

<b>Title:</b>	<b>Councillor Gifts and Benefits Policy</b>
<b>Type:</b>	<b>Council</b>
<b>Adopted:</b>	<b>24 March 2021</b>
<b>File No:</b>	21/17157
<b>Attachments:</b>	

### 1. Purpose

The purpose of the Councillor Gifts and Benefits Policy (the Policy) is to provide Murrindindi Shire Council's (Council) position on:

- responding to offers of gifts, benefits and hospitality; and
- disclosing offers gifts, benefits and hospitality.

The Policy provides clear guidelines to ensure Councillors are not compromised in the performance of their duties by accepting gifts or benefits which may result in a sense of obligation or could be interpreted as an attempt to influence. This helps to protect and promote public trust.

Council has issued this Policy to support standards of conduct, consistent with the Councillor Code of Conduct.

### 2. Rationale

Implementing a clear policy for managing the receipt and provision of gifts, benefits and hospitality is a fundamental step in developing high levels of public trust. It ensures Councillors are not compromised in the performance of their duties by accepting gifts, benefits and hospitality which may result in a sense of obligation or could be interpreted as an attempt to influence.

This Policy has been developed in line with recent recommendations from Audits of Local Government by Victorian Integrity Agencies and meets the requirements outlined in the Victorian Public Sector Commission's Gifts, Benefits and Hospitality Policy Guide.

### 3. Scope

This Policy sets out Council's standards and procedures for responding to gift, benefits and hospitality offers. It applies to all Councillors at Murrindindi Shire Council.

### 4. Definitions

Reference Term	Definition
Benefits	To receive a benefit is to gain advantage for yourself or your family. Examples of receiving a benefit are where preferential treatment is given, privileged access, loyalty programs or a promise of a new job.
Bribe	A bribe is an offer of money or other inducement made with the intention to corruptly influence a Councillor, officer or contractor in the performance of their duties. Bribery or attempted bribery of a public official is a criminal offence.
Ceremonial Gifts	Ceremonial gifts are 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 another organisation, community.

Conflict of interest	<p>“Conflict of Interest” has the same legal definition as it has in Division 2 – Sections 126 to 131 of the <i>Local Government Act 2020</i>.</p> <p>“a relevant person has a <b>conflict of interest</b> if the relevant person has—</p> <p>(a) a general conflict of interest within the meaning of section 127; or</p> <p>(b) a material conflict of interest within the meaning of section 128.”</p> <p>“relevant person has a <b>general conflict of interest</b> in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.” (section 127 of the <i>Act</i>)</p> <p>“a relevant person has a <b>material conflict of interest</b> in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.” (section 128 of the <i>Act</i>)</p>
Council	<p>"Council" is a public body and has the same meaning as it has in section 3(1) of the <i>Local Government Act 2020</i>.</p>
Gift	<p>Section 3 of the Local Government Act 2020 defines gift as being:</p> <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> <p>(a) the provision of a service (other than volunteer labour); and</p> <p>(b) the payment of an amount in respect of a guarantee; and</p> <p>(c) the making of a payment or contribution at a fundraising”</p> <p>A gift is anything of monetary or other value that is offered by an external organisation or individual to a Councillor, Officer or contractor as a result of their role with the agency. It includes free or discounted items or services, benefits or hospitality that exceeds common courtesy. Examples include:</p> <ul style="list-style-type: none"> <li>• Tickets to sporting events</li> <li>• Gift Voucher</li> <li>• Corporate hospitality at a corporate facility</li> <li>• Discounted products for personal use</li> <li>• Use of a holiday home</li> <li>• Free or discounted travel</li> <li>• Free training excursions</li> </ul>
Gift Disclosure Threshold	<p>A disclosable gift means any gift valued at or above <b>\$500</b> or a higher prescribed amount that a relevant person received in the preceding five years if:</p> <ul style="list-style-type: none"> <li>• the relevant person was a Councillor, member of Council Staff or member of a delegated committee at the time the gift was received, or</li> <li>• the gift was an election campaign donation.</li> </ul> <p>If multiple gifts are received from a person, they must be treated as a single gift with an aggregate value.</p> <p>A gift includes any good or service (other than volunteer labour) that is provided for free or at an inadequate price. It includes a payment or contribution at a fundraising function.</p> <p>A failure to comply is an offence that can be prosecuted in court. If found guilty a fine of up to 60 penalty units may be imposed, the value of the gift</p>

