



LOCAL GOVERNMENT ACT REFORM ►► TRANSFORMING LOCAL GOVERNMENT

## Gifts and Conflicts of Interests Frequently Asked Questions

Council members, Chief Executive Officers (CEOs) and other local government employees occasionally receive gifts. As part of the Local Government Act Review it was recognised that a new gift framework should be developed to provide a transparent system of accountability where members of the community can have confidence in the decision-making of their elected representatives.

The recent changes to gifts outlined below has not changed the current code of conduct gift provisions relating to employees (regulation 34B of the *Local Government (Administration) Regulations 1996*). These provisions will be reviewed when section 5.51A (Code of conduct for employees) of the *Local Government Legislation Amendment Act 2019* is proclaimed in 2020.

### Gifts

#### What changes are being made?

- The former gift exemption categories no longer apply, and council members and CEOs must declare any gift received in their capacity as a council member or CEO valued at \$300 or above (or the cumulative value of gifts from the one donor exceeds \$300 in a 12-month period). See sections 5.87A and 5.87B.
- If a council member receives *any* gift (or a series of gifts in a 12-month period) valued at \$300 or above and the donor has a matter before council, the council member must disclose an interest and remove themselves from the meeting (unless approval is granted by the council or the Minister, depending on the value of the gift). The donor becomes a closely associated person in accordance with section 5.62.
- Similarly, gifts received by the CEO will exclude them from involvement in a matter requiring a local government decision (unless approval is granted by the council or the Minister, depending on the value of the gift).

- Gifts that will not create an interest are those involving attendance at events as approved by council in accordance with the attendance at events policy and those from specified entities.
- Local governments are required to develop and publish a policy covering council member and CEO attendance at events, and addressing who will pay for the tickets.
- The former definition of a gift has been deleted, and a new definition of gift in the Act now includes contributions to travel.
- CEOs are responsible for publishing and maintaining a gift register on the local government's official website which now needs to be updated within ten days of a disclosure being made.

### **Why are these changes being made?**

- It is important that council members and CEOs make decisions – and are seen to be making decisions – free from influence.
- The changes increase transparency while recognising that gifts received in their personal lives, such as wedding presents, are not matters of public interest.
- The amendments also recognise that there is a valid role for council members in attending events, but makes this a decision of council in accordance with a published policy.

### **What are the obligations on Council members and CEOs when receiving a gift?**

- Disclose all gifts valued over \$300 received in their capacity as council member or CEO. This threshold includes cumulative gifts over a 12-month period from the one donor that add up to the value of \$300 or above.
- Disclose these gifts within 10 days of receipt.
- A failure to comply with requirements is an offence.

### **What is a gift received in their capacity as a council member mean?**

- The question is, would the gift have been given if the person was not a member of the council (or CEO), if the answer is no, then it must be disclosed if the value of the gift (or the cumulative value of gifts from the same donor), is over \$300.
- Attendance at an event, whether as a representative of the local government or otherwise as a councillor or CEO, where the council member or CEO has not paid for the ticket or hospitality is a gift and must be disclosed.

- Gifts that generally wouldn't have to be disclosed would include:
  - wedding gifts,
  - birthday gifts,
  - gifts received through a will,
  - gifts (or travel) received through their ordinary course of outside employment, or
  - the temporary loan of personal property belonging to a relative, acquaintance, neighbour etc.
- Care should still be taken when receiving a gift through the pathways listed above, as an assessment on the nature of the relationship between the recipient and the donor must still be made.

**How can a council member or CEO decide if the gift was received in that capacity?**

- Each member will need to make their own assessment.
- The test is — if I was not a council member/CEO would this person have given me a gift (or a gift of that size)?
- If the answer is no, it must be disclosed.
- If in doubt, disclose.

**How do you determine the value of a gift?**

- The value of a gift is its market value at the time it is given.
- It will be up to the council member or CEO to establish the cost of the gift.
- If challenged, the onus is on the recipient to prove the value.

