

REPORT OF THE INTEGRITY COMMISSION

No. 1 of 2015

An own motion investigation into policies,
practices and procedures relating to
receiving and declaring of gifts and
benefits in the Tasmanian State Service

INTEGRITY
COMMISSION



The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

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President
Legislative Council
Parliament House
HOBART TAS

Speaker
House of Assembly
Parliament House
HOBART TAS

Dear Mr President

Dear Madam Speaker

In accordance with sections 11 (1) and 11 (2) of the *Integrity Commission Act 2009*, the Integrity Commission presents a report to Parliament, Report No 1 of 2015 *An own motion investigation into policies, practices and procedures relating to receiving and declaring of gifts and benefits in the Tasmanian State Service*, conducted pursuant to the Act during 2014/15.

Yours sincerely



Diane Merryfull
Chief Executive Officer

22 September 2015



OPERATION KILO

An own motion investigation in respect of the policies, practices or procedures, or the failure of those policies, practices or procedures relating to receiving and declaring gifts as set out in the *State Service Act 2000*, *State Service Regulations 2011*, and Employment Direction No. 8, Gifts and Benefits insofar as they apply to each State Service Agency and the officers and employees within those Agencies.

Contents

Contents	1
List of tables	2
List of case studies	2
Glossary	3
Abbreviations and acronyms	6
Executive summary	8
Chapter 1: Introduction	14
1.1 The investigation	15
1.2 Background	17
1.3 Investigation, research and audit: the methodology of Operation Kilo	20
Chapter 2: Legislation and regulations	23
2.1 The State Service Act & State Service Regulations	24
Chapter 3: Mandatory State Service policies	27
3.1 Employment Direction No. 8 – Gifts and benefits	28
3.2 Treasurer’s Instructions No. 1101 and No. 1201	41
Chapter 4: Good practice	47
4.1 Setting the scene: guideline basics	49
4.2 Processes and procedures: declining gifts	56
4.3 Processes and procedures: accepting gifts	63
4.4 Guidance on certain types of gifts	78
4.5 Guidance for certain types of employees	89
4.6 Record keeping	104
4.7 Communicating policies and procedures to employees	116
4.8 Providing gifts and hospitality	125
Conclusion	126
Recommendations	128
Appendices	131
Appendix 1: Model gifts and benefits policy template	132
Appendix 2: Model gifts and benefits offer declaration form	140
Appendix 3: Model gifts and benefits register	142
Appendix 4: Decision making flowchart	143
Appendix 5: Victoria’s ‘take the GIFT test’	144
Appendix 6: Victoria’s ‘take the HOST test’	145
Appendix 7: Submissions and responses from Tasmanian State Service agencies	146
Appendix 8: References	163

List of tables

Table 1: State Service Act.....	26
Table 2: Establishing and maintaining the guidelines	33
Table 3: Providing a rationale for the guidelines: conflicts of interest (COI)	35
Table 4: Content of the guidelines.....	38
Table 5: Treasurer’s Instructions No. 1101 and No. 1201	43
Table 6: Setting the scene: guideline basics	53
Table 7: Processes and procedures: declining gifts	61
Table 8: Processes and procedures: accepting gifts	76
Table 9: Guidance on certain types of gifts	86
Table 10: Recording the offer: the gift declaration form.....	109
Table 11: The gift register	112
Table 12: Auditing the register	114
Table 13: Consequences of inappropriate acceptance/solicitation	123

List of case studies

Case study 1: Networking opportunity, or unacceptable conflict of interest?	36
Case study 2: Inappropriate policies and procedures.....	39
Case study 3: \$199 Reward for a government buyer.....	44
Case study 4: Procurement – the land of milk and honey.....	45
Case study 5: A free lunch	54
Case study 6: Cash and cash-like gifts – donations or bribes?.....	60
Case study 7: Patterns of acceptance.....	71
Case study 8: The importance of public perceptions	85
Case study 9: Government buyer accepts a prize	85
Case study 10: Thank you for doing your job	87
Case study 11: Company gifts \$1,500 of sponsored travel.....	87
Case study 12: Government buyers rewarded for government purchases	94
Case study 13: Examples of gifts in the Tasmanian health industry	102
Case study 14: Christmas greetings – ‘tis the season to be jolly	121

Glossary

Agency: Under the *State Service Act 2000* (Tas), an 'agency' is defined as 'a Government department or a State authority or other organisation specified in Column 1 of Schedule 1' of that Act.

