

TO ALL LOCAL GOVERNMENTS

CIRCULAR N^o 11-2019

NEW GIFTS FRAMEWORK

On 20 October 2019, the new gifts framework contained within the *Local Government Legislation Amendment Act 2019* will come into operation.

The *Local Government Regulations Amendment (Gifts) Regulations 2019* are being gazetted on 18 October. These amend the *Local Government (Administration) Regulations 1996*, the *Local Government (Audit) Regulations 1996* and the *Local Government (Rules of Conduct) Regulations 2007*. The proclamation of the associated sections of the *Local Government Legislation Amendment Act 2019* is also being gazetted on that day.

This new gift framework has been simplified, with the focus on transparency and accountability. This has been achieved by considering the nature of the relationship between the recipient and the donor of the gift and focusing the disclosure requirements on why the person has received the gift and dealing with possible influence created by the gift via the conflict of interest provisions.

Receipt of Gifts

In accordance with sections 5.87A and 5.87B of the Act, council members and CEOs are required to disclose gifts that are received in their capacity as a council member (or CEO) and –

- are valued over \$300; or
- are of a cumulative value that exceeds \$300 where the gifts are received from the same donor in a 12-month period.

Additionally, a gift given by two or more related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) is considered to have been given by a single corporation (donor).

Contributions to travel costs, whether financial or otherwise, will no longer be treated separately. These are now incorporated within the definition of gift.

The decision on whether a gift is received in the capacity of a council member or CEO must be made by the recipient of the gift. The question is whether the gift would have been given (or a gift of that value given) if the recipient were not a member of the council (or CEO). If the answer is no, it must be disclosed if the value of the gift (or aggregated value) is over \$300. The onus is on the recipient to prove that it was not received in that capacity (and that the value of the gift(s) is not greater than \$300).

Real time reporting of gifts is achieved through requirements to disclose all gifts within 10 days of receipt, for the CEO to update the register within 10 days, and for an up-to-date version of the register to be published on the local government's official website.

To assist council members and CEOs with complying with the new gift framework, a flowchart has been prepared and is attached to this circular (**Attachment A**).

To remove complexity from the gift disclosure framework, the minor breach provisions that relate to the declaration of gifts (which set two different thresholds in addition to the gift declaration thresholds above) have been removed. That is, Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* has been deleted. The removal of these provisions does not prevent a council member from being prosecuted for failing to disclose a gift or the Departmental CEO referring a serious breach of the Act (related to gifts) to the State Administrative Tribunal. The maximum penalty for failure to disclose a gift is a fine of \$10,000 or imprisonment for two years.

Conflicts of Interest – Interests relating to a gift

Receipt of a gift – any gift, whether or not in a person's capacity as council member or CEO – will create a relationship of a closely associated person and therefore an interest (sections 5.60 and 5.62).

The following situations are specifically excluded from the interest provisions:

- where the gift (or gifts over a 12-month period from the one donor) do not exceed \$300 in value;
- where the gift is a ticket to, or otherwise relates to attendance at an event and the local government approves the person's attendance in accordance with their Attendance at Events policy (see below); or
- where the gift is received from one of the following organisations:
 - WALGA (but not LGIS)
 - Local Government Professionals Australia (WA)
 - Australian Local Government Association
 - A department of the public service
 - A government department of another State, a Territory or the Commonwealth
 - A local government or regional local government.

(The gifts referred to in the second and third dot points must still be disclosed in accordance with sections 5.87A and 5.87B as described above.)

This interest creates a perceived or actual conflict which prevents the council member from participating in the meeting or the CEO from providing advice or a report on the matter to be discussed (sections 5.67 and 5.71A), unless approval has otherwise been given.

If the amount of the gift(s) is less than \$1,000, under section 5.68 the council may allow the disclosing council member to participate if:

- The council member discloses the extent of the interest they have; and
- Council decides that the interest is so trivial or insignificant as to be unlikely to influence the disclosing person's conduct in relation to the matter; or
- The interest is common to a significant number of other electors or ratepayers.

The interest, the council's decision and the reasons for that decision must be recorded in the minutes.

If an interest valued at over \$1,000 is disclosed, under section 5.69 the council or CEO may apply to the Minister to allow the disclosing member to participate in meetings or parts of meetings relating to that matter. In this case, the Minister must consider that it is in the best interests of the electors or ratepayers for this to happen, or that approval is necessary to provide a quorum. The Minister's decision and the reasons for that decision must be recorded in the minutes of the meeting where the matter is discussed.