**If I am away how can I make a disclosure in writing within 10 days?**

- It is sufficient to email the CEO (or mayor or president if a CEO).
- The following details must be provided:
  - a description of the gift,
  - the name and address of the donor,
  - the date of receipt,
  - the estimated value of the gift,

- the nature of the relationship between the donor and yourself, and
- if the gift relates to travel, a description of the travel and the date of the travel.

**How soon after a disclosure is made will it be available on the local government's website?**

- The CEO must update the register within 10 days of a disclosure being made.
- The version on the local government's website must be up-to-date.

**What new information is required in the gift register?**

- Where the gift is in accordance with the Attendance at Events policy and that attendance has been approved by council, the entry must also include:
  - the date of council approval, and
  - the reasons for the decision.
- Approval cannot be given for tickets that are provided directly to the council member (or CEO).

**Why are the publication of address details being changed?**

- The full address of the donor still needs to be disclosed, but to balance privacy with transparency, only the town or suburb of the donor's address will be published online.

**How do election gifts work with the new framework?**

- Amendments have not been made to election gifts.
- Election gifts are being reviewed in Phase 2.

**Conflicts of Interest**

**What is an interest relating to a gift?**

- It is a type of interest which recognises that a relationship is created between the donor and a recipient of a gift which could be perceived to affect decision-making.

**What is the purpose of the interest provisions?**

- These ensure that decision-making is free from influence and so decisions can be made in the best interests of the community.

### **What types of gifts could create an interest?**

- Any gift (or a series of gifts in a 12 month period) valued at over \$300 creates an interest as the donor becomes a closely associated person (section 5.62).
- An interest can be created from gifts that do not have to be disclosed in accordance with sections 5.87A and 5.87B.
- For a council member, the interest is created from any gifts since they were last elected (although election gifts also creates an interest).
- For a CEO, the interest is created from any gifts received since the CEO was last employed or appointed to act.

### **Are any gifts excluded from creating an interest?**

- Yes, section 5.62(1B) provides that the following gifts are considered not to have created an interest:
  - Attendance at events which have been approved by the council in accordance with the Attendance at Events policy
  - Gifts from the following entities:
    - WALGA (note: this does not include LGIS)
    - ALGA
    - Local Government Professionals WA
    - A State public service department
    - A Commonwealth, State or Territory government department
    - Another local government or regional local government.
- Note: these still have to be disclosed and entered on the gifts register if received in the capacity of council member or CEO.

### **When does this interest become important?**

- When the donor has a matter before council.

### **What does this mean for the council member or CEO?**

- A council member must not participate in any part of a council or committee meeting relating to that matter without approval.
- A CEO must not provide advice or a report in relation to the matter, either directly or indirectly, unless otherwise approved.

- If advice or a report is being provided by another employee, the CEO must disclose the nature of the interest they have in the matter.

### **What do I do if a matter comes before council affecting the donor?**

- A council member must disclose this interest in writing to the CEO before the meeting or immediately before the matter is discussed. (If disclosure is made to the CEO, the CEO must bring this to the attention of the presiding member before the meeting and the presiding member must bring this to the attention of the attendees immediately before the matter is discussed).
- A CEO who has an interest must disclose the nature of the interest in a written notice given to council.

### **When can approval be given to participate or provide advice or a report?**

- If the interest is from a gift valued at up to \$1,000 and full disclosure has been made, the council, by absolute majority, can approve participation (section 5.68) but only in the following circumstances:
  - those members decide that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member or CEO's conduct in relation to the matter; or
  - the interest is common to a significant number of electors or ratepayers in the case of disclosure by a council member.
- The council can decide to allow the CEO to provide advice or a report if they decide that the nature of the interest is unlikely to influence the CEO (section 5.71B).
- The decisions and the council's reasons for making that decision must be recorded in the minutes of the meeting.