Benefit: A non-tangible item of value offered over and above an employee's normal salary or employment entitlement. Benefits include hospitality, loyalty bonus points, discounts, preferential treatment, invitations to events, job offers, money, gift vouchers and cards, and other items which are readily converted to cash (e.g. lottery tickets, 'scratchies', shares, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, and memberships).

Bribe: A gift or benefit offered to or solicited by a member of staff to influence a person to act in a particular way.

Cash-like gifts: A gift or benefit that may be used in a manner similar to cash, for example gift vouchers and cards, lottery tickets, 'scratchies', shares, credit cards, debit cards with credit on them, and prepayments such as phone or internal credit.

Commissioner's Directions (CDs): See Employment Direction.

Conflict of interest: A conflict between the performance of a public duty and a private or personal interest. A 'personal interest' includes the private, professional or business interests of a person, or of the individuals or groups with whom they have a close association, such as relatives, friends or even enemies. Personal interests may be pecuniary or non-pecuniary. A conflict of interest may be:

- actual: a conflict between a person's official duties and responsibilities in serving the public interest, and their personal interest;
- perceived: occurs when a reasonable person, knowing the facts, would consider that a conflict of interest may exist, whether or not this is the case; or
- potential: occurs where a person has a personal interest that could conflict with their official duties in the future.

Cumulative gift/benefit: A series of gifts or benefits from a single individual and/or company given over a period of time.

Delegate: An employee who has been delegated authority by the head of the agency.

Discretionary decision maker: An employee who has a discretionary decision making role in relation to an individual or company. Examples included staff providing or regulating licenses, providing advice, making decisions about and inspecting and regulating businesses or giving approvals, those on selection and tender panels, government buyers, and auditors.

Employee: See Staff member.

Employment Directions (EDs): Employment Directions are issued by the Minister administering the *State Service Act 2000* (Tas), and relate to the administration of the State Service and employment matters relevant to that Act. EDs replaced Commissioner's Directions and a number of Ministerial Directions (MDs) in 2013. (See the official government website on EDs at http://www.dpac.tas.gov.au/divisions/ssmo/employment_directions.)

Gift: For the purposes of this report, the word 'gift' means any item (tangible and non-tangible) given to an employee over and above their normal salary entitlements. It includes benefits, advantages, hospitality and sponsored travel. More generally, in terms of agency policy, a 'gift' is any item of value offered over and above an employee's normal salary or employment entitlements. Gifts are normally tangible and include items such as bottles of alcohol, food, flowers, electronic equipment such as iPads, books, gift hampers, chocolate and kitchen equipment.

Gift register: A register of gifts and benefits offered and/or received in a particular agency or area.

Government buyer: Any staff member who makes or is involved in purchases on behalf of the agency. This may range from relatively small items such as office stationery, up to participation on tender panels for multi-million dollar projects. A government buyer does not necessarily have a financial delegation; a government buyer does have some influence over procurement and purchases made by agencies.

Head of agency: Under the *State Service Act 2000* (Tas), a 'head of agency' is defined as 'the Head of an Agency referred to in section 30' of that Act. The head of the agency generally has the job title of secretary or chief executive officer.

Hospitality: The provision of meals, refreshments, and entertainment. Hospitality includes modest meals such as sandwiches, restaurant meals, coffee, and tickets to events and functions, such as the movies, sporting events, award nights, and the theatre.

