



Department of  
Local Government, Sport  
and Cultural Industries

# Local Government Operational Guidelines

---

May 2020

## Disclosure of gifts and disclosure of interests relating to gifts



This document contains information, opinions, data, and images (“the material”) prepared by the Department of Local Government, Sport and Cultural industries (DLGSC). The material is subject to copyright under the *Copyright Act 1968* (Cth), and it is owned by the State of Western Australia through the DLGSC.

#### Disclaimer

While the information contained in this document has been formulated with all due care, the DLGSC does not accept any liability to any person for the information (or the use of such information) which is provided in this document or incorporated into it by reference.

The information contained herein is provided on the basis that all persons accessing the document undertake responsibility for assessing the relevance and accuracy of its content.

## **Department of Local Government, Sport and Cultural Industries**

### **Leederville office**

246 Vincent Street  
Leederville WA 6007

Postal address: PO BOX 8349,  
Perth Business Centre WA 6849

Email: [info@dlgsc.wa.gov.au](mailto:info@dlgsc.wa.gov.au)

Website: [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au)

### About DLGSC

The DLGSC works with partners across government and within its diverse sectors to enliven the Western Australian community and economy through support for and provision of sporting, recreational, cultural and artistic policy, programs and activities for locals and visitors to the State.

The department provides regulation and support to local governments and the racing, gaming and liquor industries to maintain quality and compliance with relevant legislation, for the benefit of all Western Australians. This publication is current at December 2019.

© State of Western Australia. All rights reserved.

# 1. Introduction

Council members are expected to make decisions in the best interests of their community. To do this, they must consider each issue on its merits.

Decision-making could be influenced – or perceived to be influenced – in a number of ways, including through financial relationships, personal relationships and the receipt of gifts. The *Local Government Act 1995* sets out requirements on council members, CEOs and local government employees to ensure transparency and accountability in decision-making.

This guideline deals with interests arising through the receipt of gifts. It gives an overview of the requirements of council members and Chief Executive Officers (CEO) for the disclosure of gifts received in an official capacity and the interest that may arise from the receipt of any gift. The gift provisions in this guideline do not apply to local government employees (other than the CEO) or election gifts.

Other related operational guidelines:

- Operational Guideline: Disclosure of interests affecting impartiality
- Operational Guideline: Declaring financial interests in meetings
- Operational Guideline: Primary and annual returns
- Operational Guideline: Attendance at events policy

## 2. Gifts

### 2.1 Gifts [s5.57, s5.87A, s5.87B, 5.87C and 5.89A]

A gift is defined under section 5.57 of the Act as a conferral of a financial benefit (including a disposition of property) made by one person in favour of another person unless adequate consideration in money or money's worth passes from the person in whose favour the conferral is made to the person who makes the conferral. It includes any contributions to travel.

“Consideration in money or money's worth” refers to the value of a gift compared to a person's contribution. As an example, which was outlined in *Scaffidi v CEO, Department of Local Government and Communities (2017) WASCA 222*, a council member being provided with expensive accommodation in an exotic location in return for a minimal contribution at a conference such as cutting a ribbon, is not likely to be proportional to the contribution made by the council member. In this case, the council member would need to disclose the accommodation (and potentially other expenses such as airfares and meals) as a gift.

#### Case Study

Councillor Sandy is invited to a function and requested to give a 20 minute presentation. As part of the function, she is provided with a three course meal, including drinks.

Tickets to the function are \$400. Councillor Sandy determines that her time taken to prepare and deliver the speech is valued at \$200 (calculated using an appropriate hourly rate). This is deducted from the ticket value (\$400), giving a net value of the gift of \$200. As it is under \$300, the gift does not need to be disclosed or recorded on the gift register.

There are two aspects to gifts: disclosure of receipt and disclosing an interest when a matter comes before council or when the CEO provides advice or a report to council.

### **Disclosing the receipt of a gift**

In accordance with the Act, council members (section 5.87A) and CEOs (section 5.87B) are required to disclose gifts that are received in their capacity as a council member or CEO and:

- are valued over \$300; or
- are of a cumulative value that exceeds \$300 where the gifts are received from the same donor in a 12-month period.

Additionally, a gift given by two or more related bodies corporate (as defined by section 50 in the *Corporations Act 2001* (Cth)) is considered to have been given by a single corporation.

### **Case Study**

Company GoGetEm gives a gift valued at \$250 to councillor Sandy, as does Company ComeGetMe.

