

Gifts, benefits and hospitality

Responding to gift offers - (2) An overview

Boards and employees of major DELWP agencies

This is an overview of how you must respond to offers of gifts, benefits and hospitality received as a result of your role as a board member or employee.

It includes a summary flowchart.

Introduction

Who does this guidance note apply to?

This guidance note applies to board members and employees of the over 100 major public entities and other statutory boards, committees, councils, panels, etc. in the Department of Environment, Land, Water and Planning (DELWP) portfolio, including large (category 1 and 2) committees of management of Crown land reserves.¹

Induction kits

This guidance note is recommended for inclusion in induction kits for board members and employees.

Your agency's policy

Your agency must have a gifts policy that fulfils its legal obligations (e.g. *Minimum accountabilities for the management of gifts, benefits and hospitality*) and complies with good public sector governance practice.² It should be consistent with the **DELWP model policy**.³

Your obligations

The Victorian public sector has strict requirements in relation to integrity.

As a board member or employee of a public sector agency, you must act in the **public interest** (best interests of the agency).

You **must not** accept a gift offer made as a result of your role unless there is clear justification, consistent with your agency's policy, to do so.

¹ For small (category 3) committees, see www.delwp.vic.gov.au/committees.

² Issued by the Victorian Public Sector Commission (VPSC).

³ The DELWP model policy is designed specifically for DELWP agencies. It should be used rather than the generic model policy issued by the VPSC.

Aim of gifts policy

The aim of your agency's policy is to minimise gift offers made to, and accepted by, board members and employees. This helps to protect and promote public confidence in the integrity of your agency.

Summary flowchart

A **summary flowchart** of how you must respond to gift offers is set out in **Appendix 1**.

What is a 'gift offer'?

A gift offer is anything of value that is offered to you or your close associates (e.g. a family member) by an external source as a result of your position with the agency. It includes free or discounted:

- **items or services** - e.g. Xmas hamper, bottle of wine, desk calendar, door prize
- **benefits** - e.g. promise of a new job
- **hospitality that exceeds common courtesy.** Hospitality includes offers of food, drink, travel, accommodation, events or activities (e.g. sporting, social, 'industry', arts, entertainment or other events or activities). Common courtesy is polite, basic and modest. It is not a conflict of interest.

For details and examples, see **Appendix 2**.

'Token' or 'reportable'?

A gift offer is either:

- **token** – the offer is trivial and inconsequential. The combined total of offers to you from that source in the last 12 months does not exceed \$50
- **reportable** – the offer exceeds the token value OR is of cultural, historic, or other significance.

For details and examples, see **Appendix 3**.

Prohibited gifts

You must refuse **prohibited** gifts - i.e. a gift offer that:

- is money or similar
- is a conflict of interest (real, potential, or perceived)
- could in any other way create a reasonable perception that it could influence your judgement;
- is inconsistent community expectations, or

- could otherwise bring your integrity or that of the agency into disrepute.

A reportable gift offer must also be refused unless it has a legitimate business purpose.

For details and examples, see **Appendix 4**.

Misuse of position

Accepting a prohibited gift offer may constitute misuse of your position, a breach of your agency's policy and/or the relevant code of conduct, and may result in disciplinary action. If the gift was offered with the expectation of something in return (e.g. preferential treatment), accepting it may constitute a bribe or other form of corruption and lead to criminal prosecution.

Ban on soliciting gifts

You must not solicit gifts for yourself or anyone else. To do so may be misuse of your position (see above).

It is important to note that the ban on soliciting gifts relates to any gifts, **direct** or **indirect**. For example, you must not ask:

- a supplier to provide a relative with a trade discount (and any such offer must be refused and disclosed)
- an external contractor to contribute to a fund raising activity for your child's kindergarten or for the employee social club (and any such offer must be refused and disclosed).

Disclosing a gift offer

You must disclose every gift offer that you receive, **regardless of whether you accept the offer**.

You disclose the offer to your **responsible person**. For board members and the CEO, this is the chair. For employees, this is usually the line manager.

There are difference processes for disclosing a gift offer, depending on whether it is a token or reportable:

Token gift offers

To disclose a token gift offer, email your responsible person as soon as practicable (and keep a copy).

If you accept a token gift you may retain it as your own.

It is *your responsibility* to keep track of whether the total value of offers to you from a particular source exceeds the reportable threshold of \$50 in the last 12 months.

For details, see **Appendix 5**.

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Reportable gift offers

To disclose a reportable gift offer:

- verbally disclose the offer to your responsible person as soon as practicable
- lodge a **gift offer declaration form** within five working days of receiving the reportable gift offer.

If you accept a reportable gift it belongs to the agency, not you!

The information that you disclose in a gift offer declaration form is entered into the **gifts register**. A copy of the register that complies with privacy laws is published on the agency's external website.

