

Gifts and Benefits

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AUTHORISED BY: Deputy Secretary, Finance, Strategy & Operations	AUTHORISED DATE: 15/09/2016
ISSUED BY: Corporate Strategy	EFFECTIVE DATE: 22/09/2016
CATEGORY: People, Ethics and Conduct	REVIEW DATE: 22/09/2019

1. Policy Statement

The NSW Department of Industry, Skills and Regional Development (the department) is committed to building and maintaining a professional and ethical workplace. In doing so, it will safeguard the trust and confidence of the community by ensuring our staff are not influenced by gifts, benefits and bribery.

2. Purpose

This policy outlines the circumstances when the department's staff may either accept a gift or benefit, or when an offer must be declined. A key goal of the policy is to minimise the risk that unethical or corrupt behaviour will occur.

It states the department's requirements for managing gifts and benefits, and will help protect you and the department from potential negative consequences, including from reputational damage.

This policy describes the arrangements for reporting and recording when offers of gifts and benefits are received, offered or declined

3. Scope

This policy applies to all divisions and offices within the department (with the exception of Local Land Services and TAFE NSW). It applies to all ongoing, temporary, term, casual, seconded staff; private contractors and consultants when performing the role of a public official.

It does not apply to:

- gifts and benefits provided by the department to clients and others external to the department. For related information, refer to the Department's Hospitality and Entertainment policy.
- benefits supplied to the department as part of sponsorship or partnership agreements. For related information, refer to the Department's Sponsorship policy.

4. Objectives

It is important that staff ensure that they:

- maintain their integrity and objectivity when performing their duties at all times; and
- make the right decision so that they do not compromise their role, or cause, or appear to cause a conflict of interest.

5. Context

The giving or acceptance of gifts and benefits may affect the public perception of the integrity and independence of the department and its staff.

Staff must be able to demonstrate that they cannot be improperly influenced in the performance of their duties by offers of gift(s) and benefit(s).

There are often occasions where a staff member may be offered a gift or benefit, and they are often minor or token in nature. To assist staff to do the right thing, the department has set a minimum reportable value of \$50.00. For further guidance on managing gifts and benefits refer to [Section 6](#) of this policy.

If a person who offers you a gift/benefit becomes offended because you will not accept it, you should politely explain the department's policy against accepting gifts and benefits.

6. Requirements

6.1 Staff

a) Staff must not:

- accept gifts / benefits that could be perceived by a reasonable person to influence you when carrying out your duties, or what might otherwise be considered a bribe.
- accept offers of cash or financial benefit (including gift vouchers, cheques, money orders) as this could be considered a bribe.
- solicit or accept gifts / benefits from clients in connection with your official duties aimed at persuading a decision, or to provide a favour.

b) Staff may:

- accept token gifts/ benefits below the reportable value (\$50) where it is offered to all participants and attendees at a business event or function (e.g. seminars, conferences, trade and agricultural shows). These gifts do not need to be declared on the Gifts and Benefits Register.
- accept a gift of gratitude below the reportable value (\$50) as long as it does not fall under any of the categories outlined in Section 6.1(a) above.
- accept a gift/benefit for presenting at a conference, seminar, or business event as long as it does not fall under any of the categories outlined in Section 6.1a above and you must declare and report the gift/benefit on the Gifts and Benefits Register.
- accept a ceremonial gift from another organisation on behalf of the department. Ceremonial gifts are considered to be intended for the department and are not for the individual receiving the gift. These gifts must be declared and reported on the Gifts and Benefits Register and will remain the property of the department.
- accept a prize won whilst engaged in official duties as long as it does not fall under any of the categories in Section 6.1a above.
- accept refreshments (e.g. tea, coffee, water, juice) or a meal (no alcohol) during a meeting or as a participant of a working group. These only need to be declared on the Gifts and Benefits Register if above the reportable value (\$50).

c) Staff must:

- advise their Supervisor / Manager immediately if offered a gift or benefit where you believe, the intention of the person making the offer was to influence the way you do your work, or where the offer could be considered a bribe.
- consider the purpose of a gift/benefit before making any decisions about accepting it. If you are unsure discuss with your Supervisor / Manager.
- register cumulative or serial gift giving, which is where you may be offered a series of gifts or benefits from an individual or organisation. Individually, these gifts may be acceptable, however if you are offered multiple gifts (two or more) over a 12 month period, and regardless of whether the total value exceeds the reportable value, then you are required to add them to the Gifts and Benefits register.
- register all gifts and benefits above the reportable value (\$50) detailed at Section 6.1 within 10 working days of receiving them via the FSO portal. This includes registering:
 - all ceremonial gifts received.
 - all gifts and benefits given in gratitude.
 - any gift, benefit or prize that you may win as a result of entering a competition while engaged in official duties.

- the offer and/or receipt of any benefit as part of your official duties (You must be satisfied that the gift/benefit does not fall into any category listed at [Section 6.1a](#)).
- any gift/benefit that is declined, returned or disposed of by you. For example if you share the gift with colleagues, you donate it, or you return the gift.
- discourage your family, relatives, friends or associates from accepting gifts and benefits, which could give the perception of an indirect attempt to influence you.
- complete a conflict of interest declaration where a gift or benefit creates an actual, potential or perceived conflict between your private interests and your official duties.

6.2 Exceptions.

a) Staff in the following list have no discretion (except as described at [Section 6.2b](#) below) to accept gifts or benefits, other than light refreshments, and are obliged to refuse all offers:

- Regulatory staff;
- Inspectors;
- Licencing staff;
- Staff working in the area of procurement and/or disposal of assets;
- Staff negotiating and/or managing contracts for public/private partnerships; and
- Staff negotiating and/or managing the delivery of products and services.

These staff must inform their manager / supervisor of any offer made.

b) Staff auditing a food business may accept a modest meal if:

- the audit takes longer than 3 hours, is being conducted in a remote location, or outside normal business hours, and
- the staff member is unable to purchase a meal.

In these circumstances the staff member must register the meal in the Gifts and Benefits register in accordance with [Section 6.1c](#) above.

6.3 Managers / Supervisors¹

- a) Action gifts and benefits reported to them within **10 working days** of receiving the gifts and benefits declaration form from their staff member.
- b) Determine the appropriate course of action for managing the gifts and benefits offered to staff in their Unit, Branch and Division. Possible actions include:
 - retain; decline, return, share, donate or seek direction with regard to the gift/benefit.
- c) Confirm approved actions, including for disposing gifts, have been completed.
- d) Promote ethical conduct and regularly remind staff of their responsibilities in relation to gifts and benefits.
- e) Take appropriate action in relation to any reported bribe or breaches of this policy in consultation with the Department's Fraud Control Officer.
- f) Arrange for the display of gifts in Department of Industry Offices where appropriate.
- g) Supervise the disposal of gift items not suitable for display in Department of Industry offices or donation to charity.

6.4 Senior Executives

- a) ensure staff comply with this policy and associated procedures.
- b) approve or decline gifts and benefits declarations, in consideration of any actual, potential or perceived conflicts of interest.

¹ Management levels 1 - 5 consistent with the Levels of Authority within the Human Resources Manual of Authority.

6.5 Board and Committee members

- a) at a minimum are to act in accordance with relevant guidance issued by the NSW Department of Premier and Cabinet. This policy may be adapted for use by the Board or Committee if required.

6.6 Deputy Secretary, Finance Strategy and Operations

- a) is legally obligated to report any instances of actual or suspected fraud, corruption or bribery to ICAC and the NSW Police.

6.7 Corporate Strategy Branch

- a) review the policy and procedure and provide relevant advice and guidance to the department.
- b) manage and maintain the official gifts and benefits register and associated procedures and forms required to track and record this information.
- c) develop and implement processes to monitor compliance and attest compliance through an annual management review of the Gifts and Benefits process.
- d) provide reports to the Executive and divisions in relation to the management of gifts and benefits in the department, including advice on emerging risks.
- e) raise awareness of gifts and benefits across the department.