51% of the shares in ComeGetMe are held by GoGetEm. These are related bodies corporate so councillor Sandy would be required to disclose a gift to the value of \$500.

(The position would be the same if GoGetEm owned less than half the shares but had the power to control the composition of the board of ComeGetMe.)

All such gifts must be disclosed within ten days of receipt: the CEO makes the disclosure to the mayor or president; council members make the disclosure to the CEO. The CEO must update the gifts register within 10 days and an up-to-date version of the register is required to be published on the local government's official website.

Form 4 of the *Local Government (Administration) Regulations 1996* sets out the information that is to be disclosed:

- 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 recipient; and
- in the case of travel, the date of the travel and a description
- in the case of an excluded gift, the date of the approval and reasons for the approval.

These disclosures can be made by email to the CEO, ensuring all information is included. Best practice would be for the local government to have a standardised form for gift declarations as this supports declarations inclusive of all the required information.

For an example of a Gift Register refer to Figure 1.

### **Consideration of whether the gift was received in their capacity as a council member or CEO**

The recipient of a gift must decide whether the gift is received in their capacity as council member or CEO. The questions to ask yourself are: would the gift have been given to me if I was not a member of the council or CEO? and would a gift of that value be given to me if I was not a member of the council or CEO? If the answer to either is no, the gift must be disclosed if the value of the gift (or the cumulative value of gifts from the same donor in a twelve-month period) is over \$300.

While the circumstances surrounding the provision of a gift or why people are invited to a celebration of an occasion may differ, examples of gifts that generally wouldn't have to be disclosed include:

- Wedding or birthday gifts;
- Gifts from relatives;
- Gifts received through a will;
- Gifts received through your ordinary course of employment (for council members), or
- The temporary loan of personal property belonging to a relative, acquaintance, neighbour etc.

In all cases, including those above, consider the nature of the relationship between you and the donor when forming your decision to disclose receipt of the gift. The onus is on you, as council member or CEO, to prove that you did not receive the gift in the capacity of council member or CEO if an allegation is made.

**Figure 1: Example of gift register — Section 5.87C of the Act**

Name of person making disclosure	Description of gift	Name and address of person who made gift	Date gift was received	Estimated value of gift at time it was made	Nature of relationship between person who made gift and person who received gift	For a gift that is a travel contribution — description and date of travel	For an excluded gift under s. 5.62(1B)(a) – the date of the approval referred to in s. 5.62(1B)(a)(ii) and the reasons for the approval
May Day	Bottle of Grange	John Generous 5 Market St Midland WA 6056	20 October 2019	\$350	Swan Chamber of Commerce and Industry		
Jack Back	2 x tickets to a Musical	Renee Citizen 35 Graham St Auckland Central NZ 1010	25 October 2019	\$400	Mayor of Auckland		
May Day	Accommodation	Cassidy Digger 15 Disclosure Road Belmont WA 6104	1 November 2019	\$600	Conference convener	Payment of accommodation, 12 – 14 December 2019	
Van Vanh	2x tickets to sporting event: Sports Cup	Sports Cup Events 123 Adelaide Tce Perth 6000	10 November 2019	\$320	Attended event in accordance with attendance at events policy		Approved by council on 24 October 2019; represented council by opening the event.

To assist council members and CEOs with complying with the new gift framework, refer to Figure 2.

