

# **GIFTS, BENEFITS AND HOSPITALITY**

November 2017

**PROCEDURE**

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## 1. Introduction

This *Procedure for Gifts, Benefits and Hospitality* sets out procedures for employees to follow to deal appropriately with offers and receipt of gifts, benefits and hospitality in the workplace.

While it is preferable that the NSW Government agencies that form part of the Planning & Environment cluster will also adopt this Procedure, cluster agencies are free to implement and follow their own gifts, benefits and hospitality policy and procedure if so desired by their agency head.

This Procedure (and the *Gifts, Benefits and Hospitality Policy*) applies to all permanent, temporary and casual staff, volunteers and other Government sector employees who are on secondment or assigned to the Department. Employees who work in the Arts and Culture Division should also consult Appendix A of the Policy for further guidance on the appropriate approach to and management of gifts, benefits and hospitality in that sector.

All contractors, consultants and volunteers to the Department who work at Department workplaces must comply with this Procedure, when working on or participating in Departmental processes, such as regulatory, procurement or recruitment processes.

For the purposes of this Procedure, “employees” refers to all people to whom the *Gifts, Benefits and Hospitality* policy and this Procedure applies.

## 2. What is a gift, benefit or hospitality?

Gifts and benefits include any item, service, prize, hospitality or travel provided by a customer, client, applicant, supplier, potential supplier, or external organisation, which has an intrinsic value or a value to the recipient, a member of their family, relation, friend or associate.<sup>1</sup>

Gifts and benefits may take many forms, and include:

- Cash, gift voucher or gift card;
- Shares or other monetary equivalents;
- Loans;
- Manufacturers’ samples or products;
- Promotional materials that are valued above \$50 and not generally distributed;
- Goods and services for personal use;
- Sponsored travel or attendance at public events, such as sporting events or entertainment;

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<sup>1</sup> Public Service Commission, *Behaving Ethically: A guide for NSW government sector employees*, p 39.

- Use of facilities, such as gyms or holiday homes;
- Discounts on goods and services, such as car hire, commercial items, food and beverages;
- Function or event invitation from suppliers/contractors;
- Incentive schemes for purchases;
- Prizes won as a result of entering a competition while on official duty, such as a lucky door prize at a seminar or supplier-run competition; and
- Other forms of preferential treatment or favouritism.

### 3. Exceptions to the prohibition

There are a number of exceptions to the general prohibition on accepting gifts, benefits and hospitality. However, gifts, benefits and hospitality of this kind still need to be declared and acceptance approved according to the Policy and Procedures.

Exceptions include:

- A token gift or benefit not exceeding a value of \$50 and offered in business situations;
- Gifts that are non-returnable; and
- Certain work-related hospitality functions, where attendance directly benefits the Department, after being approved and declared.

Exceptions **do not apply** in circumstances where:

- (a) the offer is intended (or could be perceived to be intended) to be an attempt to influence the way an employee performs their official duties;
- (b) the offer is from a person or organisation with an interest in the process or decision to be made by the employee, for example, from a customer, colleague, supplier, potential supplier, bidder, planning approval proponent, adviser, contractor or consultant; or
- (c) the recipient of the offer performs one or more of the following functions:
  - Making or advising on purchasing decisions;
  - Evaluating tenders, quotes, proposals or applications;
  - Administering, or advising on, grants or approvals;
  - Managing contracts;
  - Regulating individuals, organisations or industries; or
  - Delivering valuable services to individuals, companies, or organisations, including the hiring of staff.

The Gifts, Benefits and Hospitality policy prohibits the acceptance of any offer of a gift, benefit or hospitality that is not covered by an exception to that policy.

Employees must never seek or encourage a gift, benefit or hospitality. Such action is a breach of the *Code of Ethics and Conduct* and of the *Gifts Benefits and Hospitality Policy* and may result in disciplinary action.

## 4. Bribes

A bribe is a gift or benefit offered to or solicited by an employee to influence that person to act in a particular way that is contrary to accepted rules of honesty and integrity. It is unlawful both to make an offer of a bribe and to accept it.

In such a situation, an employee must:

- Refuse the offer and stop interacting with the person who made the offer;
- Immediately notify a manager and a Senior Executive Manager or the Secretary in person or in writing (by email) of the offer of the bribe, where and when it was made, and who made it; and
- Complete a *Gifts and Benefits Declaration* form in relation to the offer of the bribe and the action taken by the employee.

The Department must take appropriate steps to make a report to the Independent Commission Against Corruption and/or Police. The employee may also be required to make a formal public interest disclosure, consistent with the *Public Interest Disclosures Policy*.