### **Why is the council deciding on whether another council member can participate in consideration of a matter in which they have an interest?**

- Council is in the best position to judge whether the receipt of the gift is likely to affect the person's decision-making.
- If the council agrees, the council member will be able to be present during and participate in the discussions and decision-making in relation to that matter.
- Council will need to record the reason for making that decision in the minutes so there is accountability.
- A cap is being placed on this so that for gifts over \$1,000, an application will need to be made to the Minister for approval to participate.

### **Can a committee make the decision or does the member have to go to the full council for permission to participate?**

- The council can give power to a committee to decide if they feel it is appropriate.

### **What if the gift is over \$1,000?**

- Only the Minister can make a decision to allow participation or the provision of advice or a report (section 5.69).
- The Minister can only decide to allow a council member to participate if:
  - a quorum is needed, or
  - the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.
- The Minister can decide to allow the CEO to provide advice or a report if the Minister is of the opinion that the interest is unlikely to influence the CEO in the provision of the advice or report (section 5.71B).
- The Minister's decision and the reasons for it must be recorded in the council's minutes when the matter is considered by council.

### **Will the CEO have to make an application to council for approval to be involved in matters affecting the donor of a gift from whom the CEO has received a gift?**

- Yes. A CEO must, when proposing to provide any advice or report to the council or a committee, disclose the nature of any interest (section 5.70).
- This must be in writing and be provided to the council.
- The advice or report could be one that will be provided directly by the CEO or indirectly through another employee.
- A CEO that has an interest relating to a gift and authorises another employee to provide advice or a report must disclose the nature of their interest when the advice or report is provided (section 5.71A).

### **Who is responsible for liaising with the Minister to get approval for the CEO to be involved in a matter where the CEO has received a gift over \$1,000?**

- It is the council's responsibility.
- It would be practical for the Mayor or President to be authorised by Council to do so.

## **Attendance at Events policy**

### **What is the purpose of an Attendance at Events policy (section 5.90A)?**

- For council to actively consider the purpose of and benefits to the community from council members attending events.
- To provide a framework for the acceptance of invitations to such events.
- To clarify who pays for tickets to events.
- To provide transparency to the community on the acceptance of tickets to events.

### **What should a council consider in developing and endorsing an Attendance at Events Policy?**

- What benefit will there be to the community or local government in having council member(s) or the CEO (or staff) attend?
- What role will the person attending the event be taking: for example, speaker, giver of awards, member of the audience?
- How many people should appropriately be authorised to attend?
- Is the event to be held within the district?
- Who is bearing the costs of attending and is this appropriate?
- Should the person attending contribute to the costs?
- Who provides the tickets: the organiser of the event or a third party.

### **What matters should be contained in the Attendance at Events Policy?**

- The criteria that the council will use in deciding whether attendance is appropriate.
- How many people should be approved to attend as representatives of the council.
- How tickets to events will be distributed.
- How much a councillor or CEO will have to contribute to the costs of attending.

### **Does the policy cover all events that a council member attends?**

- No, a council member may attend an event outside the policy, or without the council's authorisation.



- If they do so, they must not use a ticket that has been given to the council or that has been funded by another person.
- Unless attendance has been paid for in full by the council member, they must disclose the value of the tickets or hospitality to the CEO within ten days of receipt.
- The council member will also have an interest in any matter involving the donor that comes before council.
- The policy should cover all events that the council member attends as representative of the council.

**Does the policy have to detail actual events and who will attend?**

- No, but if council members traditionally attend certain events, these could be detailed in the policy so that further approval is not needed.
- The policy must clearly outline on what basis the decision to approve attendance at any other events will be made.

