



## Gifts, Benefits and Hospitality Policy

### Rationale

To ensure a high level of integrity and impartiality from all school staff and school councillors.

### Aims

To guide all individuals as to what they need to do when considering whether to accept gifts, benefits and hospitality. It is underpinned by the integrity and impartiality values and principles specified in the *Public Administration Act 2004*, the *Code of Conduct for Victorian Public Sector Employees* and the *School Council Code of Conduct*

### Specification

#### Gifts:

*Gifts* are the free or heavily discounted items, intangible benefits or hospitality exceeding common courtesy that are offered to employees or school councillors in association with their duties and responsibilities. They may be enduring, such as a work of art, or consumables, such as a box of chocolates. They can range in value from nominal to significant and be given for different reasons.

#### Benefits:

*Benefits* are the privileged treatment, privileged access, favours or other advantage offered to an individual. They include invitations to sporting, cultural or social events, access to discounts and loyalty programs, and promises of a new job. While their value may sometimes be difficult to quantify in dollars, they may be highly valued by the intended recipient and therefore used to influence behaviour.

#### Hospitality:

*Hospitality* is the friendly reception and treatment of guests. It is hospitable to offer light refreshments in the course of a business meeting or as part of a conference program. Hospitality can range from offers of light refreshments at a business meeting to restaurant meals and sponsored travel and accommodation.

#### Reportable gifts:

*Reportable gifts* are those that must be recorded, typically on a gift declaration form and/or gift register. At a minimum, reportable gifts include accepted gifts, benefits and hospitality that exceed a nominal value. They could also include gift offers of any value, whether they are accepted or not. The gifts may have been offered to an employee or school councillor directly, or extended to them as a guest of their partner or other close relation.

#### Nominal value:

*Nominal value* refers to the value of the gift offer. It is used to determine whether an offer, if accepted, is a reportable gift and therefore recorded on the gift register. Irrespective of the value, a gift offer that could create a reasonable perception that an employee or school councillor could be influenced must be refused.

### Implementation

The **minimum requirements** apply to all employees and school councillors. The **minimum accountabilities** also apply to the Department's executive and executive class and principal class employees in the Teaching Service (excluding assistant principals).

The **minimum requirements** for individuals are that they:

- do not solicit gifts, benefits or hospitality

- refuse all offers of gifts, benefits or hospitality from people or organisations about which they are likely to make decisions, i.e. tender processes, procurement, licensing or regulation, etc.
- refuse all offers of money or items easily converted to money, such as shares
- refuse bribes and report bribery attempts to their manager/principal
- seek advice from their manager/principal or other appropriate delegate if unsure about how to respond to an offer of a gift, benefit or hospitality of more than nominal value.

The **minimum accountabilities** for the Department's executive, executive class and principal class employees in the Teaching Service (excluding assistant principals) are that they:

- promulgate and establish awareness and compliance with the Gifts, Benefits, and Hospitality policy and Guidelines with all staff and school councillors
- reinforce to all employees and school councillors that a breach of gifts, benefits and hospitality procedures could constitute a breach of binding codes of conduct and result in disciplinary action
- ensure records are kept of accepted gifts, benefits and hospitality of more than nominal value and that such records are subject to regular scrutiny, including review by the audit committee.

In accepting gifts, benefits and hospitality individuals must exercise particular care in accepting gifts, benefits or hospitality if:

- the donor person, company or organisation is involved in a tender process with the Department or school, or the donor person or organisation is the subject of, or affected by, a decision within the Department or school's discretionary power or significant influence
- the person, company or organisation is in a contractual relationship with the Victorian Government or school council, or
- the employee or school councillor has been offered gifts of any kind from the same donor more than once in the last year.

Employees or school councillors may accept benefits and hospitality, such as invitations to official functions or events of reasonable value, as long as they are related to the business of the Department or school, and provided that they do not involve a conflict of interest or create a perception that the employee or school councillor will be unduly influenced by accepting the benefit or hospitality. In all cases the benefit or hospitality should be proportionate to the occasion.

Benefits and hospitality in relation to for-profit organisations sponsoring conferences or industry tours should generally be declined, unless reasons why there is no conflict of interest or apparent conflict of interest or improper influence can be demonstrated.

However, if attendance at the conference or industry tour is in the public interest, then the Department or school should consider paying for the travel and accommodation.

Gifts of seemingly excessive value should not be accepted. The only exception to this is when failure to accept the gift, benefit or hospitality is likely to cause embarrassment or insult to the donor.

Gifts of any value must never be accepted if:

- the donor or reasonable observer would perceive that acceptance would create an obligation to the donor, particularly if the value of the gift is disproportionate to the circumstances in which it is offered

- the gift is likely to influence an employee or school councillor in the course of their duties or where acceptance could cause a conflict of interest
- the organisation's primary purpose is to lobby Ministers, Members of Parliament or agencies
- the gift is an offer of money or anything readily convertible into money (e.g. shares), or
- the organisation or individual has a connection with a tender process or a decision over which the Department or the school could be perceived to have influence.

Employees and school councillors should remember that the consequences of creating a **perception** that the Department's or school's impartiality can be compromised may be as damaging as an actual compromise.

#### **Keeping gifts:**

Employees and school councillors may keep token gifts such as a box of chocolates, for the work they have done.

In limited circumstances, employees and school councillors may be able to keep a gift worth \$100 or more, but less than \$500, **subject to the documented approval** of their Deputy Secretary or school council. The Secretary, Deputy Secretary or school principal may also consider offering the employee or school councillor the option of purchasing the gift at market value.