Offeree: Person to whom a gift/benefit is offered.

Offeror: Person or entity offering a gift/benefit.

Officer: Under the *State Service Act 2000* (Tas), an 'officer' is defined as 'a person appointed as a Head of Agency, to a prescribed office or as a senior executive under section 31' of that Act.

Procurement: A process by which the agency secures goods or services from providers.

Reportable gift/benefit: A gift or benefit which an employee must report to their agency.

Rewards program: A program offered by many companies whereby purchases earn the purchaser 'points', which they can later cash in for goods or services.

Sponsored travel: Transport, accommodation, attendance or living expenses paid for, or provided, through means other than the agency's funds or the staff member's own resources.

Staff member/employee: For the purposes of this report, 'staff member' and 'employee' refers to both 'employees' and 'officers' as defined in the *State Service Act 2000* (Tas). It includes all persons who work in in the 'public service' as defined in s 6 of the *State Service Act*, including state servants, public servants, and management personnel (including the head of the agency).

State/public servant: For the purposes of this report, a state or public servant is a person who works in the 'public service' as defined in s 6 of the *State Service Act 2000* (Tas); s 6 states, 'The State Service consists of Heads of Agencies, holders of prescribed offices, senior executives and employees.'

Suspect gift/benefit: Any gift or benefit that which may give rise to a suspicion, regardless of value. It includes gifts and benefits:

- given cumulatively;
- offered to the family of a staff member;
- offered during a procurement process and/or in secret;
- offered by a person or organisation about which decisions are, or will be, made;
- that have no link to the business of the agency or government; or
- that are cash or something easily converted to cash.

Token gift/benefit: Means a gift or benefit of an inconsequential/trivial value to both the offeror and the offeree, and may include mass produced promotional items such as pens, pads and modest hospitality such as sandwiches and coffee during normal work interactions. A token gift/benefit is usually supplied as part of an event. If a token gift/benefit is received often, it may be cumulative and therefore suspect.

Treasurer's Instructions: Treasurer's Instructions (TIs) are State Service wide policies issued by the Treasurer. TIs are issued under the authority of the *Financial Management and Audit Act 1990* (Tas) and require compliance by all heads of agency.¹

¹ Treasurer's Instruction No. 105 – Compliance cl 1.

Abbreviations and acronyms

CCC:	Either Western Australia's Corruption and Crime Commission, or Queensland's Corruption and Crime Commission (previously Crime and Misconduct Commission (CMC)).
CD:	Commissioner's Direction.
CD14:	Commissioner's Direction No. 14: Gifts and benefits.
CMC:	Queensland's Crime and Misconduct Commission, now named the Corruption and Crime Commission (CCC).
COI:	Conflict of interest.
Commission:	Integrity Commission.
DEDTA:	Department of Economic Development, Tourism and the Arts, now merged with the DIER to form the DSG.
DHHS:	Department of Health and Human Services.
DIER:	Department of Infrastructure, Energy and Resources, now merged with the DEDTA to form the DSG.
DoE:	Department of Education.
DoJ:	Department of Justice.
DPaC:	Department of Premier and Cabinet.
DPEM:	Department of Police & Emergency Management.
DPIPWE:	Department of Primary Industries, Parks, Water & Environment.
DSG:	Department of State Growth.
DTF:	Department of Treasury and Finance.
ED:	Employment Direction.
ED5:	Employment Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct.
ED8:	Employment Direction No. 8 – Gifts and benefits.
HoA:	Head of agency.
ICAC:	New South Wales' Independent Commission Against Corruption.
IT/ITC:	Information technology/information and communications technology.
SSA:	<i>State Service Act 2000</i> (Tas).
SSR:	<i>State Service Regulations 2011</i> (Tas).
TAO:	Tasmanian Audit Office.
THO-N:	Tasmanian Health Organisation – North.