6.8 People Learning and Culture

- a) incorporate Gifts and Benefits awareness and training, and highlight potential risks, as a part of the Department's induction program.

7. Disposal

There may be circumstances where a gift may not be easily returned, such as cultural or ceremonial gifts, or where the gift was received anonymously. In these instances, the gift must be:

- declared via the [FSO portal](#) outlining the method of disposal, and
- given to the Manager / Supervisor to determine the appropriate disposal method / action.

In these circumstances, appropriate options may include:

- Sharing the gift amongst a branch, team or office
- Donating the gift to an appropriate charity

If you are unsure what to do with a gift, contact Corporate Governance for advice.

8. Gifts and Benefits Register

The Gifts and Benefits Register is the department's official record that details gifts or benefits received or offered to staff and how they were managed by the department. The register is centrally managed by Corporate Governance.

9. Breaches

Breaches of the policy include accepting inappropriate or prohibited gifts / benefits and failing to declare these items on the Gifts and Benefits Register. Depending on the nature and seriousness of the breach, may result in disciplinary action. Any breach to this policy, may also constitute a breach of the Code of Conduct.

In addition, to solicit or accept a gift or benefit; or accept a bribe that influences decision making, or to provide a favour, is inconsistent with this policy and may be considered an offence under the *Crimes Act 1900 (NSW)*, or constitute corrupt conduct under the *Independent Commission Against Corruption Act 1988* and may lead to criminal prosecution.

10. Roles and Responsibilities²

Role	Responsibility*
Secretary	Approve Gifts and Benefits declared by Level 2 Officers.
Deputy Secretary, FSO	As nominated delegate, approve Gifts and Benefits declared by the Secretary. Approve policy changes / exemptions. Report actual or suspected fraud, corruption or bribery to ICAC ³ / NSW Police.
Level 4+ Approvers	Approve Gifts and Benefits declared by staff.
Managers / Supervisors	Action gifts and benefits reported by staff.

11. Definitions

For the purposes of this policy and any related policy documents, all terminology is taken to mean the generally accepted or dictionary definition with the exception of the following terms which have a specifically defined meaning:

- **Benefit:** similar to a gift in that it is of value to the recipient, but less tangible. For example meals, seats at sporting events, access to corporate boxes at sporting venues, upgrades on flights, new job or promotion, preferential treatment, or access to confidential information.
- **Bribe:** a gift or benefit offered to or solicited by a public official to influence that person to act in a particular way and to induce the public official to act in a way that is contrary to the known rules of honesty and integrity.
- **Bribery:** includes offences committed under section 249B and associated sections of the *Crimes Act 1900* (NSW), involving acts of offering or soliciting a corrupt commission or reward to or by a public official to influence that person in a particular way.
- **Ceremonial Gift:** an official gift from one organisation to another organisation. Such gifts are often provided to a host agency when conducting official business with delegates from another organisation. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the agency and therefore the gift is considered to be for the organisation, not a particular individual.
- **Corruption:** the abuse of public office, that is, 'public trust' for private or personal advantage.
- **Cumulative gifts:** also referred to as serial gift giving, is a series of gifts or benefits (two or more) given to staff by an individual or organisation over a 12 month period.
- **Gift and Benefits:** any item, service, prize, hospitality or travel, provided by a customer, client, applicant, supplier, potential supplier or external organisation, which has an intrinsic value and /or a value to the recipient, a member of their family, relation, friend or associate.
- **Gift:** an item of value for example - a gift voucher, entertainment, hospitality, travel, commodity, property etc. which one person or organisation presents to another. Gifts may be offered as an expression of gratitude with no obligation to repay in kind, or given to create a feeling of obligation. In the business context, gifts can have different meanings and purposes. The purpose of the gift, to a certain extent, affects how it should be managed.
- **Gift of Gratitude:** a gift that is offered to an individual or an agency in appreciation of performing specific tasks or for exemplary performance of duties. Gifts to staff who speak at official functions would be considered gifts of gratitude.
- **Gift of Influence:** a gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future.
- **Gifts and Benefits Register:** an official agency record that details gifts and benefits received by staff and how they were managed.

