

COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT GUIDELINE: GIFTS AND BENEFITS

Public Sector Act 2009

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INTRODUCTION

This Guideline is intended to assist employees and agencies of the Public Sector to determine behaviour, primarily in relation to the receipt of gifts and benefits in the course of employment activities but also in relation to the giving of gifts by public sector employees to others.

The Commissioner for Public Sector Employment is empowered to issue guidelines relating to public sector employment matters pursuant to section 14(d) of the *Public Sector Act 2009* ("the Act").

This Guideline is written with the following objects of the Act as reference:

- to encourage public sector agencies and employees to apply a public sector-wide perspective in the performance of their functions;
- to establish:
 - general principles to guide public sector operations; and
 - a code of conduct to enforce ethical behaviour and professional integrity in the public sector.
- to ensure the public sector is viewed as an employer of choice;
- to ensure accountability in the public sector;
- to facilitate the integration of employment and management practices across the public sector; and
- to promote uniformity and transparency in governance arrangements for the public sector.

The following also informed the content of this Guideline:

The Public Sector Principle at section 5(6) of the *Public Sector Act 2009: Ethical behaviour and professional integrity*:

Public sector employees are to:

- be honest;
- promptly report and deal with improper conduct;
- avoid conflicts of interest, nepotism and patronage;
- treat the public and public sector employees with respect and courtesy;
- make decisions and provide advice fairly and without bias, caprice, favouritism or self interest;
- deal with agency information in accordance with law and agency requirements;
- avoid conduct that will reflect adversely on the public sector;
- accept responsibility for decisions and actions; and
- submit to appropriate scrutiny.

The provisions of Division 5 of the *Public Sector (Honesty and Accountability) Act 1994* - with respect to the duty of employees to act honestly (section 26) and the duty to avoid conflicts of interest (section 27).

The common law concept of conflict of interest is often described as conduct which in respect of important matters:

- is incompatible with the fulfilment of an employee's duty, or
- involves an opposition or conflict between the employee's interest and their duty to their employer, or
- impedes the faithful performance of an employee's obligations, or
- is destructive of the necessary confidence between employer and employee.

The *Code of Ethics for the South Australian Public Sector* stipulates the following requirements relating to the acceptance of gifts and benefits:

- the acceptance of any gifts or benefits by public sector employees has the potential to secure the influence or favour of an employee. The public expects the public sector and its employees to be impartial and not to be improperly influenced in the performance of their duties;
- public sector employees will not, for themselves or others, seek or accept gifts or benefits that could be reasonably perceived as influencing them;
- non-pecuniary gifts or benefits offered to employees by representatives of other Governments may be accepted, as may gifts from non-Government sources if they are obviously mementos or gifts of a symbolic nature; and
- all employees will comply with any policies of their agency in relation to accepting, declaring and/or recording the receipt of gifts or benefits.

This Guideline is not a substitute for specialist human resource management or legal advice.

Where agencies have policies in place, relevant content of those policies should be consistent with this Guideline.

DEFINITIONS

Gifts

Gifts include 'free' items or hospitality exceeding common courtesy that are offered to an employee in association with their work. They may be enduring or consumable. They range in value from nominal to significant and may be given for different reasons.

Gifts may include, but are not limited to, offers of cash or shares, entertainment, travel and accommodation, acceptance of fees, bottles of wine, prizes, personal items, manufacturer's samples, clothing, books, and CDs or DVDs.

Benefits

Benefits include the giving of preferential treatment, privileged access, discounts, favours or other advantages offered to an employee. While the value of benefits may be difficult to quantify in dollars, they may be highly valued by the intended recipient and therefore used to influence future behaviour.

Benefits may include, but are not limited to, accruing value or points for loyalty schemes, such as frequent flyer schemes, car hire or other discounts, meals, hospitality and travel upgrades.

GUIDE TO ETHICAL BEHAVIOUR

An underlying guiding principle is that employees are aware of, and meet, the expectation of the community that public sector employees act with integrity and honesty in and in connection with the conduct of their duties and their status as a public sector employee. This means that they should be impartial and not be improperly influenced by, or seek to improperly influence, others. In general this will mean that the employing agency should meet expenses associated with work activities undertaken on its behalf by its employees, and in addition not use public money inappropriately or without proper consideration.

The acceptance of any gift or benefit by public sector employees has the potential to secure the influence or favour of an employee in the performance of their duties and thus give rise to an actual, potential or perceived conflict of interest. At the extreme, it could amount to a bribe, which is a criminal offence.

It is therefore unacceptable for a public sector employee:

- under any circumstance, to accept money from any party other than a wage or salary received from their employer for the performance of their work duties;
- to solicit or accept any gift or benefit, the receipt or expectation of which does or might in any way influence, or appear to tend to influence, the employee in their official capacity;
- to offer a gift or benefit to another public sector employee; and
- for a family member or associate of a public sector employee, to accept a gift or benefit, from a third party as acceptance has the potential to result in an actual, potential or perceived conflict of interest between the role and duties of a public sector employee and their pecuniary and other personal interest.

It is particularly important that the above guidance be observed when:

- an employing agency is involved in a tender process with either a person or company for the procurement of goods and services or sale of assets, or
- a person, company or public sector agency is the subject of a decision within the discretionary power or substantial influence of the public sector employee or agency concerned.

It is good practice for agencies to inform suppliers and contractors about this Guideline and any agency-level Gifts and Benefits Policy, and to state that inducements of any kind are unacceptable.