THO-NW:	Tasmanian Health Organisation – North-West.
THO-S:	Tasmanian Health Organisation – South.
THS:	Tasmanian Health Service.
TI:	Treasurer’s Instructions.
TI 1101:	Treasurer’s Instruction No. 1101 – Procurement Principles: goods and services.
TI 1201:	Treasurer’s Instruction No. 1201 – Procurement Principles: building and construction/roads and bridges

Executive summary

This is a report of an own motion investigation undertaken by the Integrity Commission (the Commission) pursuant to s 45(1)(d) of the *Integrity Commission Act 2009* (the Act). The investigation, titled Operation Kilo, was into Tasmanian State Service policies, practices and procedures in relation to gifts and benefits. The receipt of gifts and benefits is an area of high misconduct risk. The motivation for this investigation stemmed from information that had come to the Commission's attention during other investigations, and from training it had delivered which indicated that this may be a problem area for State Service agencies.

As part of Operation Kilo, the Commission:

- collected the current gift policies of 12 State Service agencies;
- collected gift registers covering the period 1 July 2011 to 30 June 2014 from 12 State Service agencies;
- conducted an audit of the policies and registers of those 12 State Service agencies;
- collected and collated good practice materials from across all Australian jurisdictions;
- issued 13 notices to produce information, pursuant to s 47(1) of the Act, including nine to private companies to produce gift records covering the period 1 July 2011 to 30 June 2014;
- issued seven notices to attend to give evidence and conducted seven interviews under notice, pursuant to s 47(1)(b) of the Act; and
- sent 14 letters requesting information to private companies.

This report

This report covers five main areas from which Tasmanian State Service gifts and benefits management practices may be derived. Those areas are:

- legislation;
- regulations;
- Employment Directions;
- Treasurer's Instructions; and
- good practice.

Findings

Appropriate management of offers of gifts and benefits is essential to maintaining the actual and perceived integrity of the Tasmanian State Service. Through this investigation, the Commission has identified a concerning complacency among agencies about this issue. Almost without exception, the Commission's request for gifts and benefits policies and records triggered a flurry of activity within agencies. Many agencies advised that they had a new gifts policy – or were in the process of drafting one. Some agencies took several months to locate and send the requested information to the Commission.

Another matter of concern was the lack of understanding of the relationship between gifts and conflicts of interest. None of the agency policies explained this relationship satisfactorily – indeed, only two of the policies explained it at all. Even where an agency's policy did provide some explanation of conflicts of interest, the gifts that had been approved by the agency demonstrated either a failure to understand the policy, or a failure to apply it.

The finding of Operation Kilo indicates that there is a fundamental misunderstanding about gifts and benefits and how they should be appropriately managed in State Service agencies. Of particular concern is that this is occurring in high risk areas in some agencies, such as

asset management and procurement. Further, records produced by private companies indicate that by no means are all gifts and benefits received by state servants being declared. It is clear that agencies are not providing their staff with enough (or any) support, guidance and training in these matters. As a result, legislation, regulations, mandatory State Service policies, agency policies, and good practice are seldom adhered to by staff, management and agencies.

Operation Kilo has revealed a systemic issue within the Tasmanian State Service. The State Service appears to be at risk of developing a culture of entitlement in relation to receiving gifts and benefits – that employees are owed these ‘rewards’ because of their ‘hard work’. There is a lack of understanding of appropriate standards, and of the risks that arise from accepting such rewards. Particularly at the lower end of the scale, accepting certain benefits is seen as just a ‘way of doing business’. Many State Service agencies appear to be under the impression (or at least give the impression to their staff) that as long as they are declared, most – if not all – gifts are acceptable. Yet at the same time, it appears that only a small percentage of received gifts are being declared. There is evidence of a reluctance on the part of agency management, at least prior to this investigation, to enforce change, or even to enforce the agency’s own guidelines.

