

LG Alert

Gifts Ahoy ... But don't let them sink your boat!

The proposed section of the draft Mandatory Code of Conduct for Elected Members dealing with Gifts and Benefits has been amended and released for further consultation.

The draft Mandatory Code of Conduct for Council Employees has also been released for consultation and includes gifts and benefits provisions that mirror those of the Elected Member Code.

The relevant considerations of the now proposed clauses 3.7 and 3.8 of the Elected Member Code are:

- there continues to be an **absolute prohibition** on elected member gifts and benefits where:
 - an elected member seeks a gift/benefit;
 - it creates or it may be perceived to create a sense of obligation;
 - it may be perceived to be intended or likely to influence the carrying out of public duty;
 - it is from any person that is in a contractual relationship with the Council; and/or
 - if it is from a person that seeks to be in a contractual relationship with the Council;(noting that this extends to consultants, legal providers, etc. engaged or seeking to be engaged by Council).
- there is now a recognition of 'hospitality' as a 'sub set' of Gifts and Benefits and that certain limited hospitality may be accepted provided that:
 - it is in the context of the elected member performing his/her duties of office (i.e. this includes Council work related events such as training/education sessions, workshops, conferences);
 - it is a Council function/event; or
 - it is a social function organised by a third party limited to Council committees or other community organisations (for example, not for profit type organisations);
- invitations to and attendance at local, social, cultural or sporting events are also recognised as types of benefits that elected members may accept.

Importantly, the above exceptions regarding gifts and benefits that an elected member may accept are limited in nature and application and do not detract from the high moral and legal position set out by the absolute prohibitions. In any event, where any of the limited range of gifts and benefits that can be accepted, are accepted by a member there will be a corresponding obligation of public accountability through a requirement to record the details in a public register (which will also be on the Council website) – where the value is more than an amount to be Gazetted by the Minister.

It is intended that these revised provisions overcome the lack of clarity in the initial proposals. However, the continuing underlying integrity principles are:

- elected members must use their own informed judgment in accepting any gift or benefit within the limited exceptions available to them;
- a gift or benefit should never be accepted that could or could be seen by an objective third party to be capable of amounting to improper or undue influence;
- whenever a limited gift or benefit is accepted there is to be corresponding community accountability under the public disclosure obligations; and

There is now a recognition of 'hospitality' as a 'sub set' of Gifts and Benefits and that certain limited hospitality may be accepted...

- disregarding the types of limited exception gifts and benefits, there is no such thing as a 'free' gift or benefit. The best counsel for elected members, therefore, is:
 - there are risks attached to most gifts/benefits offered or provided to public office holders, in particular relative to improper influence on decision making; and
 - the concern about integrity, compromise or undermining of a public office whether by perception or in reality, necessarily promotes appropriate circumspection in relation to any gift/benefit.

If you have any questions please contact Michael Kelly on 8113 7103 or mkelly@kellyjones.com.au, or Natasha Jones on 8113 7102 or njones@kellyjones.com.au