	must be paid to the Council and the Councillor may be required to pay the costs of the prosecution.
Gift Register	Means a register that captures all offers of gifts, benefits and hospitality, irrespective of value, or whether received, accepted or declined by Councillors.
Hospitality	<p>Means 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.</p> <p>Hospitality is considered a gift unless the hospitality was reasonable and you were attending the function or event in an official Council capacity.</p> <ul style="list-style-type: none"> <li>• <u>Reasonableness test</u>: the hospitality must be of a standard and type that an independent observer would consider appropriate and not excessive.</li> <li>• <u>Official capacity test</u>: it must clearly be your duty as a Councillor to attend the relevant function or event.</li> </ul> <p>Hospitality that <u>exceeds</u> common courtesy includes:</p> <ul style="list-style-type: none"> <li>• A 'fine dining and wines' working lunch at another organisation's premises</li> <li>• An offer to pay for a working lunch at a café</li> <li>• An offer of a free spot on an industry golf day</li> </ul> <p>Hospitality that does <u>not</u> exceed common courtesy and is therefore <u>not</u> a gift includes:</p> <ul style="list-style-type: none"> <li>• Sandwiches and pastries over a lunchtime meeting</li> <li>• A cup of coffee or tea at another organisations premises</li> </ul>
Internal Gifts	Gifts received by Councillors from Murrindindi Shire Council are not covered by this Policy and do not need to be declared. For e.g. recognition gifts after the end of the Mayoral or Councillor term
Legitimate business benefit	Means if it furthers the conduct of official business or other legitimate Council goals. The following are <u>not</u> legitimate business reasons: <ul style="list-style-type: none"> <li>• 'it would have been impolite to refuse'</li> <li>• 'Refusal would offend' (except in compelling circumstances that are in the public interest, for example accepting a gift onstage at an official ceremony)</li> <li>• 'Networking'</li> <li>• 'Maintaining stakeholder relationships'</li> </ul>
Non-token offer	Means an offer of a 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. The monetary value of non-token offers is \$50 or more.

Token offer	Means an offer of a gift, benefit or hospitality that is of inconsequential or of trivial value to both the person making the offer and the Council representative. The monetary value of token offers is less than \$50.
Value	Value means the face value or estimated retail value.

## 5. Policy

Murrindindi Shire Council is committed to building a culture of integrity and transparency whereby Councillors will uphold the principles that apply to this Policy.

Further to that, Councillors have an obligation with the community to ensure ratepayers funds are managed with probity and consideration of Council's resources.

### 5.1 Prohibited Gifts

In accordance with the *Local Government Act 2020*, section 137, Councillor's are prohibited from accepting a gift, benefit or hospitality that equals or exceeds the gift disclosure threshold unless they know the name and address of the person making the offer. If for any reason a Councillor finds themselves in possession of a gift when they don't know the name and address of the person who gave the gift, the Councillor can give the gift to the Council within 30 days to avoid committing an offence.

Further to the requirements under the Act, Councillors will not:

- a) seek or solicit gifts, benefits or hospitality for themselves or others
- b) accept bribes or inducements and will report such acts to the Public Interest Disclosure Coordinator (Director Corporate and Shared Services) as soon as possible.

