

Council Policy

18.9 – GIFTS, BENEFITS AND HOSPITALITY

PURPOSE

The purpose of this policy is:

- to ensure that Council activities are conducted professionally and not influenced, or perceived to be influenced by the receipt or prospect of some form of gift, benefit or hospitality;
- to state Council's position on responding to offers of gifts, benefits and hospitality, to ensure that Councillors, staff and Council contractors 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 construed as an attempt to influence; and
- to support individuals and Colac Otway Shire Council to avoid conflicts of interest and maintain high levels of integrity and public trust.

SCOPE

This policy applies to all workplace participants. For the purpose of this policy, this includes: the Mayor, Councillors, executives, employees and any individuals or groups undertaking activity for or on behalf of Colac Otway Shire Council.

DEFINITIONS

Benefits

Benefits include preferential treatment, privileged access, favours or other advantage offered to an individual. They may include invitations to sporting, cultural or social events, access to discounts and loyalty programs or promises of a new job. The value of benefits may be difficult to define in dollars, but as they are valued by the individual, they may be used to influence the individual's behaviour.

Bribe

A bribe is an offer of money or other inducement made to influence a person in the performance of their duties.

Business Associate

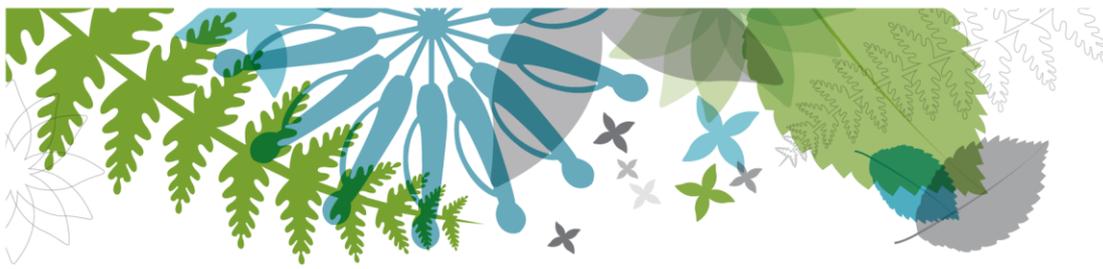
An individual or body that the public sector organisation has, or plans to establish, some form of business relationship with, or who may seek commercial or other advantage by offering gifts, benefits or hospitality.

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 or foreign government. Ceremonial gifts are the property of the public sector organisation, irrespective of value.

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DEFINITIONS (continued)

CEO

The Chief Executive Officer of Colac Otway Shire Council.

Client

A customer or someone who receives services.

Conflict of interest

The *Local Government Act 2020* defines conflicts of interest as being either general or material.

In the application of this policy, conflicts may be:

- Actual: There is a real conflict between an individual's public duties and private interests.
- Potential: An individual has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.
- Perceived: The public or a third party could reasonably form the view that an individual's private interests could improperly influence their decisions or actions, now or in the future.

Council

Colac Otway Shire Council, or the organisation.

Gifts

Gifts are free or discounted items or services and any item or service that would generally be seen by the public as a gift. These include items of high value (e.g. artwork, jewellery, or expensive pens), low value (e.g. small bunch of flowers), consumables (e.g. bottle of wine) and services (e.g. painting and repairs). The transfer of any type of property, or property entitlement, from one person to another that isn't paid for (in whatever way) at its full monetary value is a gift.

Hospitality

Hospitality is 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. Hospitality is required to be declared if valued at \$50 or more.

