

Gifts and Donations

GUIDELINE – AUGUST 2018

This Guideline has been developed to assist local government with the application of the gifts and donations requirements in the *Local Government (General) Regulations 2015*.

New gifts and donations register

As of 1 August 2018, the *Local Government Act 1993* requires councils to keep a register of gifts and donations received by councillors.

The *Local Government (General) Regulations 2015* (Regulations) have been amended to provide details of what gifts and donations need to be reported.

Classes of gift and donation

Gifts and donations to be reported include any of the following with a value of \$50 or more:

- an item;
- a service;
- a loan of money;
- a loan of property; or
- any other benefit.

This includes a series of gifts or donations received by the same councillor from the same donor where the total value in a financial year is \$50 or more.

For example, a \$10 lunch bought for a councillor each week over a period of time.

The Regulations refer to 'donations' generally. This is any donation and includes political donations of \$50 or more.

Who must notify?

Currently only sitting councillors are required to disclose gifts or donations received during their term and during an election period.

Gifts that have been received by councillors in their personal capacity, for example a birthday gift from a family member, are not required to be disclosed.

Candidates for a local government election who are not sitting candidates are not required to disclose gifts or donations received during the election period.

Notification

A councillor is to give notice within 14 days of receiving a gift or donation. The notice must be in writing and include:

- the name of the councillor who received the gift or donation;
- a description of the gift or donation;
- the name of the donor (if known);
- the councillor's relationship to the donor (if known);
- the suburb/locality where the donor resides (if known);
- the date on which the gift or donation was received; and
- the estimated monetary value of the gift or donation.

If the gift or donation is received while the councillor is outside Australia, notice is to be provided within 14 days of returning to Australia.

Register

The general manager is responsible for keeping the register, which must contain the following information:

- the name of the councillor;
- a description of the gift or donation;
- the name of the donor (if known);
- the councillor's relationship to the donor (if known);
- the suburb/locality where the donor resides (if known);
- the date on which the gift or donation was received; and
- the estimated monetary value of the gift or donation.

There is currently no requirement under the Act and Regulations for councils to make the register public, although some councils already publish the register on their website.

In the interests of transparency and good governance, it is expected councils will make a copy of the register available at the council's public office and on its website.

Personal versus public capacity

Councillors may need to assess whether a gift has been given to them in their personal capacity or their private.

To help distinguish this, councillors may wish to ask themselves the following questions:

- *Who is the giver of the gift or donation and what is their relationship to me?*

Would I be receiving the gift or donation if I was not an elected member? Could the

person or organization benefit from a decision I make?

- *Are they seeking to influence my decisions or actions?*

Has the gift or donation been offered to me publically or privately? Does its timing coincide with a decision I am about to make?

- *Are they seeking a favour in return?*

Would accepting it create an obligation (overt or otherwise) to return a favour? Has the person or organisation made several offers over the last 12 months?

- *Would accepting the gift or donation diminish public trust?*

How would I feel if the gift or donation became public knowledge? What would my colleagues, family and friends think?

Should gifts and donations be accepted?

Councillors should also ask themselves the above questions when determining whether to accept an offered gift or donation.

While there may be instances where it is appropriate to accept a gift, for example cultural differences, judgement should be exercised to determine whether gifts and donations be accepted, refused or donated to the council.

Councillors should also consider whether accepting a gift or donation would amount to a breach of Part 5 of the *Local Government Act 1993* or their council's Code of Conduct.