It is important for a public sector employee to consider all ethical implications before accepting an offer of a gift or benefit. An open and transparent process for discussing and reporting such occurrences and issues in the agency is essential to minimising the potential for any negative outcomes.

Acceptance of gifts

Gifts from non-Government sources or representatives of other Governments may be accepted if they are obviously mementos or gifts of a symbolic nature. If an employee is uncertain about whether they should accept a gift or benefit, the details of the context and circumstances should, in the first instance, be discussed with their manager or supervisor.

Payment for duties outside of normal duties

Generally, public sector employees will not accept payment for activities considered part of their normal duties. In some circumstances it may be appropriate for an agency to derive a fee for the services and time of an employee - i.e. speaking at a conference or seminar.

Hospitality

Offers of hospitality from sources outside of the South Australian public sector have the potential to cause actual, potential or perceived conflicts of interest. Agencies should consider providing information to employees that will help them make judgements over the appropriateness of accepting hospitality.

Travel

Agencies generally pay for public sector employees to travel when it is connected with the performance of their official duties. Public sector employees should not accept offers of travel sponsored by private organisations or groups. Sponsored travel includes transport, accommodation or living expenses paid for, or provided, through means other than the agency's funds or the public sector employee's own resources. Acceptance of such travel may lead to the perception that the agency or the public sector employee is favouring the organisation or group providing the benefit or using their position to gain a benefit. Sponsored travel is still not acceptable when undertaken during a period of leave.

From time-to-time employees may have their class of travel upgraded by an airline. Such upgrades may be accepted but should be declared to the employee's immediate supervisor.

Attendance at events

Attendance at events, such as sport or theatre can provide public sector employees with opportunities to make important business or community connections providing benefit to the work of their agency, or simply providing an opportunity to represent the agency at such events. Such attendance may be seen as more questionable when the nature of the event has an uncertain or no connection to the agency's role in the public sector or the duties or role of the public sector employee. Agencies should exercise discretion when considering acceptance of an offer as to whether it would create an actual or perceived conflict of interest. An option is for the employee to pay for the entertainment. In contrast, if the event is in fact in line with the organisation's established functions and has clear benefit to the work of their organisation or has a developmental benefit such as attendance at seminars and breakfasts then the cost of attendance may be paid by the organisation.

It is important for public sector employees to appreciate the example they set for other employees in upholding public sector values. The more prominent the event the more important it is to be mindful of perceptions. While it may be in the interests of the agency for public sector employees to accept invitations to some events, it is not appropriate for them to accept offers of paid travel or accommodation in relation to their attendance.

Benefit schemes

An employee, who is a private member of a frequent flyer or other benefit scheme, is not entitled to accrue personal benefits through this membership as a consequence of undertaking government-related business.

Where the cost of membership for a frequent flyer or other benefit scheme is met by a public sector agency, any points or benefits accrued or acquired through the course of government work, must be used by the employee for the purposes of future work related travel or other work related purchases. In such cases, the agency chief executive must establish an appropriate reporting and monitoring process for the agency's management of frequent flyer points, or other benefits arising from public sector funded travel or work that is capable of being audited.

The important criterion to be borne in mind is that the agency, or the public sector as a whole, should gain and be seen to gain, the benefit of the opportunity, rather than the individual undertaking the travel.

Bribery and Related Offences and Duty with respect to Conflict of interest

Acceptance of gifts or rewards, whatever form they are in (i.e. cash, shares, property, land or fees) may amount to misconduct, and may also be a criminal offence.

All public sector employees have a duty to act honestly and contravention of that duty is a criminal offence. See section 26 of the *Public Sector (Honesty and Accountability) Act 1994*.

All public sector employees have a duty with respect to conflict of interest pursuant to section 27 of the *Public Sector (Honesty and Accountability) Act 1994*. That includes disclosing in writing to the relevant authority any pecuniary or other personal interest that conflicts or may conflict with the employees duties as a public sector employee (considered broadly); and following the written directions of a relevant authority in order to resolve a conflict of interest. An employee may have a conflict of interest between their pecuniary or other personal interests and their role and duties as a public sector employee due to the circumstances of an associate of the employee. Contravention of the duty with respect to conflict of interest gives rise to grounds for termination of employment.

Refer to the Commissioner's Guideline: *Management of unsatisfactory performance (including misconduct)* when employees are suspected of misconduct.

All public sector employees should also be aware of their obligation to refer certain matters to the Office of Public Integrity ("OPI") in accordance with the *Independent Commissioner Against Corruption Act 2012* ("ICAC Act") and the Directions and Guidelines issued under that Act.

Please refer to the following link for further information:

<http://www.icac.sa.gov.au/content/directions-and-guidelines>

References:

1. *Public Sector Act 2009* -
<http://www.legislation.sa.gov.au/LZ/C/A/PUBLIC%20SECTOR%20ACT%202009.aspx>
2. *Public Sector (Honesty and Accountability) Act 1994*-
[http://www.oper.sa.gov.au/files/PublicSector\(HonestyandAccountability\)Act1995.mht](http://www.oper.sa.gov.au/files/PublicSector(HonestyandAccountability)Act1995.mht)
3. *Code of Ethics for the South Australian Public Sector*:
<http://www.oper.sa.gov.au/page.php?id=351>
4. Commissioner's Guideline *Management of unsatisfactory performance (including misconduct)* http://www.oper.sa.gov.au/files/Managing_Unsatisfactory_Performance.pdf
5. Independent Commissioner Against Corruption: *Directions and Guidelines*:
<http://www.icac.sa.gov.au/content/directions-and-guidelines>