Similar provisions are contained in sections 5.71A and 5.71B in relation to the CEO providing advice or a report, directly or indirectly, to the council or a committee.

To assist council members and CEOs with understanding how the interests relating to gifts operate, a flowchart is attached to this circular (**Attachments B and C**).

Attendance at Events policy

Local governments must prepare and adopt a policy that relates to the attendance of council members and CEOs at events such as concerts, conferences and functions. This policy must address the provision of tickets to events, payments in respect of attendance and approval of attendance by the local government and criteria for approval. New section 5.90A relates.

In essence, the policy deals with a council member's or CEO's attendance at events as a representative of the council. Tickets or the invitation to the event must be made to the council directly, not to the council member or CEO personally. If a council member or CEO attends an event in accordance with the local government's policy, then no conflict of interest arises.

Guidance material to support the development of the Attendance at Events policy is being prepared and will be available on the Department's website at www.dlgsc.wa.gov.au/lgareview.

Local Government Operational Guidelines are being updated to include these provisions.

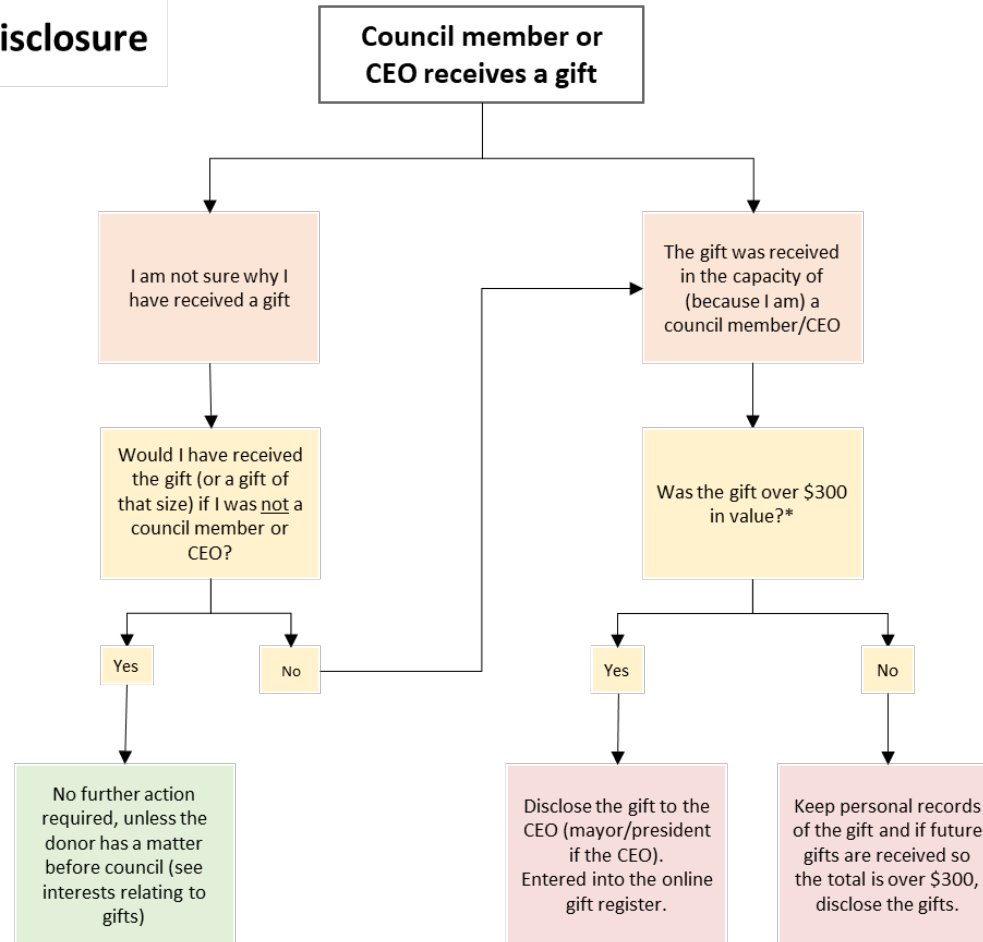
For further information, please contact the Strategic Initiatives team via email at actreview@dlgsc.wa.gov.au.