Hospitality valued at \$50 or more should not be accepted, unless:

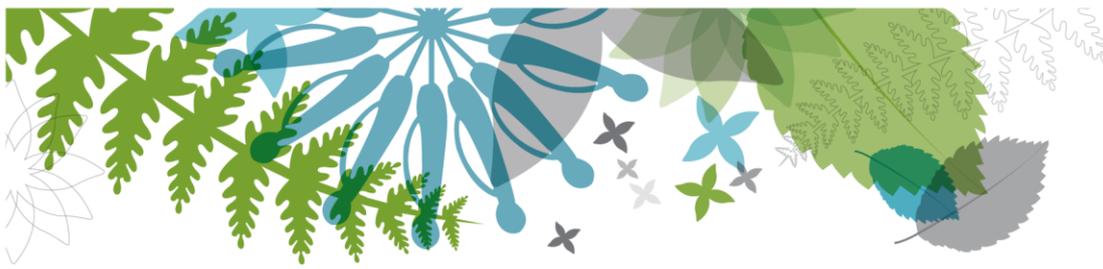
- it is of a standard and type that an independent observer would consider appropriate and not excessive; and
- it clear that you are attending the function or event as part of your duty and role at the Council (ie legitimate business benefit).

Legitimate business benefit

A gift, benefit or hospitality may have a legitimate business benefit if it furthers the conduct of official business or other legitimate goals of Council.

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DEFINITIONS (continued)

Offer of goodwill

Examples of offers of goodwill are:

- small gestures of appreciation from a community member or customers/clients such as flowers cut from a person's garden or homemade baked goods
- a souvenir received from a person or company as a result of attending a seminar or conference, conducted or sponsored by them, for which an appropriate fee was paid to attend. For example pens or mugs
- small gestures of appreciation (ie box of chocolates) from a client or from a person or company as a result of presenting at an external event.

For the purposes of this policy, offers of goodwill are deemed to be valued under \$30 and are not required to be disclosed.

Public Official

Public official includes Councillors, executives, employees, contractors, consultants and any individuals undertaking activity for or on behalf of Colac Otway Shire Council.

Public Register

A public register is a record, preferably digital, of a subset of the information contained in a register, for publication as required.

Register

A register is a record, preferably digital, of all declarable gifts, benefits and hospitality.

Token offer

A token offer is a gift, benefit or hospitality that is of inconsequential value to both the person making the offer and the recipient. Token offers must be worth less than \$50.

Non-token offer

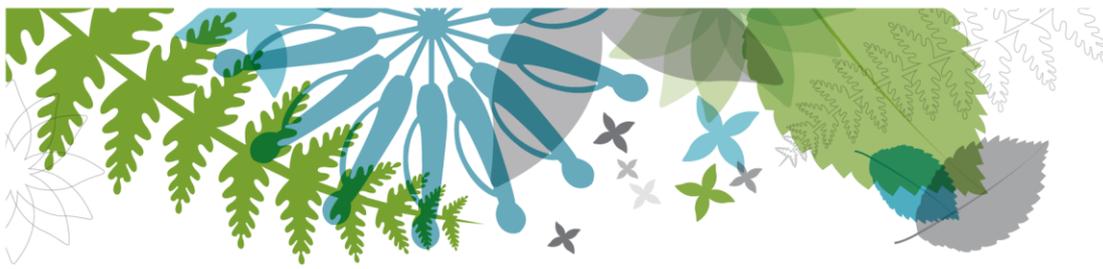
A non-token offer is a gift, benefit or hospitality that is, or may be perceived to be by the recipient, the person making the offer or by the wider community, of more than inconsequential value. All offers worth \$50 or more are non-token offers and must be recorded on the gift, benefit and hospitality register.

Repeat offers

Receiving multiple offers from the same person or organisation can generate a stronger perception that the person or organisation could influence you.

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REFERENCES

Local Government Act 2020

Local Government (Governance and Integrity) Regulations 2020 (S.R. No. 116/2020)

Independent Broad-based Anti-corruption Commission (IBAC) Act 2011

STATEMENT OF POLICY

Colac Otway Shire Council is committed to and will uphold the following principles in applying this policy:

Impartiality

Individuals have a duty to place the public interest above their private interests when carrying out their official functions. They will not accept gifts, benefits or hospitality that could raise a reasonable perception of, or actual, bias or preferential treatment. Individuals do not accept offers from those about whom they are likely to make business decisions.