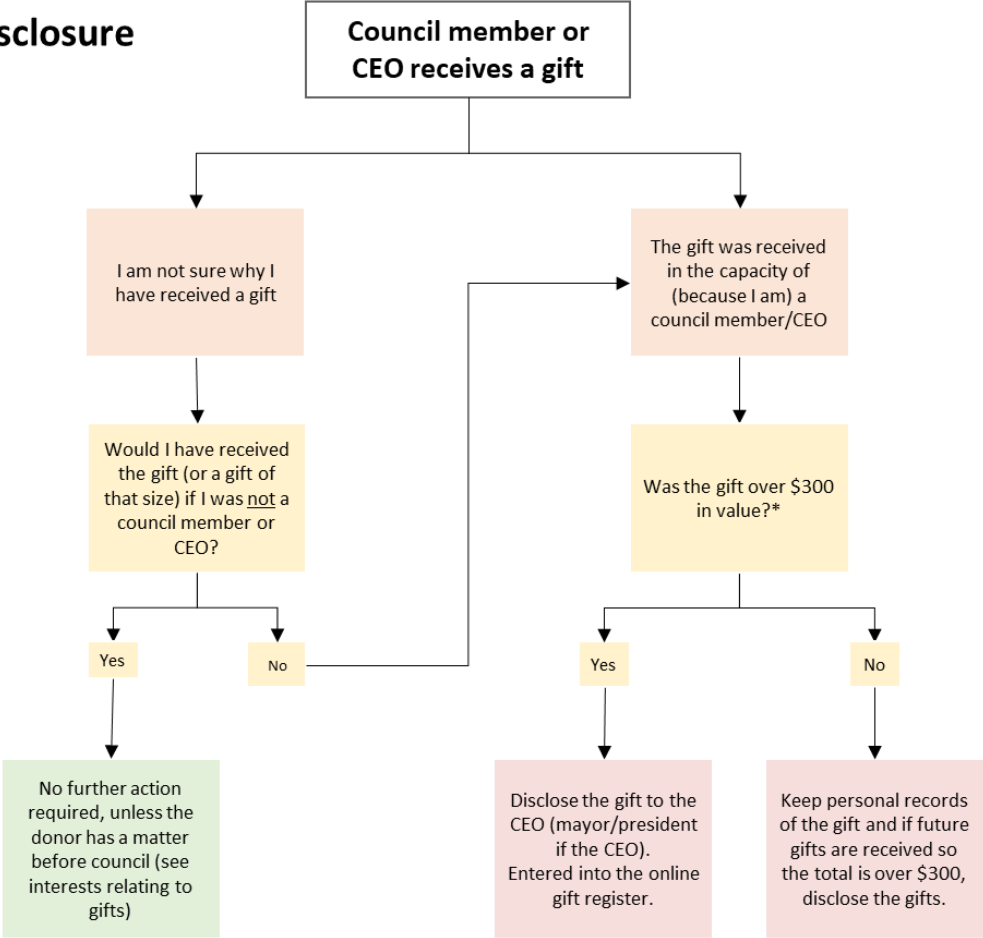
**As a council member can I attend an event if I believe it is in accordance with the policy?**

- You must have council approval to attend – this will either be explicitly stated in the council approved policy or a council decision will be required.