## 5. Dealing with an offer of a gift, benefit or hospitality

When offered a gift, benefit or hospitality, employees must:

- Assess the offer of the gift, benefit or hospitality;
- In consultation with their manager and the Executive Director Governance and Performance, determine the appropriate course of action, including seeking approval if required;
- Complete the *Gifts and Benefits Declaration* form; and
- Submit the completed form to the Executive Director Governance and Performance

### (a) Assessment

When offered a gift, benefit or hospitality, employees must first consider whether the particular offer is intended, or could be perceived to be intended, to be an attempt to influence the way they are performing their official duties. If an employee is concerned this might be the case, they must refuse the gift, benefit or hospitality, or return the item if it has been sent or delivered to them and declare the offer.

An employee should also report the offer as a bribe (See section 3), if circumstances warrant.

If a gift or benefit is unable to be returned or falls under one of the exceptions, the Executive Director Governance and Performance will make a determination of the most appropriate course of action to deal with the gift or benefit.

The steps in making an assessment are as follows:

1. Is the offer of a gift, benefit or hospitality prohibited under the Policy?
2. Is the offer prohibited for another reason (quarantine laws, health and safety laws, security reasons)?
3. Does it fall under one of the exceptions?
4. If the gift is otherwise prohibited but not able to be returned, what is the most appropriate way of dealing with it?
5. If it is a professional development opportunity or a significant event that is largely work-related, has attendance been approved by the Secretary or delegate?
6. Has the declaration form been completed?

## **(b) Guidance for making an assessment**

### *Is the gift prohibited?*

<b>Reason for prohibition</b>	<b>Nature of prohibition</b>	<b>Does it apply? Y/N</b>
Circumstances	Where the particular offer made to an employee is intended (or could be perceived to be intended) to be an attempt to influence the way the employee is performing their official duties	
Circumstances	Where the particular offer made to an employee's family member/s or close associate/s. is intended (or could be perceived to be intended) to be an attempt to influence the way the employee is performing their official duties	
Role of giver	customer, colleague, supplier, potential supplier, bidder, planning approval proponent, tenement applicant or holder, potential grant recipient and their advisers, contractors or consultants	

<b>Reason for prohibition</b>	<b>Nature of prohibition</b>	<b>Does it apply? Y/N</b>
Role of recipient	An employee whose role is or includes the following duties or functions: <ul style="list-style-type: none"> <li>• Making or advising on purchasing decisions;</li> <li>• Evaluating tenders, quotes, proposals or applications;</li> <li>• Administering, or advising on, grants or approvals;</li> <li>• Managing contracts;</li> <li>• Regulating individuals, organisations or industries; or</li> <li>• Delivering valuable services to individuals, companies, or organisations, including the hiring of staff.</li> </ul>	
Type of offer	<ul style="list-style-type: none"> <li>• Any gift of money, gift vouchers or cards, shares or other monetary equivalents.</li> <li>• Any loan, whether interest is to be charged or not.</li> <li>• A gift or benefit over a value of \$50.</li> <li>• A gift or prize from entering a competition while on official duty.</li> <li>• Manufacturers' samples or products;</li> <li>• Promotional materials valued at more than \$50 and not for general distribution;</li> <li>• Goods and services for personal use;</li> <li>• Sponsored travel or attendance at public events (sporting, entertainment);</li> <li>• Use of facilities such as gyms or holiday homes;</li> <li>• Function or event invitation from suppliers/contractors;</li> <li>• Incentive schemes for purchases;</li> <li>• Other forms of preferential treatment or favouritism</li> </ul>	
Any other reasons for prohibition	Includes: <ul style="list-style-type: none"> <li>• Quarantine restrictions (is it able to be brought into Australia or NSW legally?)</li> <li>• Health and Safety concerns (does the item pose a health and safety hazard?)</li> <li>• Security concerns</li> </ul>	

If any of these circumstances apply, then the gift is prohibited and must be declined or returned unless one of the exceptions.