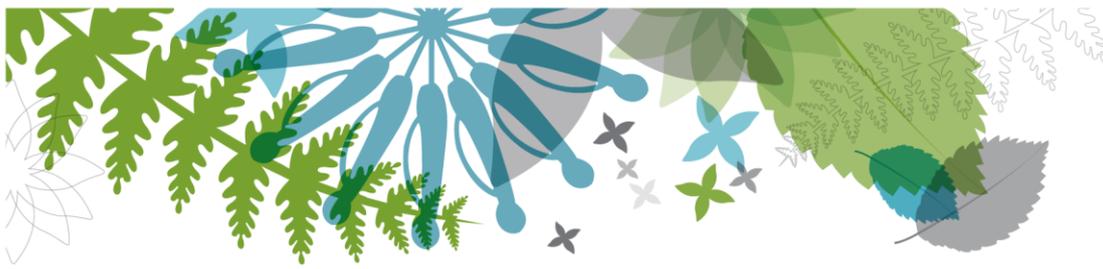
Accountability

Councillors, executives, employees, contractors, consultants and any individuals or groups undertaking activity for or on behalf of Colac Otway Shire Council:

1. Do not, for themselves or others seek or solicit gifts, benefits and hospitality.
2. Refuse all offers of gifts, benefits and hospitality, except for:
 - token offers from clients; or
 - offers of goodwill; or
 - token or non-token offers with a legitimate business benefit (ie networking, promotion of shire etc).
3. In addition to point 2, refuse all offers of gifts, benefits and hospitality that:
 - are money, items used in a similar way to money, or items easily converted to money, ie gift card;
 - give rise to an actual, potential or perceived conflict of interest;
 - may adversely affect their standing as a public official or which may bring the Colac Otway Shire into disrepute;
 - are from suppliers or contractors (current or potential).
4. Declare all accepted token offers of gifts, benefits and hospitality (except offers of goodwill) and declare all non-token offers of gifts, benefits and hospitality (whether accepted or declined).
5. Refuse bribes or inducements and report inducement and bribery attempts to the General Manager, Corporate Services or the CEO (who should report any criminal or corrupt conduct to Victoria Police or the Independent Broad-based Anti-corruption Commission).

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6. Treat repeat offers from the same source to the same individual as a trigger for strong consideration as to whether the offer is seeking to gain influence.
7. If non-acceptance of a ceremonial gift may cause offence or embarrassment (eg overseas dignitary visit or gift is culturally sensitive) the ceremonial gift may be accepted by an individual on behalf of the organisation and declared.

Section 137 of the *Local Government Act 2020* imposes additional requirements on Councillors in relation to anonymous gifts. Essentially a Councillor must not accept, directly or indirectly, a gift which is equal to or exceeds the gift disclosure threshold unless the name and address of the person making the gift are known to the Councillor and the Councillor reasonably believes the name and address are true and correct.

Sections 9(1)(k) and 9(4) of the *Local Government (Governance and Integrity) Regulations 2020* (S.R. No. 116/2020) include requirements for gifts with a one off or cumulative value above the disclosure threshold to be disclosed in the lodgement of biannual personal interest returns.

Additional information to guide decision making in relation to gifts, benefits and hospitality is provided in *Appendix 1 – Decision Guidance*.

PROCEDURE FOR RECORDING AND MAINTAINING THE GIFTS, BENEFITS AND HOSPITALITY REGISTER

Recording

The offering and acceptance of gifts, benefits and hospitality are recorded to enable assessment and appropriate management of the potential for influence on Council representatives and processes. To capture the appropriate data the following principles apply:

