

Department of Police and Public Safety
Gifts and Benefits Guidelines – State Service Employees

May 2005

Purpose:

To inform all State Service employees of their statutory obligations concerning the receiving and giving of gifts and benefits.

Introduction:

The *State Service Act 2000* contains State Service Principles that, in part, requires the State Service to be apolitical and perform its functions in an impartial, ethical and professional manner. The State Service Code of Conduct and the State Service Principles establishes the conduct requirements for State Service officers and employees. The Code of Conduct, in part, requires officers and employees to behave honestly and with integrity in undertaking their duties.

Consistent with the attributes prescribed by the *State Service Act 2000*, the Tasmanian community expects that the giving and receiving of gifts or benefits does not influence a person employed in the State Service.

Therefore, it is important that no conflict exists, or appears to exist, between the public duty and private interest of an officer or employee in the State Service. Such conflict of interest, or appearance of conflict, may relate to an officer's or employee's past, current or future duties.

Legislative Requirements:

Section 9 (1) of the *State Service Act 2000* requires that an employee must behave honestly and with integrity in the course of State Service employment.

Section 9 (4) of the *State Service Act 2000* requires that an employee, when acting in the course of State Service employment, must comply with all applicable Australian law.

Section 9 (8) of the *State Service Act 2000* states that an employee must disclose, and take reasonable steps to avoid, a conflict of interest in connection with the employee's State Service employment.

Section 9 (11) of the *State Service Act 2000* states that an employee must not make improper use of information gained in the course of his or her employment or the employee's duties, status, power or authority in order to gain a gift, or seek to gain, a gift, benefit or advantage for the employee or for any other person.

Section 9 (12) of the *State Service Act 2000* requires that an employee who receives a gift in the course of his or her employment, or in relation to his or her employment, must declare the gift as prescribed by regulations.

Section 9 (16) of the *State Service Act 2000* extends these requirements to all officers.

Regulation 12 of the *State Service Regulations 2001* requires that a gift must be declared to the relevant Head of Agency.

Chapter IX of *The Criminal Code Act 1924* pertains to gifts and the corruption of public officers and extortion by public officers.

Definitions:
Gift:

Means any gratuity or benefit gained by an officer, employee, or their immediate families (i.e. spouses, partners and dependant children), either monetary or otherwise (except by means of a will), in the course of the officer's or employee's duties or in relation to the officer's or employee's duties from any person or entity other than the employer. It includes, but is not limited to:

- ✦ a gift of money;
- ✦ a gift of a physical object;
- ✦ the conferring of a benefit;
- ✦ indirect or concealed gifts such as the permanent or indefinite loan of money or property, the sale or transfer of property at less than market value or the provision of a benefit which has a financial or commercial value for less than market value; or
- ✦ provision of hospitality (e.g. accommodation), travel (e.g. airfares), or entertainment for less than market value.

Appendix A provides additional information as to the scope of the definition of a gift or benefit.

Procurement:

Means any process by which an Agency secures goods or services from internal or external providers.

Head of Agency Responsibilities:

The Head of Agency must ensure that:

- (1) the Agency has guidelines relating to the giving and receiving of gifts and benefits;
- (2) all staff are made aware of the guidelines relating to the giving and receiving of gifts and benefits and the need to inform the Head of Agency should they be offered or receive a gift in the course of their employment; and
- (3) the State Service Commissioner is provided with a copy of Agency guidelines and any subsequent revisions.

Guidelines Relating to the Giving and Receiving of Gifts and Benefits**At all times:**

- Employees/officers are to exercise due diligence to ensure that Government or Agency Procurement decisions are not influenced by the offer of or the receipt of gifts.
- Any officer or employee engaged in procurement processes is aware of the statement in the Handbook for Government Procurement issued by the Department of Treasury and Finance in that “it is a requirement that all Government buyers decline, gifts, gratuities or any other benefit which may influence or might be deemed to influence, equity or impartiality in procurement decisions.
- Employees/officers are to duly report any offer and or acceptance of a gift or benefit received during their employment in the course of their duties. This extends to gifts or benefits that may be offered whilst not during normal working hours but may be perceived to be linked or associated with an individual’s work activities. A gift or benefit should not be accepted, unless it is justifiable to do so.
- An employee/officer must disclose, and take reasonable steps to avoid, a conflict of interest in connection with the employee’s State Service employment. This may include being presented with a gift or the offer of payment of an attendance fee at a presentation or conference.