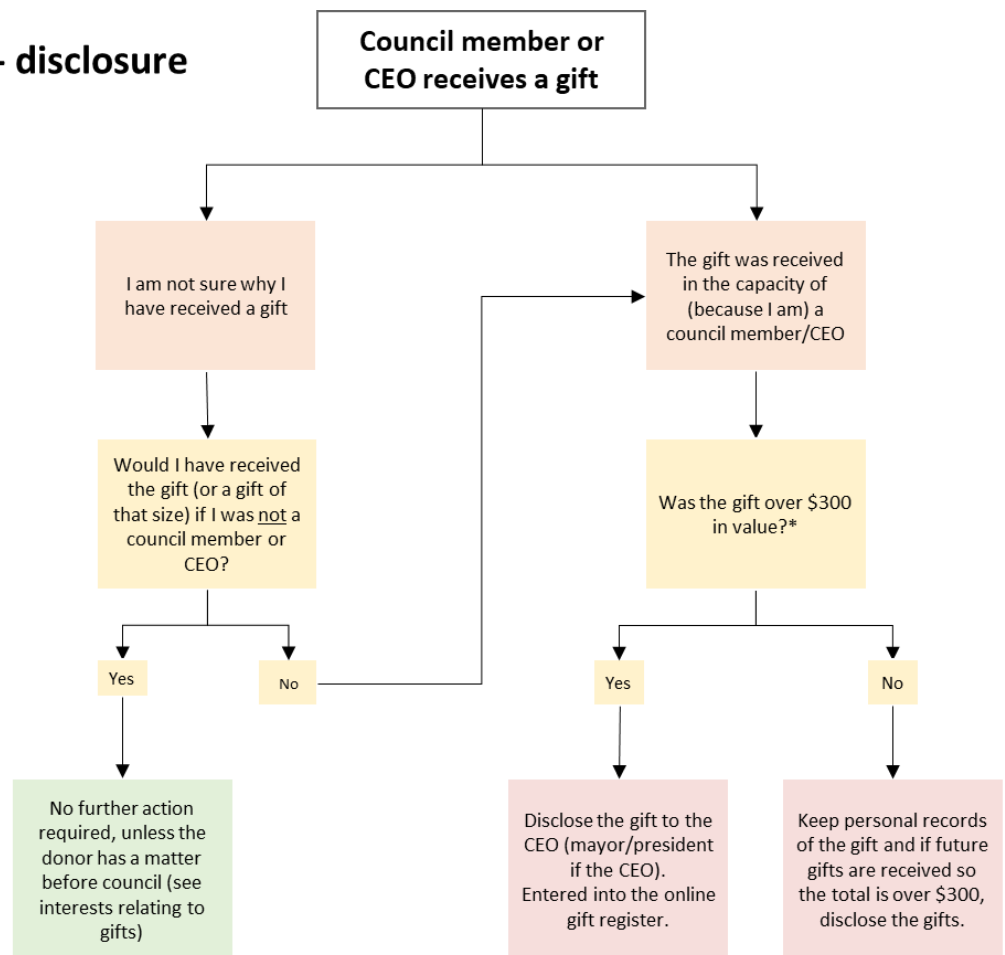
### Value of the gift

The onus is on the recipient to establish the value of the gift, based on the market value on the day the gift was received. How this can be established will depend on the nature of the gift received. For example, the price of a bottle of wine can be established through an internet search or a piece of artwork through contacting the artist. Hospitality can be determined by contacting the restaurant or caterers directly or from an internet search.

### Gifts received during the election period

The *Local Government (Elections) Regulations 1997* provide for the disclosure of electoral gifts in a separate electoral gift register and are not required to be disclosed again under section 5.87A. The provisions relating to these gifts are being reviewed as part of the development of a new Local Government Act. More information on the treatment of these gifts can be found on the Department’s website.

### Gift framework - disclosure



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

Figure 2: The gift reporting framework under the *Local Government Act 1995*.

## 2.2 Interests in matters before council

The interest provisions are aimed at ensuring that decision-making is free from influence and so decisions can be made in the best interests of the community.

The interest relating to gifts provisions recognise that a relationship is created between the donor and a recipient of a gift which could be perceived to affect decision-making. It is irrelevant why the gift was received - whether in the person's capacity as a council member or CEO or some other capacity.

What is critical is that there is a matter before council from which the donor could benefit or suffer detriment.

The basic principle is that the council member is not to participate in any part of the meeting dealing with the matter (section 5.67). They must be absent from any deliberations. If the council member has such an interest, in accordance with section 5.65, they must disclose this interest in writing to the CEO before the meeting or immediately before the matter is discussed.

If it is the CEO who has the interest due to receipt of a gift, they are not to provide advice to council or prepare reports for council, either directly or indirectly (section 5.71A).

### Case study:

Councillor Sandy receives a \$450 watch for her birthday from her friend, Sally. As Councillor Sandy did not receive the gift in her capacity as a council member, the gift does not need to be disclosed or entered in the gift register.

Two months later, Sally decides to open a café in town and makes an application to the Shire of North, where Sandy is a council member. As Sandy has received a gift from Sally that is over \$300, in accordance with section 5.62(1)(eb), Sally is a closely associated person and therefore Councillor Sandy has an indirect financial interest. This requires Sandy to declare an interest and she cannot vote on the matter before council.

