



GIFTS & BENEFITS

POLICY, GUIDELINES

&

REPORTING FORM

Objectives:

1. To explain gifts and benefits, including token gifts and benefits and gifts and benefits of value.
2. To provide clear guidelines on how to deal with gifts and benefits.
3. To ensure that Council Officials understand and meet their obligations under Council's Code of Conduct so as not to be compromised or appear to be compromised because of a gift or benefit.
4. To demonstrate to anyone who may wish to offer a gift or benefit that the matter will be dealt with in an open and transparent manner.
5. To provide a reporting system to record all gifts or benefits offered/accepted/or declined in accordance with this guideline.

Policy Statement:

The Gift and Benefits Policy has been established to provide guidelines for dealing with gifts and benefits and establish transparent processes so that the integrity and independence of the individual and the Council is not compromised.

This policy applies to all Council Officials of Coonamble Shire Council as defined in this Policy.

1. Purpose:

Sometimes people who deal with Coonamble Shire Council wish to express appreciation for service or assistance given by a Council Official or wish to demonstrate good faith in a business relationship by the giving of some form of gift or benefit.

In some circumstances the giving of a gift or benefit has the potential to compromise a person by creating a sense of obligation and thereby affecting impartiality.

This is of particular significance for Councillors and for staff who have approval, regulatory or purchasing roles.

The policy operates in addition to all other obligations under the *Local Government Act 1993* (the Act), any other legislation, or relevant codes and policies regarding the disclosure of any interests.

2. Definitions:

In this policy:

- *council official* includes Councillors, members of staff, administrators appointed under section 256 of the Act, members of Council committees, conduct reviewers and delegates of Council
- *delegate of Council* means a person or body, and the individual members of that body, to whom a function of Council is delegated
- *gift or benefit* means any product or service (including hospitality) voluntarily provided to a Council Official, as further explained in this policy, at no charge or at a discounted charge or fee of any other consideration as a consequence of the recipient's role as a Council Official. It includes gifts or benefits received by family or associates of a Council Official. It includes any circumstance where there was no opportunity given to refuse the gift or benefit. It does not include a political donation or gift that is dealt with under the Environmental Planning and Assessment Act 1979
- *staff* means all employees of Coonamble Shire Council (full time, part time, temporary or casual). It also includes, for the purposes of this policy only, contractors (who principally provide their labour)
- *you and your* refers to Council Officials of Coonamble Shire Council.

3. Code of Conduct:

Gifts and benefits are dealt with in clause 8 of the Code of Conduct (Personal Benefit). This Policy expands on the provisions of the Code and establishes a procedure for disclosing and, where necessary, surrendering or refusing certain gifts and benefits.

Clause 8.3 of the Code of Conduct states that you must not:

- seek or accept a bribe or other improper inducement
- seek gifts or benefits of any kind
- accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- accept any gift or benefit of more than token value
- accept an offer of money, regardless of the amount.

Clause 8.4 of the Code of Conduct states:

Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the General Manager.

The recipient, supervisor, Mayor or General Manager must ensure that any gifts or benefits of more than token value that are received are recorded in Coonamble Shire Council's Gifts and Benefits Register. The gift or benefit must be surrendered to Council, unless the nature of the gift or benefit makes this impractical.

As a consequence of the Code of Conduct there are:

- certain gifts and benefits that are of token value that may be accepted and retained (General Manager approval required)
- gifts and benefits of more than token value that are required to be disclosed and surrendered
- gifts and benefits, irrespective of their value, that are required to be disclosed and surrendered.
- Gifts and benefits of more than token value that should be refused or returned
- totally inappropriate gifts and benefits

4. Dealing with offers of a gift or benefit:

You must always consider the purpose and value of the gift or benefit before making a decision to accept it. Ask yourself:

"Why is the person offering me this gift or benefit? If I accept this gift or benefit how will it be perceived by a reasonable person?"

In addition to what is required under the Code of Conduct (clause 8.3) you must not:

- use your position to improperly influence others so as to receive a gift or benefit
- use your position to improperly influence others so as to obtain a gift or benefit for someone else
- accept anything from a potential supplier when you are involved in assessing or deciding on quotes, expressions of interest or tenders
- accept anything from an applicant to Council when you are involved in assessing or deciding on their application.