**What if tickets or an invitation is given directly to a council member?**

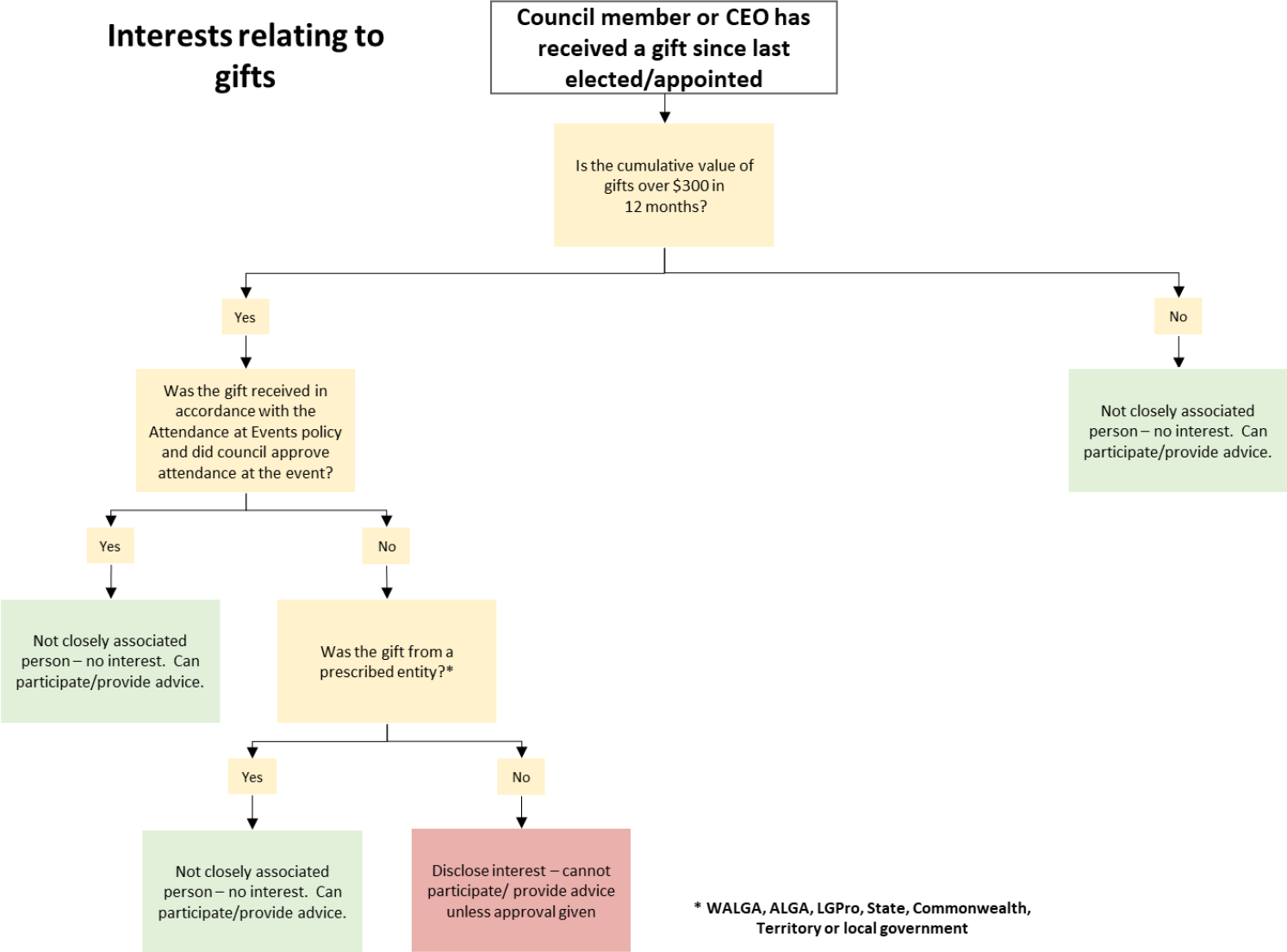
- These will not be covered by the policy.
- The recipient must disclose receipt of the tickets (and any other associated hospitality) within ten days.
- The recipient will also have an interest in any matter involving the donor of the tickets that comes before council.