### Gifts excluded from the interest provisions

Certain gifts are specifically excluded from the conflict of interest provisions (section 5.62(1B)). These are gifts relating to attendance at an event where attendance has been approved by the council in accordance with the council endorsed Attendance at Events policy, and gifts from specified entities. Regulation 20B of the Local Government (Administration) Regulations prescribe the specified entities as WALGA (but not LGIS), ALGA, LG Professionals, a State public service department, a Commonwealth, State or Territory government department or another local government or regional local government. Gifts from any of these sources must still be disclosed and published on the gifts register if over \$300 in a twelve-month period. To assist council members and CEOs with understanding how the interests relating to gifts operates, refer to Figure 3.

**Note:** You can have a relationship with a person who has an interest in a matter before council for reasons other than the receipt of a gift. Section 5.62 of the *Local Government Act 1995* contains an extensive list of closely associated persons. In all situations of financial interest (either direct or indirect) you must disclose the interest and exclude yourself from participation. Some relationships that your partner has (such as employment) also create a conflict for you.



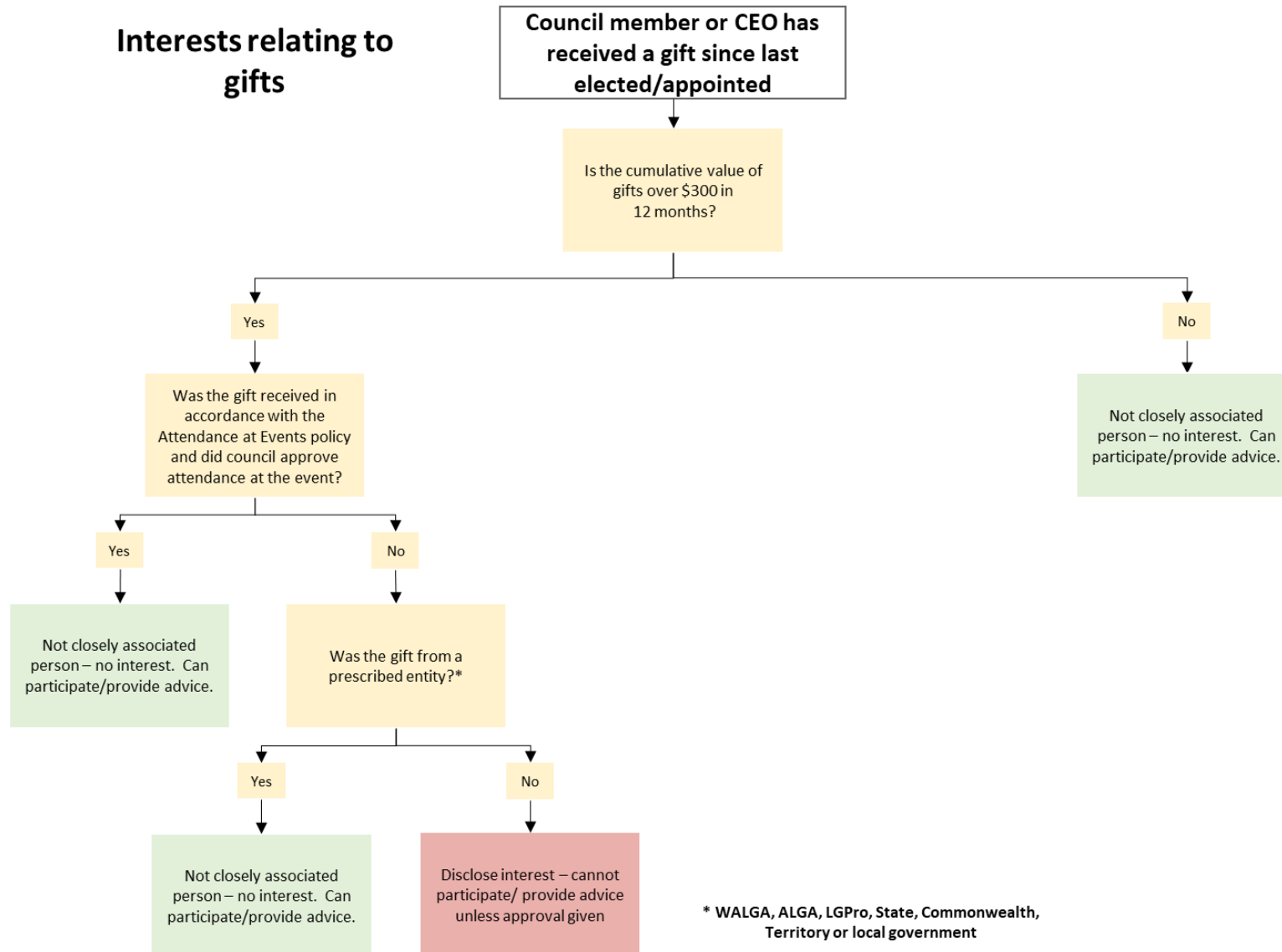


Figure 3: Interests relating to gifts under the *Local Government Act 1995*.