*Does the gift fall under one of the exceptions?*

<b>Reason for Exception</b>	<b>Details and examples</b>	<b>Does it apply? Y?N</b>
Token Gifts (under \$50 in value)	<ul style="list-style-type: none"> <li>• products given to employees at a conference or other event, which are mass-produced and not given as a personal gift – eg, promotional calendars, coffee mugs, T shirts or folders;</li> <li>• a modest gift (such as flowers, book, bottle of wine, gift card, art or craft, commemorative glass or china) provided by way of thanks for contributing knowledge or expertise to an event such as speaking at a public forum or conference, judging an industry competition or participating in an expert panel; or</li> <li>• light refreshments provided in conjunction with official business, conferences or events.</li> </ul>	
Unable to be returned	<ul style="list-style-type: none"> <li>• Gifts accepted for ceremonial, cultural, protocol or other reasons, where returning it would be deemed ill-mannered, offensive or inappropriate;</li> <li>• A wrapped gift that the recipient does not open in the presence of the gift giver;</li> <li>• Anonymous gifts received through the mail or left for the recipient without a return address; or</li> <li>• A gift received in a public forum where attempts to refuse or return it would cause significant embarrassment.</li> </ul>	

### **Prior written approval**

Those gifts or benefits that involve sponsored travel or attendance at a conference and have been approved in advance by the Secretary or delegate should be declared and entered on the Register.

<b>Type of Gift, Benefit or Hospitality</b>	<b>Must Be Approved By</b>
Sponsored travel	The Secretary
Attendance at significant events	The Secretary, Chief Financial Officer/Operating Officer or a Deputy Secretary

Speaking engagements	The responsible Executive Director must approve, with their manager's endorsement
Professional development programs and hospitality	The responsible Director or above

If the gift falls under one of the exceptions listed above, then the employee and their manager should seek guidance from the Executive Director, Governance and Performance, as to the most appropriate way in which to deal with the gift.

### **(c) Determining the appropriate course of action**

Determining the most appropriate course of action will depend on the nature of the gift itself, and the circumstances in which it is received.

The following table sets out some general options for guidance. Each situation is different however, and employees and their managers are encouraged to seek guidance from the Executive Director Governance and Performance.

<b>Type of gift or benefit</b>	<b>Circumstances</b>	<b>Options</b>
mass-produced and not given as a personal gift – eg, promotional calendars, coffee mugs, T shirts or folders	included in delegates' registration materials at a conference or other event attended by employees in the course of their official duties	Employees may keep the gift
mass-produced and not given as a personal gift – eg, promotional calendars, coffee mugs, T shirts or folders	given to the Department as part of a promotion of a movie, theatrical or artistic event where the Department has contributed funding or other support	distributed amongst the staff with the approval of the relevant Deputy Secretary or Executive Director
flowers, book, bottle of wine, gift card, art or craft, commemorative glass or china (under \$50 in value)	given as a thank you for contributing knowledge or expertise to an event such as speaking at a public forum or conference, judging an industry competition or participating in an expert panel	Employee may keep the gift or donate it to the Department if appropriate, for example: <ul style="list-style-type: none"> <li>• a book can be donated to the section library</li> <li>• art or craft displayed in the office</li> <li>• gift card can be given to a nominated charity or used to part fund a departmental event</li> </ul>

<b>Type of gift or benefit</b>	<b>Circumstances</b>	<b>Options</b>
flowers, book, bottle of wine, gift card, art or craft, commemorative glass or china (under \$50 in value)	won as a result of a game of chance or luck at a conference or professional development even such as a lucky door prize	Employee may keep the gift or donate it to the Department if appropriate, for example: <ul style="list-style-type: none"> <li>• a book can be donated to the section library</li> <li>• art or craft displayed in the office</li> <li>• gift card can be given to a nominated charity or used to part fund a department staff event</li> </ul>
Gifts over \$50 that cannot be returned	Gifts accepted for ceremonial, cultural, protocol or other reasons, where returning or declining it would be deemed ill-mannered, offensive or inappropriate or	Artworks and other artefacts can be displayed in a public area or a meeting room, with a description of the work and an acknowledgement of the gift
Gifts over \$50 that cannot be returned	A wrapped Gift that the recipient does not open in the presence of the gift giver	Will depend on the nature of the gift but options include: <ul style="list-style-type: none"> <li>• Keep in the department for official use or display</li> <li>• Donate to a charity</li> <li>• Donate to a university or professional association with which the Department has affiliations</li> </ul>
Gifts over \$50 that cannot be returned	Anonymous gifts received through the mail or left for the recipient without a return address	Will depend on the nature of the gift but options include: <ul style="list-style-type: none"> <li>• Keep in the department for official use or display</li> <li>• Donate to a charity</li> <li>• Donate to a university or professional association with which the Department has affiliations</li> </ul>
Gifts over \$50 that cannot be returned	A Gift received in a public forum where attempts to refuse or return it would cause significant embarrassment	Will depend on the nature of the gift but options include: <ul style="list-style-type: none"> <li>• Keep in the department for official use or display</li> <li>• Donate to a charity</li> <li>• Donate to a university or professional association with which the Department has affiliations</li> </ul>

## Declaration

Employees must Declare any gift, benefit or hospitality that is accepted or declined in accordance with the *Gifts, Benefits and Hospitality* policy and complete the *Gifts Benefits and Hospitality Declaration Form*.