- An employee or officer must also advise of circumstances where other than in accordance with the official duties (as formally directed) a gift or benefit is offered, received or declined using the appropriate notification form.
- All employees and officers when either receiving a gift or benefit or the offer thereof will complete the appropriate notification form (Appendix B) within 5 working days of receiving a gift or benefit or the offer thereof.
- All employees and officers must seek approval to accept a gift or benefit prior to the event where possible. There may be circumstances where it is appropriate to accept a gift or benefit on behalf of the Department and approval should be sought prior to the event to ensure correct Department protocol at such events or occasions is observed. Approval should be sought by completing the notification form (Appendix B).
- Where practicable, gifts that are approved for retention should be displayed in the workplace. In the case of consumables, they should be shared within the workplace or utilised at Departmental functions.

Breaches of the Guidelines

Any breach of the guidelines concerning the giving or receiving of gifts or benefits will be dealt with in accordance with the procedures set out in the Commissioner's Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct.

Review of Agency Guidelines on the Giving and Receiving of Benefits

The Head of Agency will review the guidelines at least once every four years or when amendments are made to the State Service Act 2000 or the Commissioner's Direction to ensure compliance with relevant legislation and direction.

Definition and scope of gifts and benefits

A gift or benefit may include and is not limited to:

- Offers of cash or shares.
- Gifts, such as bottles of wine, manufacturer's samples or personal items.
- Promotional materials, including clothing, books or compact discs which may be used either within the work environment or out of work hours. It is deemed that corporate gifts, for example a pen, writing pad and other items that are provided at a conference or workshop to all participants and of small value are not deemed to be a gift or benefit. However a discount voucher or other means where a reduction in cost is afforded to an employee is considered to be a gain or benefit not readily available to all and therefore must be declared.
- Sponsored Travel. Acceptance of sponsored travel may not occur without prior approval of the Head of Agency. Sponsored travel may be approved if it is considered to be of benefit to the state. Sponsored travel provided by the Commonwealth is not considered to be a gift, whilst other sponsored travel is deemed to be a gift or benefit. These determinations apply if an employee accepts and takes sponsored travel during their own time or in an unofficial capacity, particularly when any link exists or could be construed to exist between the gift and the official duties of the employee or officer.
- The acceptance of invitations to functions, entertainment and hospitality constitute a gift. The key issue is whether acceptance of hospitality is appropriate and whether the hospitality is aimed at influencing the officer or employee in the exercise of some specific or general duty or power either individually in directing the activities of their department or through the exercise of a discretion.
- Benefits under loyalty schemes, for example frequent flyer schemes to individuals.
- Discount car hire, accommodation charges, entertainment or sporting facilities or commercial items or discounted places on training or development courses that may be considered to be linked to the employee or officer's official position.

No nominal monetary value for gifts or benefits has been determined as it is contingent on each individual circumstance. Individuals should be aware that in some circumstances the acceptance of what they consider to be a gift of small monetary value may be construed differently by others. As such, each circumstance will need careful consideration to ensure that there is no misconception by others concerning the acceptance of any gift or benefit, especially during tender periods or where questions may arise as to the intent of the person receiving the gift in respect of their duties, delegation or area of authority.

These guidelines are to be read in conjunction with instructions in the Department's Finance Manual in relation to entertainment expenses.

Department of Police and Public Safety

Gifts and Benefits Notification Form

Name:		
Work Location:		
Date of notification:		
Description of gift/benefit:		
Reason for gift or benefit:		
Date gift/benefit was made known to you:		
Date gift/benefit provided to you:		
Current location of gift/benefit:		
Name of Supervisor (if notified/advised):		
Name & signature of Supervisor:	Date:	
	Comments/Recommendations:	
Name & signature of Inspector/ Manager:	Date:	
	Comments/Recommendations:	

Completed form is to be forwarded to your section's Inspector/Manager and on forwarded to Commander, HR.