Regardless of the value, Councillors will not accept gifts, benefits or hospitality that:

- a) could bring them, Council or the public sector into disrepute
- b) are money, or used in a similar way to money, or something easily converted to money – this includes vouchers and gift cards
- c) is alcohol
- d) is likely to influence them, or be perceived to influence them, in the course of their duties or that raise an actual, potential or perceived conflict of interest
- e) is made by a person or organisation about which Council will likely make or influence a decision (this also applies to processes involving grants, sponsorship, regulation, enforcement or licensing), particularly offers:
  - I. made by a current or prospective supplier
  - II. made during a procurement or tender process by a person or organisation involved in the process
  - III. made by and individual or group that may be involved with a regulatory process that is underway
- f) could be perceived as endorsement of a product or service, or acceptance would unfairly advantage the sponsor in future procurement decisions;
- g) extends to their relatives or friends;
- h) are made by a person or organisation with a primary purpose to lobby elected members of Council; or
- i) are made in secret.

## 5.2 Consequence of accepting prohibited gifts

Accepting a prohibited gift may constitute misuse of a Councillors position and a breach of this Policy may result in serious misconduct allegations for Councillors. Should the gift be perceived as being offered in return for some thing or act then accepting it may constitute a bribe, or corruption and lead to criminal prosecution.

## 5.3 Attempts to Bribe

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

- Immediately notify the Public Interest Disclosure Coordinator (Director Corporate and Shared Services)
- Lodge a gift declaration form (see section 5.7), so their refusal can be properly recorded
- A Councillor who believes another person within the Council may have solicited or been offered a bribe which they have not reported, must report the matter to the Public Interest Disclosure Coordinator (Director Corporate and Shared Services).

## 5.4 Management of the offers of gifts, benefits or hospitality

Deciding whether to accept an offer, Councillors 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 offer, the more likely that a conflict of interest or reputational risk exists.

Developed by the Victorian Public Sector Commission, the GIFT test (Table 1) is a good example of what to think about when deciding whether to accept or decline a gift, benefit or hospitality.

**Table 1 - GIFT test**

<b>G</b>	Giver	<p><b>Who is providing the gift, benefit or hospitality and what is their relationship to the Councillor?</b></p> <ul style="list-style-type: none"> <li>• Consider regulatory processes currently underway, potential or current suppliers, potential grant applicants.</li> <li>• Could the person or organisation benefit from a decision Council makes?</li> </ul>
<b>I</b>	Influence	<p><b>Are they seeking to gain an advantage or influence Council decisions or actions?</b></p> <ul style="list-style-type: none"> <li>• Has the gift, benefit or hospitality been offered to Councillor/s publicly or privately?</li> <li>• Is it a courtesy or a token of appreciation or a valuable non-token offer?</li> <li>• Does its timing coincide with a decision Council is about to make?</li> </ul>
<b>F</b>	Favour	<p><b>Are they seeking a favour in return for the gift, benefit or hospitality?</b></p> <ul style="list-style-type: none"> <li>• Has the gift, benefit or hospitality been offered honestly?</li> <li>• Has the person or organisation made several offers over the last 12 months?</li> <li>• Would accepting it create an obligation to return a favour?</li> </ul>
<b>T</b>	Trust	<p><b>Would accepting the gift, benefit or hospitality diminish public trust?</b></p> <ul style="list-style-type: none"> <li>• How would the public view acceptance of this gift, benefit or hospitality?</li> <li>• What would ratepayers think?</li> </ul>

## 5.5 Token and Non-Token Gifts

Gifts, benefits or hospitality offers of **up to \$50** in value are considered to be a token gift. Councillors may accept a token gift, once they have given consideration to the GIFT test and Section 5.1 – ‘Prohibited Gifts’.

The combined total of offers from a single source in a 12 month period must not exceed \$500. Token gift offers must be disclosed in accordance with section 5.7.

## 5.6 Non-token gifts

Gifts, benefits or hospitality offers valued at **\$50 and over** should not be accepted unless there is a legitimate business benefit and the offer has been approved in writing by the Chief Executive Officer.

In the event where there is no opportunity to seek written approval from the Chief Executive Officer prior to accepting a gift, for example, a wrapped gift that was later identified as being a non-token offer, the Councillor must notify and handover the gift (if applicable) to the Chief Executive Officer as soon as practicable but no more than 7 days after receipt.

The Chief Executive Officer should evaluate if there is a legitimate business benefit and decide whether the gift is accepted by Council or returned.

All non-token gift offers must be disclosed in accordance with section 5.7.

