

Gifts and benefits

The obligation

A reputation for integrity and professionalism can only be achieved and maintained if the community is confident that public officials are not influenced by gifts, benefits or bribes.

Public officials should never expect to get anything extra for doing what they are paid to do. Public officials should not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably perceived by an impartial observer as intended or likely to influence the public official:

- to act in a particular way (including making a particular decision)
- to fail to act in a particular circumstance, or
- to otherwise deviate from the proper exercise of their official duties.

Public officials should also take all reasonable steps to ensure that their immediate family members are not the recipients of gifts or benefits which could give the appearance to an impartial observer of an indirect attempt to secure their influence or favour.

The issue of gifts and benefits is a minefield. It is often not a question of whether a gift or benefit is or was an attempt to influence a public official, but what a reasonable 'impartial observer' would think. Things which could influence the perception of a gift or benefit would include:

- the scale, lavishness or expense/cost/value
- the frequency of occurrence, and
- the degree or openness surrounding the occasion or gift.

Relevant considerations would include such things as:

- the nature of the main functions of the agency and/or relevant public official
- the relationship between or potentially between, the giver/offerer and the agency and/or relevant public official
- the type of gift or benefit offered or given, and
- the frequency or regularity of gifts or offers from the same source.

Public officials should not take advantage (or seek to take advantage) of their status or position with, or functions performed for, a public sector agency in order to seek or obtain unauthorised or unfair benefit for themselves or for any other person or body. This includes seeking such advantage:

- as an inducement or reward for some decision, action or inaction, priority or delay that favours or is against the interests of any person or body, or
- whose receipt (or any expectation of receipt) would in any way tend to influence the person to show, or not to show, favour or disfavour to any person or body in relation to the affairs or business of the agency (see ss.249B and 249H of the *Crimes Act 1900*).

What are gifts and benefits?

Gifts or benefits include, but are not limited to, free (or less than market value) accommodation, entertainment (eg, tickets to major sporting events, concerts, etc), hospitality (eg, meals, alcohol, invitations to use a corporate box at a major event) or travel. Generally speaking, token gifts and moderate acts of hospitality would include:

- gifts of single bottles of reasonably priced alcohol to individual public officials at end-of-year functions, public occasions or in recognition of a presentation
- free or subsidised meals and/or beverages provided infrequently (and/or reciprocally) by representatives of other public sector agencies or Federal Government departments or agencies, and
- free meals and/or beverages provided to public officials who formally represent their agency at government-related functions.

Circumstances where gifts or benefits may be acceptable

Gifts or other benefits not essentially token or inconsequential in kind (including moderate acts of hospitality) should only be accepted:

- where they are not obtained by virtue of a public official's office or position
- where a gift is given to a public official in a public forum in appreciation for the work, assistance or involvement of the public official or an agency, and refusal to accept the gift would cause embarrassment or affront
- if there is no possibility that the recipient might be, or might appear to be, compromised in the process, or
- in circumstances generally approved by the principal officer of the agency, or on any other occasion with the formal written approval of the principal officer, preferably obtained beforehand.

Approval of the principal officer should only be given where the acceptance of the gift is unlikely to be seen by a reasonable 'impartial observer' to create a conflict of interest, or influence the performance of duties or functions

Gifts and benefits registers

Agencies should consider having a gifts and benefits register to record the gifts and benefits that are given to staff, whether staff were allowed to retain non-token gifts or benefits and if so, by whom was that authorised and on what basis.

Reporting offers of bribes

If any offer or suggestion of a bribe is made directly or indirectly to a public official, the facts should be reported to a senior officer at the first opportunity. The senior officer should immediately inform the principal officer of the agency who is under a duty to report to the ICAC any matter that he or she suspects, on reasonable grounds, concerns or may concern corrupt conduct (see s.112, *Independent Commission Against Corruption Act 1988*).

Further information

For further information on this and related topics, see: *Good Conduct and Administrative Practice—Guidelines for state and local government*, NSW Ombudsman, August 2003, the *Personnel Handbook*, NSW Premier's Department, September 2003 (at 8.4.2); and *Gifts, benefits or just plain bribes*, ICAC.

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

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We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.