Gifts worth \$500 or more must be surrendered to the State or school **under all circumstances**. Employees and school councillors may purchase a gift worth more than \$500 from the State or school, with the Secretary's or school council's written approval, provided that no other public entity (e.g. Museums Victoria) has expressed interest in retaining the gift. For further details see Attachment A.

Official gifts, namely gifts intended for the Department, school or the Victorian Government rather than the individual recipient(s), remain the property of the Department or school.

#### **Transferring gifts to Department or school ownership:**

When an employee or school councillor is representing the Department or school at an event, and the Department or school has paid for their time, labour or accommodation to attend the event, any benefits accruing from this event belong to the Department or school. The employee or school councillor is then required to record any benefit accordingly, dependent upon the nominal value.

In the case of an international delegation offering ceremonial gifts on behalf of their country to an individual, school or the Department, these gifts (dependent on the nominal value) are to be recorded on the gift register and become the property of the Department or school.

#### **Recording the acceptance and/or keeping of a gift:**

Acceptance of token gifts or reasonable hospitality does not need to be formally registered. Similarly, hospitality provided by other government departments or governments does not need to be recorded.

#### **Non-school-based employees:**

For non-school-based employees, including Teaching Service employees in non-school locations, acceptance and offers of a gift worth more than \$100 (nominal value) **must** be formally registered on the Department's gift register administered by Procurement Division.

This includes gifts accepted on behalf of, or passed on to, a third party. See the Gift Declaration Form at Attachment B.

The following information is to be recorded on the declaration form:

- recipient's name
- donor's name and organisation
- location of the gift
- description and estimated value
- date, time and place of offer
- decision taken on the gift
- Secretary's or Deputy Secretary's signature.

Once the declaration form is completed, it is then sent to the General Manager, Procurement Division, who will record the details on the Department's gift register. Significant gifts will also be recorded on the Department's asset register.

The asset register is monitored and reviewed by the Secretary and the Department's Audit Committee.

#### **School-based employees and school councillors:**

For school-based employees and school councillors, acceptance and offers of a gift worth more than \$100 (nominal value) must be formally registered on the school's gift register. Where a school gift register does not exist, principals are required to institute one and record the following information for each gift:

- recipient's name
- donor's name and organisation
- location of the gift
- description and estimated value
- date, time and place of offer
- decision taken on the gift
- principal's or school council president's signature.

The gift register is monitored by the principal and annually reviewed by the school council.

#### **Declining a gift, benefit or hospitality:**

Some employees and school councillors perform roles that call for greater scrutiny. Members of the Accredited Purchasing Unit, or those involved in procurement processes, must not accept gifts from contractors, particularly not when a tender has been advertised. Those who award grants must not accept gifts from applicants, and policy makers must not accept gifts from lobbyists.

#### **Alternatives to sponsored travel and accommodation:**

Individuals may receive offers of sponsored travel and accommodation to attend a conference. Such offers should generally be declined because of the potential for conflict of interest. However, if attendance is considered to be in the public interest, then the Department or school could pay for the travel and accommodation instead. If there is no public benefit to accepting a gift, benefit or hospitality, then it should be declined. This is particularly the case when acceptance could be perceived as an endorsement of the organisation or product.

#### **Repeat gifts and attempted bribery:**

If an individual considers they have been offered a bribe or inducement, the offer must be reported to the Secretary, school principal or their delegate immediately.

**Gifts and fringe benefits tax:**

Fringe benefits tax (FBT) is a tax payable by an employer in respect of fringe benefits provided to:

- an employee
- an associate of an employee, or
- an employee by an associate of an employer.

The FBT legislation provides that certain benefits that are less than \$300 in value and infrequently provided may qualify as so-called 'minor benefits' exempt from FBT. However, the minor benefit exemption does not extend to gifts of an entertainment nature. Consequently, all entertainment gifts will be subject to FBT regardless of their value.

Entertainment is specifically defined in tax legislation as entertainment by the way of:

- food
- drink
- recreation
- accommodation or travel associated with the provision of food, drink or recreation.

Therefore, gifts that are of an entertainment nature and/or any other gifts of \$300 or more in value, accepted by an individual from an employer or associate of an employer, are subject to FBT.

The Department must keep records showing the taxable value of certain fringe benefits provided to its employees. If the total taxable value of reportable fringe benefits provided to an employee in an FBT year (1 April to 31 March) is more than \$2000, the Department must record the grossed-up taxable value of those benefits on the employee's payment summary for the corresponding income year (1 July to 30 June).

Any FBT liability in respect of school-based employees will be met by the Department, and the cost of FBT will be passed on to the school. The school council may be responsible for any FBT liability in respect of gifts given to staff employed by it.

**Consequences of breaching the policy:**

A breach of this policy may constitute a breach of:

- Victorian Public Sector Code of Conduct
- *Public Administration Act 2004* in relation to misconduct
- Directors' Code of Conduct under the *Public Administration Act 2004*
- Ministerial Order 199
- Independent Broad-based Anti-corruption Act 2011
- School Council Code of Conduct.

In some circumstances, accepting a gift or benefit may constitute a breach of sections 175–179 of the *Crimes Act 1958*. This is an indictable offence that attracts a maximum penalty of ten years imprisonment.

Division 9A of the *Crimes Act 1958* also provides that common law bribery attracts a maximum penalty of ten years imprisonment.

This policy will be reviewed as part of the RGLPS review cycle.