You must decline any gift or benefit if:

- it would create a sense of obligation on your part to the person offering it
- it could be reasonably perceived by an impartial observer that there may be a sense of obligation to the person offering it.

An impartial observer's perception of a gift or benefit and any resulting sense of obligation may be influenced by:

- the scale, extravagance or value of the gift or benefit
- the frequency of occurrence of the giving of the gift or benefit
- the degree of openness surrounding the giving of the gift or benefit.

In deciding whether to accept a gift or benefit, consideration should be given to whether refusal of the gift or benefit in the circumstances could be discourteous or cause offence to the person offering the gift or benefit.

Care should be taken in handling circumstances where there are cultural differences. In some circumstances it is recognized that declining a gift may be difficult, inappropriate or offensive.

Where you decide to decline a gift or benefit (**except where it is a bribe, see clause 9**) you should politely thank the person for the offer. You should also explain what your obligations are under this policy and the importance of impartiality and perceptions.

Staff should always seek advice from their Supervisor, Manager, Director, or the General Manager in any instances where a gift or benefit appears to be generous in the circumstances. You should also seek advice where the gift or benefit was received in circumstances where you were not given the opportunity to decline it and if you had that opportunity you would have declined it.

5. What is not a gift or benefit for the purposes of this policy?

For the purpose of this policy, a gift or benefit is not:

- any product or service that genuinely has no connection to your role as a Council Official
- any product or service that is given to a Council Official by the Council or another Council Official (except a contractor) as an award, any other form of recognition or to celebrate an occasion
- any discounted product or service if the discount is reasonable and generally available or capable of being negotiated by others not connected with the Council and acceptance of the product or service will not compromise the Council or be seen to compromise the Council
- any discounted product or service if the discount is offered to staff generally (such as through a staff social club) and the arrangements will not compromise the Council or be seen to compromise the Council and the arrangements have the approval of the General Manager
- any product or service received in relation to your membership of any industrial or professional organization, club or other association or body
- any product or service received by your relative or associate from someone connected to Council if you genuinely did not know about it
- a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation
- any sponsorship arrangement that is dealt with in accordance with Council's Sponsorship Policy.

6. (a) What are token gifts and benefits?

A gift or benefit of a value of less than \$50 is considered to be token value.

Something that you are given that is of small value (less than \$50.00) in gratitude for something done or to demonstrate good faith in a business relationship is likely to be a token gift or benefit for the purposes of this policy.

Generally speaking, token gifts and benefits include (clause 8.1 Code of Conduct):

- (a) *free or subsidized meals, beverages or refreshments provided in conjunction with:*
 - i) the discussion of official business (but not with a tenderer or service provider)*
 - ii) council work related events such as training, education sessions, workshops*
 - iii) conferences*
 - iv) council functions or events*
 - v) social functions organized by groups, such as council committees and community organizations.*
- (b) *invitations to and attendance at local social, cultural or sporting events*
- (c) *gifts of single bottles of reasonably priced alcohol to individual council officials at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address)*
- (d) *ties, scarves, coasters, tie pins, diaries, chocolates or flowers.*

6. (b) What are gifts and benefits of value?

Gifts and benefits that have more than a token value are gifts and benefits of value. They include, but are not limited to:

Tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility or function including at major sporting events and Christmas luncheons, dinners or cruises, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel and corporate golf days (other than Council sponsored charity days).

It is a matter for each individual to determine whether or not a gift or benefit is of more than token value having regard to this Policy and the actual gift received.

Upon accepting a gift considered to be of token value it is the recipient's responsibility to obtain suitable information to properly assess the value of the gift or benefit received. A token gift or benefit can be accepted and may with the General Manager's approval be kept but has to be disclosed and reported and recorded in the Gifts and Benefits Register.

Councillors and designated persons must, by law, disclose a description of any gift or benefit totaling a value exceeding \$500 made by the same person during a period of 12 months or less (required to be included in the disclosures of interest returns – Sec 449 LGA)

7. What must be disclosed?

Sometimes gifts or benefits are offered in such a way that it is difficult to refuse them, they are provided without the opportunity to decline them or they are provided in a manner that makes it difficult to return them. Some offers of gifts or benefits must be declined.