For details, see **Appendix 6**.

Support from your agency

Induction and annual refresher training

Your agency should provide you with induction training and annual refresher training, including:

- information about your agency's policy
- **practical guidance** on how to comply with it (e.g. where to obtain gift offer declaration forms, how to refuse a gift without giving offence, etc.)
- advice on the consequences of breaching its policy.

A copy of your agency's policy and practical guidance on how to comply should be provided to you when you commence your term of appointment/employment. Updates should be provided as soon as practicable.

'Responsible person'

Your agency should nominate a '**responsible person**' to whom you:

- disclose all gift offers that you receive
- seek advice from in relation to gift offers.

For board members and the CEO, this is the chair. For employees, this is usually the line manager.

Gifts Hub

You can also seek advice from your agency's Gifts Hub. This is the central point in your agency from which to obtain expert advice and guidance materials.

Obtaining advice from your 'responsible person' or from the Gifts Hub does not abrogate your responsibility to make the right decision.

External stakeholders

Your agency's policy must be published on its website to help external stakeholders understand not to offer prohibited gifts, and the policy's aim and requirements.

Information should also be provided in tender kits etc., with regular reminders sent to suppliers and external contractors.

Contracts for suppliers and external contractors should ensure that the agency can revoke (or renegotiate) the contract if the supplier or external contractor offers a prohibited gift.

Culture of integrity

To foster a culture of integrity, it is essential that board members, employees, and external stakeholders (tenderers, suppliers, external contractors, etc.) are supported to raise queries and issues about gift offers, including queries and issues relating to their own conduct or that of others.

Possible breach of this policy

If you may have breached your agency's policy you must immediately notify your responsible person and remedy any breach.

Speaking up

If you believe that another board member or employee may have breached your agency's policy you must:

- approach them, to give them the opportunity to notify the responsible person and remedy any breach, or
- notify the responsible person directly yourself.

If the matter involves corruption or serious misconduct, you can choose to instead report the matter to the Independent Broad-based Anti-corruption Commission (IBAC) as a protected disclosure.⁴

Decisive action, including possible disciplinary action, will be taken against any board member or employee who discriminates against or victimises a person who speaks up in good faith about a possible breach of your agency's policy.

⁴ A complaint to IBAC under the Protected Disclosures Act 2012 will ensure that your identity remains confidential and you are protected from reprisals.

Responding to gift offers – (2) An overview

Appendix 1 – Summary flowchart

Have you received a gift offer as a result of your role with the agency?

'GIFT' includes:

- **items or services** (e.g. chocolates, bottle of wine, commemorative object, calendar, door prize)
- **benefits** (e.g. promise of a new job)
- **hospitality that exceeds common courtesy.** ('Hospitality' includes food, drink, travel, accommodation, events or activities – e.g. sporting, social, industry, arts or entertainment. 'Common courtesy' is polite, basic and modest. It does not raise a conflict of interest. Whether an offer exceeds common courtesy depends on what is offered, by whom, to whom, when, why.)

Yes

No (hospitality does not exceed common courtesy)

Policy does not apply

Policy applies

Is it a prohibited gift?

- Is it **money** or is similar to money (e.g. gift vouchers) or easily converted into money (e.g. shares)?
- Is it a **conflict of interest** (real, potential or perceived)? – e.g. offered by an external source with an interest in a decision that you are likely to make or can influence (e.g. tender process; procurement of goods/services; awarding of a grant or sponsorship; setting of policy; enforcement, licensing or regulation; contracts).
- Could it in any other way create a **reasonable perception** that it is offered to influence, or could influence, your judgement (i.e. how you act, or fail to act, now or in the future)?
- Is it inconsistent with **community expectations**?
- Could it in any other way bring your integrity, or that of the agency, into **disrepute**?

Yes

No

It is prohibited

- **Refuse** the gift.
- **Disclose** offer to your 'responsible person' (line manager for employees; chair for board members and the CEO) as follows:
 - Token offers by email
 - Reportable offers verbally and by lodging a gift offer declaration form.

Note that information about reportable gift offers is published (de-identified) on the agency's website.

Yes – it is 'reportable'

- Is there a 'legitimate business reason' to accept the offer?

No

Yes

'Reportable' obligations

- You can either refuse or accept the gift.
- Regardless, you must inform your 'responsible person' and disclose the offer by lodging a gift offer declaration form.
- If you accept the offer, the agency is the owner of the gift, not you.

Token or reportable?

- Does the combined total of offers to you from this source in the last 12 months exceed \$50?
OR
- Regardless of value, is the gift offered of cultural, historical or other significance?

No – it is 'token'

'Token' obligations

- You can either refuse or accept the gift.
- Regardless, you must disclose the offer by email to your 'responsible person' and keep a copy of it.
- If you accept the gift, you can keep it as your own.