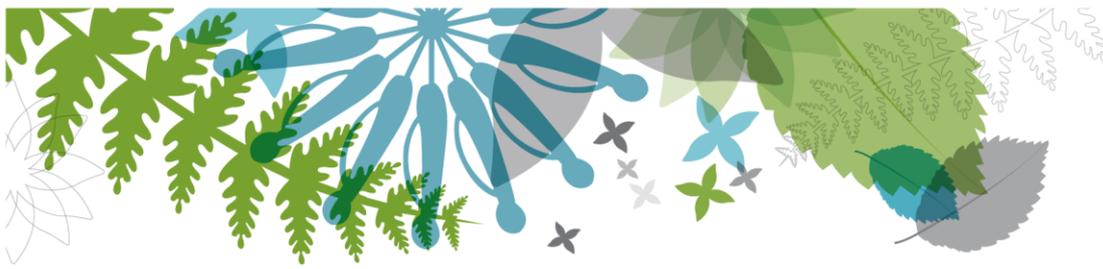
- All accepted token offers must be declared (except offers of goodwill) and the details will be recorded in the internal Gifts, Benefits and Hospitality Register.
- All non-token offers (whether accepted or not), must be declared and the details will be recorded in the both the internal and public Gifts Benefits and Hospitality Register.
- All ceremonial offers must be declared, however the details will not be recorded on the public register.
- It is the responsibility of a Councillor or an employee declaring an offer to complete the appropriate Gifts, Benefits and Hospitality Declaration form and forward the completed form to Governance within seven (7) business days of the offer. All non-token offers (regardless of whether accepted or declined) must be authorised in accordance with the Gifts, Benefits and Hospitality Procedure.

The internal register will record the following information:

- Name of the person who accepted/declined the offer
- Date the gift was offered
- If the offer was accepted or declined
- Name of the individual/company/group making the offer
- The nature of the offer and estimated market value
- The reason for making the offer (if known)
- Any legitimate business reason for accepting the offer

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- Whether the offer is considered ‘reasonable hospitality’ received by the relevant person at an event or function that they attended in an official capacity
- Any actual, potential or perceived conflicts of interest or reputational risks (to the individual or Council) that the offer raises.

Maintenance

A register of disclosed gifts, benefits and hospitality will be maintained by Governance and record sufficient information to effectively monitor, assess and report. This register will be reported to the Executive Management Team and the Audit and Risk Committee at a frequency appropriate to manage any risks. Specific details of the register are provided in the associated Gifts, Benefits and Hospitality Procedure.

A public register is provided to give the public confidence that the offering of gifts, benefits and hospitality is appropriately managed to avoid influence in decision making.

The public register will contain a subset of the information recorded, sufficient to this purpose without disclosing sensitive or private information. Specific details of the public register are provided in the associated Gifts, Benefits and Hospitality Procedure.

The public register will commence upon adoption of this policy, be updated quarterly and published on the Colac Otway Shire website.

Speak Up

Individuals are encouraged to notify:

- their manager, General Manager, Corporate Services or the CEO if they believe Councillors or colleagues are not adhering to this policy
- a public interest disclosure officer or the Independent Based-based Anti-corruption Commission (IBAC) if they believe they have observed corrupt conduct.

Policy Review

This Policy will be reviewed in four year’s time unless legislative or other requirements necessitate earlier review.

RELATED DOCUMENTS

Code of Conduct for Employees

Code of Conduct for Councillors

Gifts, Benefits and Hospitality Procedure

Department of Environment, Land, Water and Planning – Model Policy Minimum accountabilities for the management of gifts, benefits and hospitality

Victorian Auditor-General’s Report - Implementing the Gifts, Benefits and Hospitality Framework

Victorian Public Sector Commission’s Gifts, Benefits and Hospitality – Policy Guide

Public Transparency Policy

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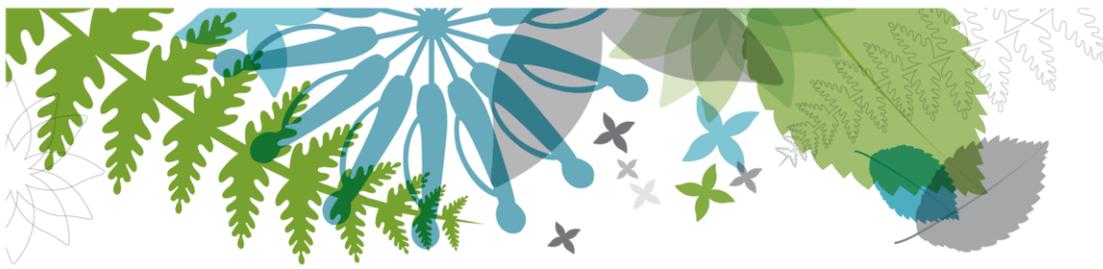


DOCUMENT CONTROL

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APPENDIX 1 - DECISION GUIDANCE

Conflict of interest and reputational risks

When deciding whether to accept an offer, individuals 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.