For the purposes of this policy, **all gifts and benefits must be disclosed** including (but not limited to):

- any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty, regardless of the value, and any offers of same that have been declined
- any gift or benefit of more than token value (\$50) as explained in clause 6 and any offers of same that have been declined
- any gift of money or anything readily exchanged/cashed in for money, regardless of the value, and any offers of same that have been declined.
- an expensive present received by you in appreciation of service to a customer of Council
- an expensive present received by your partner from someone connected to Council
- a restaurant meal (including drinks) provided by a consultant or service provider to Council
- an invitation to a sporting event including hospitality in a private room from a property developer or contractor or service provider who does or might work in the Coonamble local government area
- an invitation to a Christmas party hosted by a supplier or potential supplier to Council
- a free interstate trip to view a potential suppliers product
- any prize received in a raffle, competition or other game of chance in circumstances where you are engaging in your Council role, unless conducted by a registered charity or other non-profit group at a public event and drawn at that event
- preferential treatment, such as queue jumping, given by someone connected to Council
- contributions to a loyalty program from someone connected to Council, such as frequent flyer points
- a product or service received by an individual through a purchase incentive scheme operated by a supplier to Council, i.e. something given for free if something else is bought (not including bulk discounts provided to Council)
- a product or a service received from someone connected with the Council at a price that is less than that generally charged to the public.
- Lucky door prizes (includes business card draws at Council endorsed conferences or seminars or trade shows)

8. Gifts and Benefits Register, Disclosures and Surrenders:

Every gift or benefit offered regardless of value must be disclosed and a disclosure form completed.

Disclosures must be made in accordance with clause 7 of this Policy by completion of a Gifts and Benefits Disclosure Form (Attachment A). The disclosure form must be completed within seven (7) days of receiving the offer or receiving the gift or benefit. If you received the offer or the gift or benefit when you are outside of the Coonamble local government area, you must complete the form within seven (7) days of your return.

If you receive a gift or benefit that could be distributed amongst other staff or it is intended for more than just yourself it is your responsibility to complete a disclosure form and nominate the recipients of the gift or benefit.

Also, to the extent that it is practical, the following gifts and benefits must be surrendered to the General Manager (the General Manager to the Mayor):

- any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty, regardless of the value
- any gift or benefit of more than token value
- any gift of money or anything readily exchanged/cashed in for money, regardless of the value
- any gift or benefit that was accepted by you on behalf of the Council.

The General Manager (or Mayor) will review all entries in the Gifts and Benefits Register and determine any action that may be considered appropriate in relation to any entry, including any action that maybe required if the offer of the gift or benefit appears to be a bribe.

Such action may include:

- the giving of advice or counselling
- removal of staff from a particular decision making, regulatory or purchasing role
- taking action to return the gift or benefit
- donating the gift or benefit to a charity or other non-profit organization
- retaining the gift or benefit as property of Council
- retaining the gift or benefit pending consideration of the matter by a relevant investigative authority.

The Gifts and Benefits Register is available for public inspection.

9. Bribes:

A bribe is any form of gift or benefit made with the direct intent to influence your behaviour and public duty and to act other than with honesty and integrity. It may be money or anything else. It is a crime to offer, seek or accept a bribe.

If you think you have been offered a bribe, a corrupt inducement or a reward, it is important that you take appropriate action to minimize the possibility of negative consequences. The following are steps you should take to protect yourself if you are offered a bribe:

(i) Immediately reject the offer

Do not accept the offer, even to use as evidence of a bribe. If you accept the bribe for any reason, the person who offered it could subsequently allege that you were given more than you reported. It might also be argued that you handed in the bribe after accepting it because you feared getting caught or changed your mind about accepting it.

(ii) Terminate the interaction with the person

If the bribe was offered in relation to some activity you were undertaking for the person or his or her associates, cease that activity immediately.

For example, if an officer is involved in a long term interaction with a person that attempts to offer a bribe, such as conducting periodic inspections of that person's property, then the officer should ask to be reassigned so as to cease any further dealings with that person.