It seems unlikely that the Tasmanian community would view this situation as satisfactory – at the very least from a governance or public confidence in the public sector perspective. It is also important to consider how it would be viewed by those who seek to do business with the State Government. They too would be rightly concerned about the risk that gifts and benefits being given by some businesses could be having an unfair influence on purchasing decisions.

In response to the investigation, State Service agencies have embarked on a process of reviewing the current policy framework with a view to implementing a whole of government policy in relation to the receipt of gifts and benefits. In the Commission’s view, a ‘no gifts’ policy (subject to very limited exceptions such as token items) is the best policy for employees, agencies, and the public interest. Such a policy is consistent with good practice initiatives examined by the Commission in its in-depth research conducted for the investigation. However, this is not the preferred position of the agencies.

It should be noted that the case studies in the report were not included to single out any particular employee or agency, nor should it be presumed that the conduct described is or was misconduct. The case studies have been included to demonstrate the practical risks that the inadequate policy framework in the State Service currently poses to agencies, to employees, and to the public interest.

The Integrity Commission has made one finding and five recommendations arising from Operation Kilo. The recommendations are set out in the *Conclusion*.

Finding 1

There is a systemic failure across the Tasmanian State Service to adhere, in practice, theory or spirit, to gifts and benefits policies, practices and procedures which should be applied under:

- the *State Service Act 2000* (Tas);
- the *State Service Regulations 2011* (Tas);
- Employment Direction No. 8 – Gifts and Benefits;
- Treasurer’s Instructions No. 1101 and 1201; and
- good practice.

Submissions from Tasmanian State Service agencies

Pursuant to s 55 of the Act, the investigator provided a report of his findings to the Chief Executive Officer (CEO) of the Integrity Commission in June 2015. On receipt of such a report, the CEO is in turn to provide a 'report of the investigation' to the Board. Under s 56 of the Act, a draft of a report of an investigation may be provided to persons for comment. In this case, the report was provided to heads of all those agencies whose policies, practices and procedures were examined in the report of the investigator.

The CEO also provided each agency head with detailed feedback about its policies and practices and the information which it had received from suppliers that concerned their employees. The agencies were given until 17 July 2015 to provide a submission on the report to the Integrity Commission. Agencies were told that the Commission intended to publish a report based on the investigation report, but that the agency feedback document was for their use only.

On 17 July 2015, three agencies provided a submission on the report to the Board of the Commission:

- the Tasmanian Audit Office (TAO);
- the Department of Treasury and Finance (DTF); and
- the Department of Premier and Cabinet (DPaC).

The submission from DPaC was made by the Secretary of that Department in his capacity as Head of the State Service, and was made on behalf of:

- DPaC;
- DTF;
- Department of Education (DoE);
- Department of Justice (DoJ);
- Department of Police & Emergency Management (DPEM);
- Department of Health and Human Services (DHHS);
- Department of State Growth (DSG); and
- Department of Primary Industries, Parks, Water & Environment (DPIPWE).

No response was received on behalf of the now amalgamated Tasmanian Health Service (THS) (referred to in this report as THO-N, THO-S, and THO-NW). The Acting Chief Executive Officer of the THS subsequently advised that they considered any response from the Secretary of DPaC on behalf of the State Service agencies to be applicable to the THS.

On 6 August 2015, the Board of the Integrity Commission met to consider the report of the investigation and resolved to forward that report to the principal officers of the agencies for action. The Board also included a number of recommendations to those officers and these recommendations are set out in this public report, which is otherwise in the same form, and has almost identical content, to the report provided to the principal officers. The secretaries of DPaC and DTF were also provided with a detailed response to their earlier submissions.

The secretaries of DPaC and DTF and the TAO responded to the Board's recommendations.

Attached to this report are the initial submissions of the secretaries of DPaC and the TAO to the draft report of the investigation.

