notifiable gift</li> <li>• \$200 for a disclosable gift</li> <li>• \$200 for an election gift</li> <li>• Over \$300 for a prohibited gift</li> </ul>  |
| Prescribed timeframe for cumulative acceptance of gifts | Six or 12 months (depending on the regulation)  |
| Who is required to disclose                             | <p>Elected members and designated employees for gifts and travel contributions.</p> <p>Notifiable and Prohibited gifts apply to elected members only.</p>   |
| Exemptions (vary depending on the category of gift)     | <ul style="list-style-type: none"> <li>• A gift or travel from a relative</li> <li>• A gift or travel under \$200</li> <li>• Travel contribution from Commonwealth, State or local government funds</li> <li>• Travel contribution as part of occupation of the person (not related to council duties)</li> <li>• Travel contribution was from a political party, of which the person is a member, for the purpose of political activity or representation</li> <li>• An electoral gift disclosable under the Elections Regulations</li> <li>• A gift from a statutory authority, government instrumentality or non-profit association for</li> </ul> |

| Elements of Disclosure | Current requirements  |
|------------------------|---|
|                        | professional training (prohibited and notifiable gifts only) <ul style="list-style-type: none"> <li data-bbox="766 324 1343 535">• A gift from WALGA, the Australian Local Government Association or Local Government Managers Australia WA (for prohibited and notifiable gifts only)</li> </ul> |

## Recommendations of the gifts working group

The gifts working group proposed that a new framework should:

- provide for a transparent system of accountability where members of the community can have confidence in the decision-making of their representatives; and
- create a simplified legislative framework to deal with gifts received by elected members and senior staff.

The reference group agreed on an overhaul of the current requirements that included six key parts:

- There would no longer be separate monetary thresholds to determine what “type” of gift has been received, as is currently the case with “notifiable” and “prohibited” gifts and gifts under section 5.82.
- All gifts received by local government elected members and CEOs valued at \$500 or more received from a donor in a 12-month period must be disclosed.
- Recipients of gifts valued at \$500 or more would be prohibited from voting on matters before the council concerning the donor of the gift. The Minister for Local Government may, at their discretion and upon application, allow elected members to vote on such matters.
- Exemptions from the gift provisions would be minimal to aid simplicity.
- Gifts from a “relative” will continue to be exempt from disclosure; however, the definition of “relative” will be expanded to include adopted and foster children and grandchildren.
- All local governments will be required to develop and adopt a gifts policy for employees other than the CEO. Individual local governments can determine what gifts can or cannot be accepted by employees, any applicable threshold amounts and disclosure requirements.

Some members of the reference group sought additional changes, after agreement was reached on these positions.