## Approval to participate when there is an interest

The receipt of a gift over \$300 (or the cumulative value of gifts from the same donor in a twelve-month period) prevents a council member or CEO from participating in, or providing advice or report on, the matter to be discussed (unless approval has been given).

As council is in the best position to determine whether the receipt of a gift is likely to affect the person's decision-making, in accordance with section 5.68, council can allow a council member to participate if they have received a gift valued at up to \$1,000 but only where they decide:

- that the interest is so trivial or insignificant it is unlikely to influence the disclosing member 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.

If it is the CEO which has the interest relating to a gift, and the gift is valued at up to \$1,000, the council can allow the CEO to provide advice or a report, if they believe the nature of the interest is unlikely to influence the CEO. If the council decides that the interest is not trivial or insignificant and could be perceived to influence, the CEO should make arrangements for another employee to provide the advice or report.

The decisions to permit participation and the council's reasons for making that decision must be recorded in the minutes of the meeting.

For an interest created by a gift(s) over \$1,000 in a twelve-month period, only the Minister can make a decision to allow participation or the provision of advice or a report.

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 may also allow a CEO to provide advice or a report, if the Minister is of the opinion the interest is unlikely to influence the CEO in the provision of the advice or report. An application for the CEO to provide advice or report must be made by the council and not the CEO.

An application made to the Minister must include: the nature of the interest and any other information required by the Minister to enable the Minister to make a decision.

If the Minister allows a council member to participate or the CEO to provide advice or report, the Minister's decision and the reasons for it must be recorded in the minutes when the matter is considered by council.

To assist council members and CEOs with understanding how approval to participate provisions operate, a flowchart is included at Figure 4.