Also attached is the response to the recommendations of the Board from the secretaries of DTF and DPaC, and the TAO. The DTF response was given in place of the earlier submission from that agency and incorporates much of the general comment in that submission, as well as a response to the Board recommendations.

Agency responses to the Board's recommendations

The **Secretary of DPaC**, on behalf of the State Service agencies, advised that:

- heads of agencies welcomed the opportunity to improve and strengthen their approach to managing the provision and receipt of gifts and benefits and hospitality and that there was 'genuine scope to implement a more transparent and contemporary approach' to increase the community's confidence that its public officials were acting in the public interest;
- there was a fundamental difference of opinion between the Commission's position (no gifts policy subject to very limited exceptions) and the government's position (referred to in Mr Ferrall's letter as based on receipt and disclosure of appropriate gifts and benefits);
- there were opportunities for agencies to work with the Commission in this area;
- the Department of Treasury and Finance was leading the work to develop a new whole of government policy;
- de-identified publication of gift registers for gifts over a certain value was agreed;
- the process established by the Secretary for declaration of gifts by heads of agencies was preferred to Recommendation 5 of this report; and
- there was concern about the impact on public sector employees of publication of the report.

The first submission and subsequent response of the Secretary of DPaC is at *Appendix 7: Submissions and responses from Tasmanian State Service agencies*.

The **Secretary of DTF** requested that his response (rather than his initial submission) be included in the report. It is at *Appendix 7: Submissions and responses from Tasmanian State Service agencies*. The Secretary took issue with the report, on the alleged basis that:

- it did not present any evidence of misconduct or systemic failure in his department;
- the law and government policy explicitly allows for the acceptance of appropriate gifts and benefits by State Service employees, subject to management of conflicts of interest; and
- it provided no evidence of government buyers in his department accepting a gift or hospitality in breach of policy.

In response to the Board's recommendations, the Secretary provided advice about the work of his department in developing a 'single clear whole of government' policy. He indicated that 'selected components' of the Commission's report would help guide and inform the new policy but, as noted above, it would be based on a model for the 'receipt and disclosure of gifts' (rather than declining gifts, which is the Commission's proposed approach).

There was no agreement that agencies communicate to suppliers that they should not offer any gifts or benefits to staff (other than token gifts or modest hospitality associated with normal working interactions). Instead, it was proposed that the Treasurer's Instructions and purchasing information to suppliers would be reviewed to align with the new whole of government policy.

The Secretary did not support publication of the report.

The **Tasmanian Audit Office** agreed to:

- communicate to suppliers about not offering gifts or benefits to staff;
- publish its de-identified gifts register;
- review its policies and associated documents based on the model documents; and
- train its staff on the new requirements.

Both the TAO initial submission and its response to the Board recommendations are at *Appendix 7: Submissions and responses from Tasmanian State Service agencies*.

Integrity Commission response to submissions

It is not the Commission's intention to respond to each and every comment made. However, some of the remarks made in the submissions from the secretaries of DPaC and DTF require response and clarification.

The assertion that it was a 'finding' of this report 'that there is an absence of corruption, fraud or serious misconduct in the Tasmanian State Service' is wrong and misleading – this report makes no such finding.

Operation Kilo was not an investigation into misconduct or corruption. It was an investigation into policies, practices and procedures in the State Service about gifts and benefits. The investigation was not looking for fraud, corruption or misconduct.

Having said that, the investigation did uncover evidence that many employees had received gifts and benefits which they should have declared, but did not (as well as many which they should not have received). The primary obligation of State Service employees in relation to gifts and benefits under the State Service Code of Conduct is to declare gifts received. Therefore, every instance of non-declaration of a gift or benefit which should have been declared is a breach of the Code of Conduct.

By seeking to emphasise a supposed lack of evidence or findings about fraud, corruption or 'serious misconduct', the submissions are glossing over some of the very serious instances of inappropriate and/or undeclared gifts which the investigation uncovered. This includes (but is not limited to) very expensive electrical items, sponsored travel and (literally) thousands of dollars of gift cards – which are the equivalent of cash. Information about these instances was provided to heads of agencies in their individual feedback reports.