Responding to gift offers – (2) An overview

Appendix 2 - What is a gift offer?

A gift offer is anything of monetary or other value that is offered to you by an external source (organisation or individual) as a result of your role with the agency. It includes free or discounted:

• Items or services

Items such as a Christmas hamper, desk calendar, box of chocolates, bottle of wine, commemorative object, or 'door prize' at a function; services such as tree-logging or house painting.

• Benefits

Benefits such as preferential treatment, privileged access, favours or other advantages or intangibles, for example, access to a discount or loyalty program, or the promise of a new job.

• Hospitality that exceeds common courtesy

'Hospitality' is the friendly reception and treatment of guests. It includes offers of food, drink, travel, accommodation, events or activities (e.g. sporting, social, industry, arts, entertainment, or other events/activities).

'Common courtesy' is polite, basic and modest. It does not raise a conflict of interest.

Whether an offer exceeds common courtesy depends on the circumstances (i.e. what is offered, by whom, to whom, when and why).

Example – does not exceed common courtesy

The following offers do not exceed common courtesy. They are **not a gift offer** and do not need to be disclosed under your agency's policy:

- a cup of coffee at another organisation's premises
- a modest working lunch, such as sandwiches and pastries, at another organisation's premises
- a cup of coffee at a café (unless there is a conflict of interest).⁵

Example – gift offer

The following offers exceed common courtesy. They are a **gift offer** and must be disclosed under your agency's policy:

- a 'fine dining and wines' working lunch at another organisation's premises
- an offer to pay for a working lunch at a café
- an offer of a free spot at an industry golf day.⁶

Direct or indirect

A gift offer may be direct or indirect. It may be made directly to you or indirectly via an offer to your relative or close associate, including:

- a member of your immediate family (e.g. spouse, partner, child, grandchild, parent, sibling)
- a regular member of your household (whether or not they are related)
- another close associate (e.g. friend, business associate, other relative).

Appendix 3 - Token' or 'reportable'?

A gift offer that is made by an external source is either 'token' or 'reportable':

• Token

The offer is trivial and inconsequential. The combined total of offers to you from that source in the last 12 months **does not exceed \$50**.

• Reportable

The offer exceeds the token value OR is of cultural, historic or other significance.

Example – exceeds token value

If you are offered a \$20 bottle of wine three times by the same source in 12 months, the 3rd offer makes a cumulative total of \$60. This exceeds the \$50 threshold. The 3rd offer is therefore reportable, *even if none of the offers are accepted*. What counts is the total offered in the last 12 months.

⁵ For example, there is a conflict of interest if it is offered by a stakeholder with an interest in a policy decision that you are likely to make or can influence. Note that all conflicts of interest must be refused and disclosed under your agency's policy - see Appendix 4, 'Prohibited gifts'.

⁶ Note that in these examples the gift offer is inconsistent with community expectations and must be refused - see Appendix 4, 'Prohibited gifts'.

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Example – other significance

A gift offered by a visiting delegation (e.g. from another country) is reportable, regardless of its monetary value. Even if it is not of cultural or historic significance, it is of 'other' significance.

Appendix 4 - Is it a prohibited gift?

You must refuse any gift offer that:

- is **money** or is similar (e.g. gift vouchers) or easily converted into money (e.g. shares);
- is a **conflict of interest** (real, potential or perceived) – e.g. is offered by an external source with an interest in a decision that you are likely to make or can influence, including in relation to:
 - procurement of goods or services;
 - tender processes;
 - awarding of a grant or sponsorship;
 - setting of policy;
 - enforcement, licensing or regulation; or
 - contracts;
- could in any other way create a **reasonable perception** that it is offered to influence, or could influence, your judgement (i.e. how you act or fail to act, now or in the future);
- is inconsistent with **community expectations**; or
- could in any other way bring your **integrity**, or that of the agency, into disrepute.⁷

If it is a reportable gift offer, it must also be refused unless there is a '**legitimate business reason**' to accept it (a business purpose that furthers the official business or other legitimate goals of the agency, public sector, or State).

Example - not a legitimate business reason

The following are not a legitimate business reason:

- ✘ 'It would have been impolite to refuse'
- ✘ 'Refusal would offend' (except in compelling circumstances that are in the public interest. These almost never exist for gift offers of hospitality and rarely exist for other gift offers.)
- ✘ 'Networking'
- ✘ 'Maintaining stakeholder relationships'.

Gift offers of hospitality

To ensure that you do not accept a prohibited gift, be particularly cautious about gift offers of hospitality (i.e. food, drink, travel, accommodation, events or activities).

