



LOCAL GOVERNMENTS FOR THE FUTURE >>>

INFORMATION SHEET

Gifts policy position

The consultation paper for phase one of the Western Australian Local Government Act Review addressed a number of key areas required for reform, including receipt of gifts. The consultation process included a four month public submission period and workshops in 15 locations across the State.

This information sheet outlines what we heard during the consultation period about the receipt of gifts. It also outlines the new policy direction the Government intends to take based on this information.



Why we consulted

Councillors and local government employees 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.

It is critical that the receipt of gifts is openly and transparently acknowledged and recorded, and that those records are made freely available to the community.

The receipt or non-disclosure of gifts that may have an effect on, or could be perceived as possibly having an effect on, the decision-making of council members run the risk of damaging the reputation of the local government sector and the trust placed in council 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.

What we consulted on

Acknowledging the need for change, in September 2016 a gift working group was established with representatives from the Department, 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.

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
- create a simplified legislative framework to deal with gifts received by council members and senior staff.

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



1. 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.



2. All gifts received by local government council members and CEOs valued at \$500 or more received from a donor in a 12-month period must be disclosed.



3. 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 council members to vote on such matters.



4. For simplicity exemptions from the gift provisions would be minimal.



5. Gifts from a “relative” will continue to be exempt from disclosure; however, the definition of “relative” would be expanded to include adopted and foster children and grandchildren.



6. All local governments would 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.

The local government sector subsequently requested that gifts received in a personal capacity should be exempt from disclosure. These proposals were tested in the consultation paper.

What we heard

Feedback on the issue of gifts reflected the complexity and contentiousness of the topic, with diverse opinions offered on a suitable regulatory approach to gifts.

During the consultation period, the issue of a suitable definition, and its interpretation, was highlighted by the Supreme Court of Western Australia's decision in the case of Scaffidi v Chief Executive Officer, Department of Local Government and Communities.

Community members generally opposed the receipt of gifts in all forms, even if they were declared, as all forms of gifts could be perceived as a conflict of interest. While this approach could prevent council members from accepting gifts such as engagement rings or birthday and Christmas presents, some held firm in their view, while others agreed that gifts in a personal capacity should be permitted or permitted if declared.

Summary of feedback from local governments and non-local governments:



Strong opposition to the receipt of gifts in all forms



Call for a better definition of a gift



Local government generally supported the working group model but were concerned about the detail



Excluding gifts in a personal capacity was viewed as necessary, but no consensus on how to define this

50%

of submissions addressed the issue of gifts

50%

of community supported 'no gifts'

Almost 80%

of submissions from the community wanted gift declaration rules tightened

72%

of local governments supported working group model

Summary of feedback from peak bodies:

WALGA



Combine gifts and travel into one gift category



Remove notifiable and prohibited gift categories



Gifts to only be declared if a council member or CEO have received a gift in respect to carrying out their role



Gifts received in a personal capacity should be exempt from declaration



Gifts only to be declared if above \$500

Local Government Professionals WA



Support for the WALGA positions



Exempt Local Government Insurance Scheme (LGIS) and WA Super Board members from declaration provisions (to capture hospitality and learning opportunities)

New direction

While there was some support for the working group model proposed in the consultation paper, there was support for a model that replicated the same gift disclosure requirements as those placed on the State Government. It was also identified that it was difficult to introduce provisions to exempt gifts received in a personal capacity due to the difficulties in defining “personal capacity”.

As a result, a revised model, outlined below, has been developed that removes the need to define personal capacity and focuses on the intent of offering and accepting a gift.

Declaration of gifts by council members and CEOs

Council members and CEOs will be prohibited from accepting gifts that:



may be a perceived or an actual conflict of interest with council members duties



may be perceived as an attempt to corruptly influence the council member or CEO in the exercise of their duties



Council members and CEOs must declare all gifts over \$300 received in their role as a council member or CEO. These gifts are known as “declarable gifts”.



The thresholds will include cumulative gifts over a twelve-month period that reach the threshold.



All declarable gifts must be disclosed within 10 days of receipt and published on the local government’s online gift register within 10 days.

A ‘gift’ is to be defined as:

the receipt of property or a benefit for inadequate consideration.

Conflict of interest



In addition, other gifts received by council members (such as from family, friends or through employment) will be captured if a matter from the donor comes to council for a decision. Under the disclosure of interest provisions a council member will be required to declare any gift over \$300 (or series of gifts in a twelve-month period that total more than \$300) that they have received from a person who has a matter before council.



The council member will be prevented from voting on matters before the council concerning the donor of the gift for the period of their term.



Similar gifts received by the CEO will exclude them from involvement in a matter requiring a local government decision.



Offence provisions will apply.



Local governments will be required to develop and publish a policy covering council member and CEO attendance at events, addressing who will pay for the tickets.

Vision for the future

The revised framework for the receipt of gifts simplifies and clarifies the current provisions by:

- legislating for the broad principle that gifts that are intended to influence a council member's decision-making or could give the appearance of a conflict of interest are prohibited
- focusing on the context of the gift by requiring the disclosure of gifts received during the course of a council member or CEO's official duties.
- prohibiting a council member from voting on a matter when they have received any gift over \$300, therefore ensuring decisions are free from influence.

There will be no requirement for council members to be concerned with receiving gifts from friends or through their employment, unless a matter from the donor comes before council.

In these circumstances, the council member will need to disclose an interest and remove themselves from the meeting.

Offences will be considered a serious breach and may be referred to the State Administrative Tribunal. Failure to declare or disclose a gift may also result in the council member or CEO being fined.



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