Figure 1. GIFT test

This table is a useful tool when considering how to respond to a gift offer.

G	Giver	<p>Who is offering the gift, benefit or hospitality and what is their relationship to me?</p> <p>Does my role require me to select contractors, award grants, regulate industries or determine government policies? Could the person or organisation benefit from a decision I make?</p>
I	Influence	<p>Are they seeking to gain an advantage or influence my decisions or actions?</p> <p>Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy or a token of appreciation or valuable non-token offer? Does its timing coincide with a decision I am about to make or my endorsement of a product or service?</p>
F	Favour	<p>Are they seeking a favour in return for the gift, benefit or hospitality?</p> <p>Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 12 months? Would accepting it create an obligation to return a favour?</p>
T	Trust	<p>Would accepting the gift, benefit or hospitality diminish public trust?</p> <p>How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think?</p>

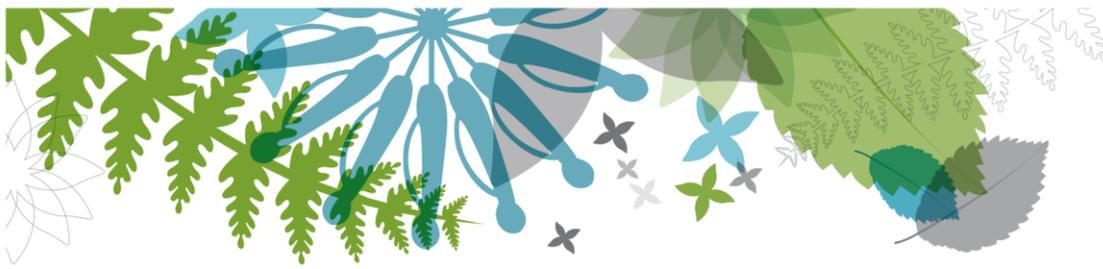
Guidance for refusing offers

Individuals should consider the GIFT test at Figure 1 and the requirements below to help decide whether to refuse an offer. Individuals are to refuse offers:

- 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;
- could bring them, or the Council into disrepute;
- made by a person or organisation about which they will likely make or influence a decision (this also applies to processes involving grants, sponsorship, regulation, enforcement or licensing), particularly offers:
 - made by a current or prospective supplier; or
 - made during a procurement or tender process by a person or organisation involved in the process;
 - made by someone with a planning or other application with Council; or
 - where Council is in dispute with another party.

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- likely to be a bribe or inducement to make a decision or act in a particular way;
- that extend to their relatives or friends;
- of money, or used in a similar way to money, or something easily converted to money;
- where, in relation to hospitality and events, the CEO considers the organisation will already be sufficiently represented to meet its business needs;
- where acceptance could be perceived as endorsement of a product or service, or acceptance would unfairly advantage the sponsor in future procurement decisions;
- made by a person or organisation with a primary purpose to lobby Council, Councillors or staff; or
- made in secret.

Offers of gifts, benefits and hospitality must be declined in a way that does not cause offence to the donor or damage relationships. This can be achieved by explaining Council's policy.

Token offers

Individuals, using their own discretion, may generally accept token offers from clients without approval, as long as the offer does not create a conflict of interest or lead to reputational damage e.g. where there have been repeated offers. If a token offer is accepted (unless an offer of goodwill), it must be declared and recorded on the register.

Non-token offers

Individuals cannot accept non-token offers unless there is a legitimate business benefit.

Individuals may be offered a gift or hospitality of unknown value, for example they may be offered a wrapped gift that is later identified as being a non-token gift. In these cases, the gift must be refused as soon as it becomes apparent that it is non-token and arrangements made to return it as soon as practicable.

Where the gift would likely bring the person or the Council into disrepute, the gift should be returned. If it represents a conflict of interest, the CEO should either return the gift or transfer ownership to the Council to mitigate this risk.

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