Hospitality offers are often inconsistent with community expectations. There is also an increased risk of a conflict of interest. In such situations, you must refuse the offer, *even if there is a 'legitimate business reason' to accept it.*

In particular, note that:

- Invitations to attend or participate in a sporting, social, 'industry', arts, entertainment, or other event or activity are high risk. Examples of gift offers that must be refused include:
 - attend as a guest in a corporate box at the football or at a car or horse racing event
 - attend a concert or theatre event
 - attend an industry golf day or play golf at a reduced fee
 - be 'shouted' a meal at a restaurant
 - accept complimentary or discounted tickets for a family member to attend the tennis.
- Gift offers that relate to conferences or familiarisation tours (sponsored attendance, participation, travel, or accommodation, etc.) must be declined.

The only exception is if there is clear justification (e.g. the invitation is issued by a government department) and you receive prior written approval.

⁷ For example, if accepting the gift offer could be perceived as endorsement of a product or service.

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Appendix 5 - Responding to a token gift offer

Response to offer

If you are offered a gift of **token** value (see Appendix 3) that is not a prohibited gift (see Appendix 4) you may:

- refuse the gift offer; or
- accept the gift offer and retain the gift as your own.

Disclosure of token offer

Regardless of whether you accept the offer, you must disclose it as soon as practicable by email to your 'responsible person' setting out:

- the date of the offer
- the source (organisation or individual) of the offer
- what was offered and why
- that it was a token offer, including an estimate of:
 - the value of the gift offered; and
 - the combined value of all gifts offered to you from that source in the last 12 months
- whether it was a prohibited gift and, if so, why
- whether you accepted or refused the offer.

You do not need to complete a gifts declaration form.

Example – acceptance of token gift

'On 16 July 2017, I received a gift offer from Berringer and Co. of a bottle of wine. It was offered to me as a thank you for presenting at their annual education forum, which I did as part of my official duties. I estimate the value of the bottle of wine to be \$30. I estimate the combined total of gift offers I have received from this source in the last 12 months to be \$45. I consider this to be a token gift offer. It was not a prohibited gift offer. I accepted the offer.'

Example – refusal of token gift

'On 13 December 2017, I received a gift offer from Murks and Co. of a desk calendar. It was offered as 'a Xmas gift'. I estimate the value of the desk calendar to be \$20. I estimate the combined total of gift offers I have received from this source in the last 12 months to be \$45. It was a prohibited gift as it is a conflict of interest - Murks is a prospective tenderer about whom I am likely to make or can influence a decision. I refused the offer and explained why to the rep.'

Keeping track of token gift offers

Both you and your 'responsible person' must retain a copy of the email, so as to:

- assist you to fulfil your responsibility to keep track of whether offers made to you by that particular source exceed a combined value of \$50 in the last 12 months (the reportable threshold)
- assist your responsible person to monitor the risks inherent in their team's work and functions.

Appendix 6 - Responding to a reportable gift offer

Response to offer

A reportable gift offer (see Appendix 3) offer must not be accepted if it is a prohibited gift (see Appendix 4).

Ownership of reportable gifts

If you accept a reportable gift offer you do so on behalf of the agency. **The agency is the owner of the gift, not you!**

(Occasionally, it will be in the public interest for approval to be given for a board member or employee to use a reportable gift 'as their own' at the behest of the agency. Your agency's policy should include criteria for when such approval may be granted - e.g. if it is required to avoid the person being in breach of the agency's policy through no fault of their own.)

Disclosure of offer

Whenever you receive a reportable gift offer you must, *regardless of whether you accept the offer:*

- verbally disclose the offer to your responsible person as soon as practicable; and
- within five working days of the offer, sign and lodge a properly completed **gift offer declaration form**.

Gifts Register

Your agency will enter the information you provide in your gift offer declaration form into its **Register of responses to reportable gift offers** (gifts register).

A 'de-identified' copy of the gifts register will be published on your agency's external website in a form which complies with privacy laws.

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Board members

At the start of each board meeting, the chair must ask all board members present to state whether their entries in the gifts register are complete and correct. If there are no changes, the minutes will note that:

‘All board members present confirmed that their entries in the *Register of responses to reportable gift offers* are complete and correct’.

If changes are declared, these will be noted in the minutes, together with the board member’s undertaking to lodge a gift offer declaration form within five working days.

Report to Audit committee

The gifts register and gift offer declaration forms are subject to regular scrutiny. The CEO reports at least annually to the board’s Audit committee on compliance with the agency’s policy and what improvements need to be made.

Further information

On Board

For further information see the [Gifts, benefits and hospitality](#) support module in the [Governance guides and resources](#) section of DELWP’s governance website, **On Board** (www.delwp.vic.gov.au/onboard). It includes the DELWP model policies and DELWP guidance notes, plus direct links to this topic on the Victorian Public Sector Commission website.

DELWP relationship manager and team

DELWP also offers support to its agencies through its divisions and regional offices. Your agency can contact its usual DELWP relationship manager or team or phone the Customer Service Centre on 136 186.

Providing gifts

There is also a model policy on providing gifts.

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