A handwritten signature in black ink, appearing to read 'Duncan Ord', with a long horizontal stroke extending to the left.

Duncan Ord OAM
DIRECTOR GENERAL

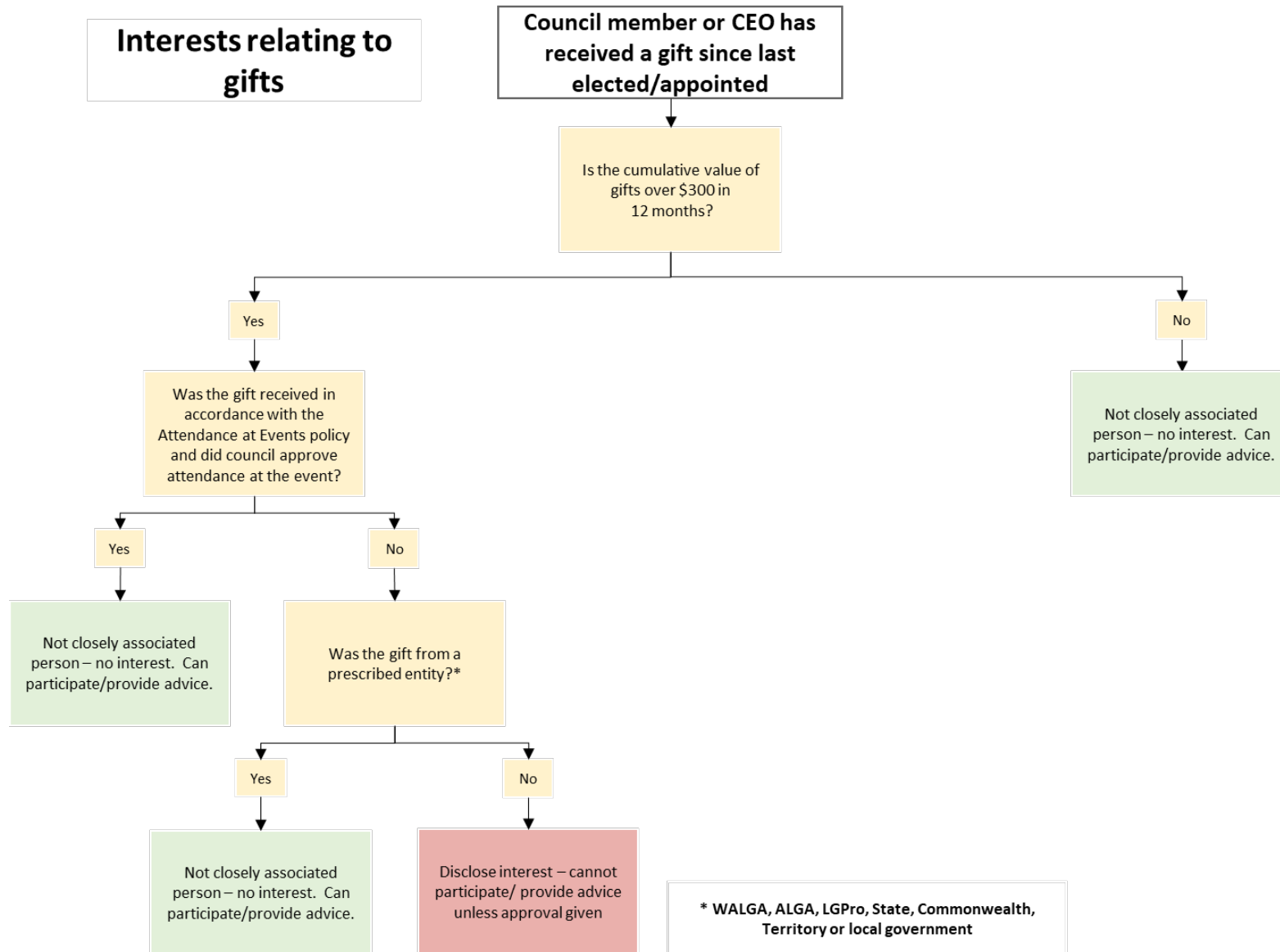
October 2019

Gift framework - disclosure



* Or a series of gifts from that person in a 12 month period was over \$300 in value

Attachment B



Attachment C