(iii) Keep a record of the event

It is important to have a clear record of what you believe happened. As soon as possible make notes about what you saw and heard. As far as possible, state who said what, such as "I said ..." and "He said ..." to ensure clarity and accuracy. Such information may be used later as evidence to support your version of events.

(iv) Inform your supervisor

Inform your supervisor of the incident, including all relevant details, as soon as possible and confirm with your supervisor what action he or she will take. If your supervisor is involved in the incident, then report it to an appropriate senior officer.

(v) Make a formal report

Prepare a formal report for the Council. Include:

- the date, time and place of the incident
- the circumstances of the offer (what it involved and what you think it was intended to persuade you to do).
- who offered it and their contact details (if known)
- what you said or did
- any other relevant details, and
- your signature and the date.

The report should be provided to your supervisor and you should keep a copy for your records.

(vi) Discuss future relations

Discuss with your supervisor (or appropriate senior officer) exactly how future relations with the person who offered the bribe should be conducted.

10. Implementation:

The implementation of this policy is the responsibility of the General Manager. Initial and refresher training will be given in this policy. The policy will be reinforced at critical times such as prior to Christmas. If, at any time, you are uncertain about your responsibilities you may discuss the matter confidentially with the Public Officer (Manager, Administration & Governance)

Council has a Statement of Business Ethics. This statement provides ethical guidance to individuals, organizations and companies that are in, or proposing to be in, a business relationship with Council. It sets out the standards of ethical behaviour that will be followed by staff and what is expected from others in all Council business dealings.

The statement is made available in all circumstances where Council deals with suppliers of goods and services.

11. Breaches of this policy:

The obligation to comply with this policy rests with each individual Council Official. Staff who believe that that this policy has been breached are encouraged to discuss the matter with their immediate Supervisor or Manager. Should you be dissatisfied with the outcome of the discussion and subsequent action you should raise the matter with your Director or the General Manager.

Councillors and Council Officials, other than staff, should raise any concerns with the General Manager. Any concerns about the General Manager should be raised with the Mayor.

The General Manager or Mayor, as appropriate, will investigate any report received and take such action as is considered necessary. Breaches of this policy may result in:

- counselling
- censure motions for Councillors
- loss of reputation
- disciplinary action, including dismissal
- criminal investigation
- criminal charges
- referral to a Conduct Review Committee for investigation and report

A serious breach of this policy may amount to corrupt conduct or maladministration.

Should you be concerned at any time that reprisal action may be taken against you for reporting a serious breach then you might consider making a protected disclosure.

A protected disclosure allows you to report corrupt conduct, maladministration or serious and substantial waste of public money and be protected from any reprisal action. Further information on making a Protected Disclosure is available in Council's Code of Conduct.

12. Associated Documents:

- Coonamble Shire Council Code of Conduct
- Coonamble Shire Council Procurement Policy
- Coonamble Shire Council Statement of Business Ethics

- External References
 - Department of Local Government, Guidelines for the Model Code of Conduct for Local Councils in NSW, October 2008
 - NSW Ombudsman Good Conduct and Administrative Practice Guidelines (2nd edition), May 2006
 - NSW Ombudsman, Public Sector Agencies Fact Sheet no. 7, Gifts and Benefits, March 2004
 - Independent Commission Against Corruption, Gifts, Benefits or Just Plain Bribes? Guidelines for Public Sector Agencies and Officials, June 1999
 - Independent Commission Against Corruption, Managing Gifts and Benefits in the Public Sector, Toolkit, June 2006



GIFT & BENEFITS DECLARATION FORM

Name: _____

Date of receipt
of gift/benefit: _____

Gift/Benefit type: _____

Gift/Benefit purpose: _____

Name of Gift/
Benefit Provider: _____

Relationship of
Provider to council: _____

Estimated Value: _____

Serial/Model No
(if applicable): _____

Current Location
(if applicable): _____

Signature: _____ Date: _____

This form is to be approved by the General Manager prior to the acceptance of any gift where practical to do so.

General Manager's Signature: _____ Date: _____

Decision: APPROVED / DECLINED (strike out whichever is not applicable)

Once completed, please forward form to Governance for the purpose of updating the Gift and Benefits Register.

Adopted by Council: 8 February 2012- Minute No.9682