² Consistent with the Levels of Authority within the Human Resources Manual of Authority.

* Staff holding, acting or performing in a responsible position.

³ ICAC: Refers to the NSW Independent Commission Against Corruption

- **Managers / Supervisors:** means the Manager / Supervisor (or equivalent) of the division or business unit in which the staff member directly reports when receiving or having been offered a gift or benefit.
- **Nominal Value:** the monetary limit of acceptable gifts. By accepting the gift, there would be no obligation, perception or expectation for reciprocation or providing preferential treatment. For NSW Department of Industry this is not a definitive amount, all items received should be declared with the exception of token gifts as defined.
- **Official duties:** The work done by a public official as defined by relevant or governing legislation (and regulations), the official's position description or lawful directions given by a Manager / Supervisor.
- **Public Official:** an individual who carries out public official functions or acts in the capacity of a public official. Temporary employees and in some circumstances private contractors and consultants are also considered public officials when performing the role of a public official.
- **Reportable value:** is the threshold amount of \$50, above which all gifts and benefits are to be reported.
- **Staff:** refers to a person whether remunerated or not, working on the Departments behalf including ongoing, temporary, term, casual, seconded staff; private contractors and consultants.
- **Token Gift:** a gift that is offered in business situations to an agency or public official representing an agency. Such gifts are in the nature of small office or business accessories that contain the company logo. These items are not given as a personal gift for use outside the business context and a reasonable person would not perceive a token gift as items designed to influence or win favours. A token gift has no significant or lasting value and could include a pen, cap, stationery, coffee mug, stress ball, mouse pad, memory stick or a showbag given to all participants at seminars, conferences, trade and/or agricultural shows and business events.
- **Working Group:** group of people working together temporarily until some goal is achieved.

12. Supporting information

12.1 Legislation

- *Crimes Act 1900 (NSW)*
- *Government Sector Employment Act 2013 (NSW)*
- *Government Sector Employment Rules 2014 (NSW)*
- *Government Information (Public Access) Act 2009 (NSW)*
- *Independent Commission Against Corruption Act 1988 (NSW)*
- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Public Interest Disclosures Act 1994 (NSW)*
- *State Records Act 1998 (NSW)*

12.2 Related policies and procedures

- Code of Conduct [IND-P184]
- Conflicts of Interest [IND-P-183]
- Enterprise Risk Management [TI-A-135]
- Fraud and Corruption Prevention [IND-P-188]
- Government Information Public Access [IND-I-178]
- Hospitality and Entertainment [TI-P-145]
- Human Resources Manual of Authority [INT16-27439]
- Managing Gifts and Benefits Procedure
- [Managing Unsatisfactory Performance Procedure](#)
- Public Interest Disclosures – Internal Reporting [TI-A-123]
- Sponsorship [TI-G-136]

12.3 Other policies and codes

- [NSW Public Service Commission: Code of Ethics and Conduct](#)
- [NSW Department of Premier and Cabinet: NSW Government Boards and Committees Guidelines](#)
- [NSW Procurement Policy Framework](#)
- [OFS – 2014-2017 – Official Travel in Australia and Overseas](#)
- [Policy on Official Travel within Australia and Overseas](#)

13. Further information

For further advice and information on the management of gifts and benefits, please contact:

Position	Business Unit	Contact Details
Manager, Corporate Governance	Corporate Governance Unit, Corporate Strategy	E: corporate.governance@industry.nsw.gov.au

13.1 Superseded documents

- NSW Department of Industry, Skills and Regional Development Gifts and Benefits Policy TI-A-122

13.2 Revision history

Version	Date effective	Reviewed By	Changes made
1.2	03/11/2016	Manager, Corporate Governance	Minor edit to refer to light refreshments at 6.2(a).
1.1	15/09/2016	Manager, Corporate Governance	Aligned with NSW Public Service Commission Ethical Framework. Introduces value thresholds. Clarified approval process for gifts and benefits declared by the Secretary.
1.0	21/04/2016	Project Officer, Corporate Governance	Policy update to reflect cluster name change.