## 5.7 Disclosure

- a) All gifts, benefits or hospitality offers regardless of their value or whether accepted must be declared via a gift declaration form. Councillors must lodge the form with the Chief Executive Officer within 7 days of the offer and the details are to be included in the register.
- b) Gifts valued at \$50 or more (non-token gifts) remain the property of Council (held by the CEO) unless otherwise determined.
- c) 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.
- d) A Councillor who has a conflict of interest as a result of receiving a gift or gifts from a person must disclose the conflict of interest in accordance with the procedures outlined in the ***Governance Rules 2020***.
- e) Gifts above the gift disclosure threshold that are election campaign donations must be disclosed in an election campaign donation return.
- f) Accepted gifts, benefits or hospitality must also be disclosed in the Gift Register.

### Gift declaration form

The following are some examples of acceptable and unacceptable levels of detail to be included in the gift declaration form when recording the business reason:

- a) Acceptable level of detail
  - "Councillor A is responsible for evaluating and reporting on the outcomes of the Council's sponsorship of Event A. Councillor A attended Event A in an official capacity and reported back to Council on the event."
  - "Councillor B presented to a visiting international delegation. The delegation presented the individual with a cultural item worth an estimated \$200. Declining the gift would have caused offence. The gift was accepted on behalf of Murrindindi Shire Council and ownership transferred to Council".

- b) Unacceptable level of detail
- “Networking” (with no further explanation)
  - “Maintaining stakeholder relationships” (without further details such as why, who, when)

### Gifts Register

The Governance and Risk Department maintain the Gift Register for all gift disclosures (Councillors, Staff and Contractors). Details of all non-token gifts received or offers (equal to or exceeding \$50) will be made publicly available on Council’s Website, in accordance with the Public Transparency Principles and Policy.

Consideration will be given to maintaining reasonable confidentiality in situations where public disclosure will prejudice a proposed development or business venture, legal advice or legal proceedings.

The Manager Governance & Risk is to monitor the Gifts Register and report to the Executive 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.

### **5.7 Gestures (not considered gifts)**

Councillors may accept gestures without approval or declaring the offer on the Gift register. To qualify as a gesture it must not give rise to a conflict of interest or lead to reputational damage.

Examples of gestures are:

- a) A bunch of fresh cut flowers from someone’s garden when a Councillor visits
- b) General hospitality when meeting with a group – for example cake offered to all in attendance
- c) A souvenir received from attending a function or seminar so long as the Councillor was not paid to appear
- d) Raffle prizes where the Councillor personally purchases the ticket

Examples of where it would not be considered a gesture and should be treated as a gift:

- a) A thank you gift for hosting an event
- b) Applicant for a planning permit bakes cookies for Councillors as a gift for visiting the proposed site
- c) Door prize associated with the Council paid attendance

### **5.8 Official gifts to the Council**

Official/Ceremonial gifts are gifts provided as part of the culture and practices of communities and governments, within Australia or internationally. Official/Ceremonial gifts are the property of Murrindindi Shire Council, irrespective of value, and should be accepted by individuals on behalf of Council and given to the Chief Executive Officer as soon as practicable.

## **6 Related Policies, Strategies and Legislation**

- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Local Government Act 2020*
- Victorian Public Sector Commission’s Gifts, Benefits And Hospitality Policy Guide
- Governance Rules 2020
- Councillor Code of Conduct
- Fraud and Corruption Control Policy
- Public Interest Disclosure Policy

## **7 Council Plan**

This Policy relates to the Council Plan 2017-2021 Our Promise strategic objective to ensure we deliver the best possible outcomes in all that we do.

## **8 Management and Review**

Review of this Policy is to be conducted every 4 years from the date of endorsement.

The Director Corporate and Shared Services and the Manager Governance & Risk are responsible for ensuring this Policy is reviewed and presented to Council for endorsement.

## **9 Consultation**

Community consultation was not required in the development of this Policy.

## **10 Human Rights Charter**

This policy has been developed with consideration of the requirements under the [Charter of Human Rights and Responsibilities](#).