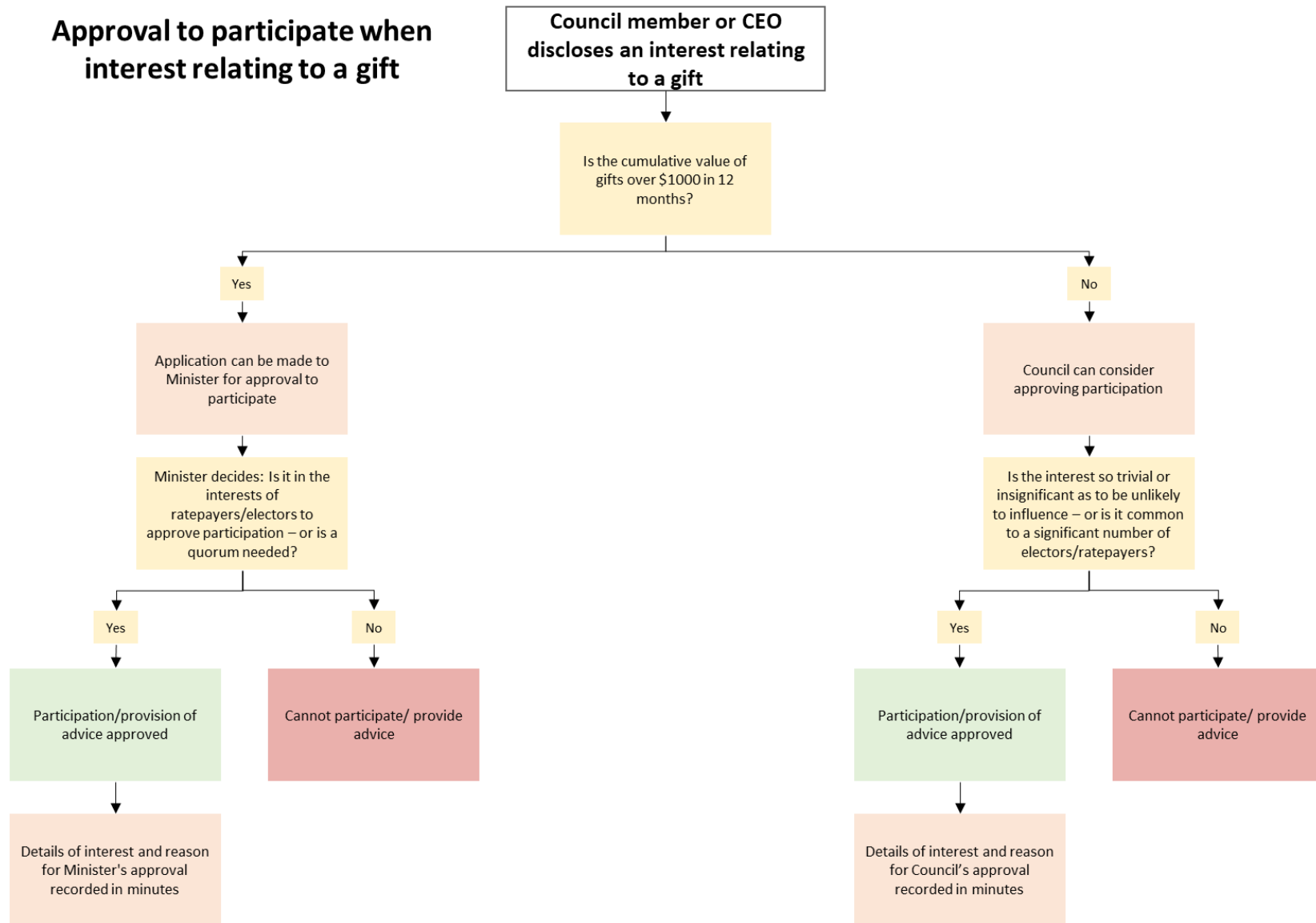


Figure 4: Approval to participate when there is an interest under the *Local Government Act 1995*.

### 3. What are the penalties for failing to comply?

#### 3.1 Failure to disclose an interest relating to a gift [s5.65 and s5.71A]

A failure to declare an interest relating to a gift carries a maximum penalty of \$10,000 or imprisonment for two years.

#### 3.2 Disclosing members not to participate [s5.67]

Participation in a meeting when an interest has been disclosed, unless otherwise permitted, carries a maximum penalty of \$10,000 or imprisonment for two years.

#### 3.3 Minister may allow members disclosing interests to participate etc. in meetings [s5.69, s5.70]

A person must not contravene a condition imposed by the Minister allowing participation. The maximum penalty is a \$10,000 fine or imprisonment for two years.

#### 3.4 Disclosure of interest by CEO [s5.71A]

A CEO who makes a disclosure must not provide the advice or report unless the CEO is allowed to do so by the council or Minister. The maximum penalty is a \$10,000 fine or imprisonment for two years.

#### 3.5 Failure to disclose receipt of a gift [s5.87A, s5.87B]

A failure to disclose receipt of a gift (or series of gifts from the same donor in a twelve-month period) over the value of \$300 within 10 days of receipt by a council member or CEO carries a maximum penalty of \$10,000 or imprisonment for two years.

#### 3.6 Offence to give false or misleading information [s5.89]

Providing information that the person knows to be false or misleading in a material particular or likely to deceive in a material way carries a maximum penalty of \$10,000 or imprisonment for two years.

#### 3.7 Reporting any breaches of financial interest [section 28 *Corruption, Crime and Misconduct Act 2003*]

The CEO as the principal officer of a local government has the legal duty and responsibility to report any breaches under the disclosure of financial interest provisions of the Act in accordance with section 28 of the *Corruption, Crime and Misconduct Act 2003*.

## 4. Concluding remarks

Council members are expected to make decisions in the best interests of their community. To do this, each issue must be considered on its merits. The gift disclosure requirements and the conflict of interest provisions are aimed at ensuring that decision-making is free from influence.

When accepting gifts, council members and CEOs must be aware, and consider the nature of, the relationship they have with the people that are providing them gifts.

The onus is on you to decide whether a gift received should be disclosed and that disclosure is made in a timely manner.

You must also pay careful attention to interests that are created and exclude yourself from decision making (or the provision of advice if a CEO) unless otherwise permitted.

The community's trust in local government is crucial to its success.

Further information on conflicts of interest is incorporated in *Council Member Essentials – Conflicts of Interest* training module prescribed in Regulation 35(2)(iv) of the Local Government (Administration) Regulations.