The *Gifts and Benefits Declaration* form is available on PEcan.

The following examples may also provide some useful guidance in determining appropriate action.

Scenario	Considerations
<p>Fatima is a geologist who works in the geological survey. Her attendance at the annual NSW Geology Society conference has been approved by the appropriate delegate and paid for by the Department.</p> <p>Attendees are given a conference pass, with a registration number. At the end of the conference, the convenor announces that there is a lucky door prize, and Fatima's registration number is drawn out of a hat and she is announced as the winner and invited to come to the stage and accept her prize.</p> <p>The prize is coffee table book about the history of gold mining in NSW. Its value is \$150.00.</p>	<p>The value of the book is over the threshold for gifts and would not be considered 'token'.</p> <p>In the circumstances, Fatima does not feel comfortable declining the gift in front of her professional colleagues. The author of the book is a well-regarded member of the society and is present in the audience.</p> <p>Fatima accepts the prize and makes a declaration when she returns to work.</p> <p>She donates the book to the branch library.</p>

Scenario	Considerations
<p>Sunil is a Director with responsibilities for the assessment of infrastructure projects.</p> <p>He receives an invitation to attend a weekend industry networking event with representatives from the asphalt industry. The invitation includes accommodation, meals and entertainment for himself and a guest at a resort in Bathurst. The event coincides with a major car racing event.</p>	<p>The invitation and the hospitality offered is likely to be perceived as an attempt to improperly influence Sunil.</p> <p>Sunil declines the invitation and reports it to his Executive Director using the Gifts, Benefits and Hospitality form. He also declares the invitation in his response.</p>

Scenario	Considerations
<p>Daniel is an Engagement and Partnerships lead with responsibilities for meeting with representatives to exchange ideas in relation to arts and culture.</p> <p>Daniel and his team met with a Chinese delegation and discussed Create NSW. When the meeting ended Daniel was presented with a number of gifts (wrapped scroll, book, pamphlet). The gifts were accepted as refusal would have culturally offended the Chinese delegation.</p>	<p>Daniel returned to the office with the gifts and established the main gift was a Chinese scroll painting that was realistically valued at over \$50. It would have been culturally offensive for Daniel and his team to refuse the gifts.</p> <p>Daniel completed a Gifts and Benefits Declaration form and requested the CEO approve for the scroll to be hung in the office for all staff. The books and pamphlets to be placed in the branch library.</p> <p>While the value of the gifts is over \$50, refusal would have been offensive to the Chinese delegation.</p>

## 6. Declaring an offer of a gift, benefit or hospitality

Employees must complete the *Gifts and Benefits Declaration* form whenever an offer of a gift, benefit or hospitality is received. Even if the offer is declined or if the gift falls under one of the 'exceptions', completion of the form is mandatory.

Any offer of a bribe, together with details of action taken, also requires completion of the declaration form – see section 3 above.

## 7. Monitoring the Procedure

The Director Governance is responsible for reviewing the Procedure at least every two years, or when the *Gifts, Benefits and Hospitality* policy is reviewed.

## APPENDIX 1

### DEFINED TERMS

#### in the *Gifts, Benefits and Hospitality* policy and this Procedure

<b>Benefit</b>	means a non-tangible item of value, for example, a new job or promotion, attendances at professional development courses, preferential treatment or access to confidential information.
<b>Bribe</b>	means a gift or benefit offered to or solicited by an employee to influence that person to act in a particular way that is contrary to accepted rules of honesty and integrity.
<b>Employee</b>	means all permanent, temporary and casual employees, volunteers and other Government sector employees who are on secondment or assigned to the Department. It also includes contractors and consultants who are working on or participating in departmental regulatory, recruitment or procurement processes
<b>Gift</b>	means anything of value that is offered to an employee in the course of their work, apart from normal employment entitlements, which has intrinsic value to the recipient, a member of their family, a friend or an associate.
<b>Hospitality</b>	means the activity of providing food, drinks or entertainment for people who are guests or customers of an organisation and may include free or subsidised meals or beverages associated with meetings or visits in connection with official functions.
<b>Senior executive manager</b>	means: <ul style="list-style-type: none"> <li>• In relation to the Secretary's direct reports – the Secretary; and</li> <li>• In relation to all other employees – Deputy Secretaries, the Chief Financial and Operating Officer, and other senior executives reporting directly to the Secretary.</li> </ul>