Gift framework - disclosure



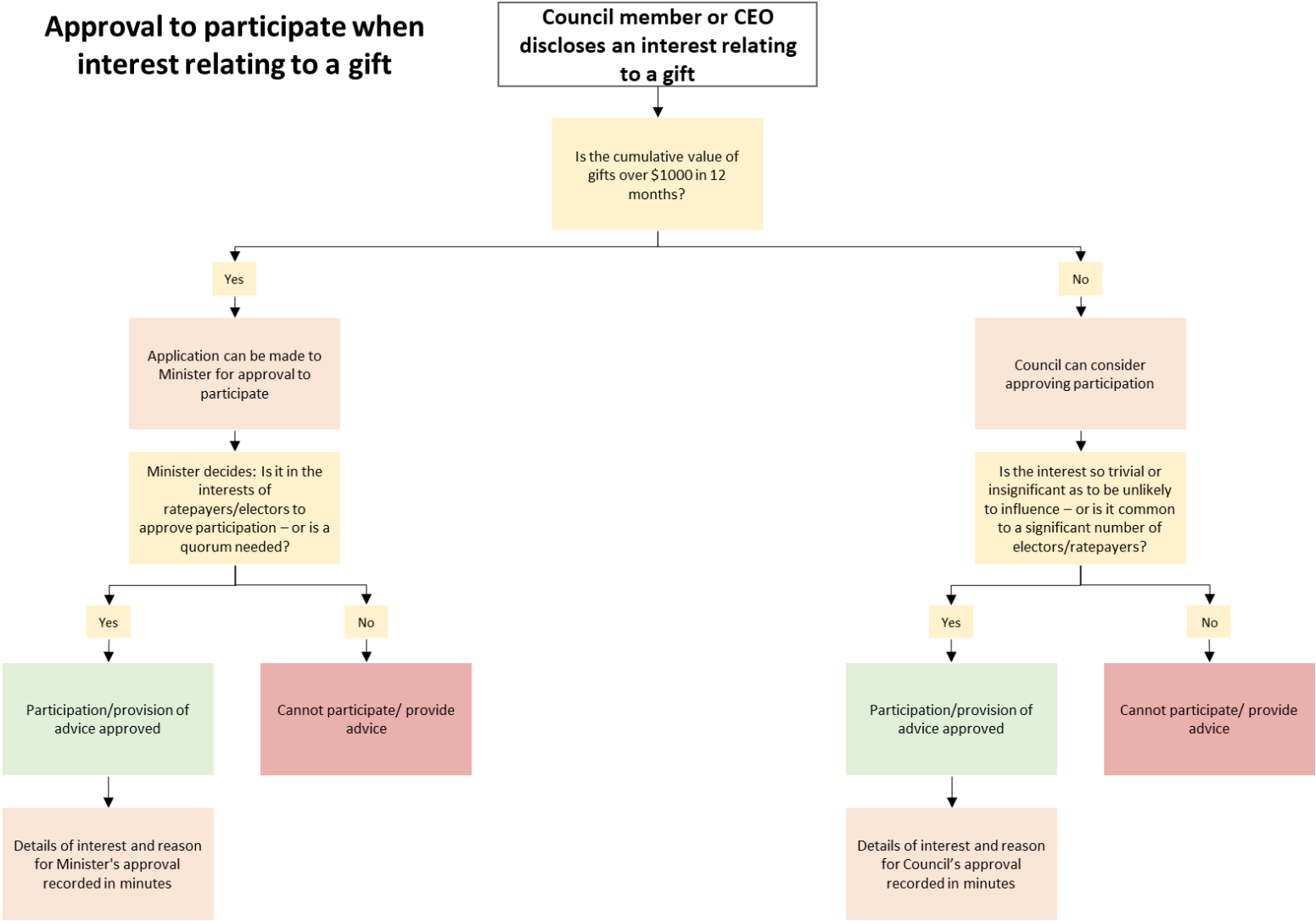
\* Or a series of gifts from that person in a 12 month period was over \$300 in value

**Interests relating to gifts**



\* WALGA, ALGA, LGPro, State, Commonwealth, Territory or local government

### Approval to participate when interest relating to a gift



Participation/provision of advice approved

Details of interest and reason for Minister's approval recorded in minutes

Cannot participate/ provide advice

Participation/provision of advice approved

Details of interest and reason for Council's approval recorded in minutes

Cannot participate/ provide advice