The view that only those persons who have 'financial delegations' to authorise contracts, or to spend public monies, can exercise influence in the procurement process is incorrect. Whether gathering quotations for a relatively small purchase, for approval by another employee, or sitting on a tender panel for a larger purchase, or just providing advice about the performance of a supplier to a relevant decision maker, many employees at different levels can provide input to a procurement decision. In this report, the term 'government buyer' is meant to be interpreted widely in order to properly address the misconduct risk.

On that basis and in consideration of the wealth of information and research which was gathered in this substantial investigation, the Commission does not agree with comments that its report contains serious deficiencies, inaccuracies, and erroneous assumptions.

In any event, the principal finding of the report is not that public servants have failed in their duties or obligations. It is the agencies which have failed their employees, through complacency, poor policy, and inadequate training, guidance and systems to monitor what is 'going on' in relation to the day-to-day decisions which employees are confronted with when they are offered gifts and benefits. In the Commission's view, it would be of significant benefit to employees for agencies to implement a policy in which the default position is to decline gifts and benefits.

No justification has been provided by the agencies as to how or why the public interest is better served by employees accepting gifts than declining them.

The suggestion that not being allowed to make their own decisions on gifts is of such importance to employees that they will not want to work in the State Service, does not demonstrate confidence in the integrity of State Service employees.

In relation to making this report public, the Integrity Commission serves the interests of the public, not the interests of public service agencies. In the Commission's view, the interests of the public are best served by transparency and accountability – not by keeping problems behind closed doors.

Chapter 1: Introduction

1.1 The investigation

On 10 July 2014 the Integrity Commission² (the Commission) commenced an own motion investigation, pursuant to s 45(1)(d) of the *Integrity Commission Act 2009* (the Act), in respect of the policies, practices or procedures, or the failure of those policies, practices or procedures:

- relating to receiving and declaring gifts as set out in the State Service Act 2000, State Service Regulations 2011 and Employment Direction No. 8, Gifts and Benefits;

insofar as they apply to each State Service agency and the officers and employees within those agencies.

On 24 July 2014, an investigator was appointed to conduct the investigation, pursuant to s 45(2)(d) of the Act. Since commencing the investigation, the investigator has served 20 notices to produce information or attend to give evidence, pursuant to s 47(1)(c) of the Act. Seven of the notices required individuals to attend and give evidence to the investigator. Thirteen notices required production of records or information. One person was legally represented during interview, in accordance with s 49 of the Act.

Twelve letters were sent to State Service heads of agency requesting details and information about their agency's gifts and benefits policy, and copies of their gift register covering the period 1 July 2011 to 30 June 2014. Because they did not or could not voluntarily provide the information requested, three agencies were served notices to produce this material.

Fourteen letters requesting information were sent to pharmaceutical and information technology companies that provide goods and services to State Service agencies.

The investigation has been conducted in private subject to the provisions of s 48 of the Act.

Jurisdiction

It is a principal objective of the Commission that it is to appropriately investigate and deal with allegations of misconduct. In the performance of its functions and exercise of its powers, the Commission may inform itself of any matter in such manner as it thinks fit. In this matter, the Commission's jurisdiction was invoked on delegation from the Board to the CEO to undertake the own motion investigation.

An own motion investigation is defined in s 45 the Act to include an investigation of misconduct or policies, practices or procedures, or the failure of those policies, practices or procedures, within public authorities or by public officers. During any investigation, the investigator may make any investigations he or she considers appropriate, may conduct the investigation in any lawful manner he or she considers appropriate, and may obtain information from any persons in any lawful manner he or she considers appropriate: s 46.

The conduct of the investigation was carried out in accordance with s 47 of the Act.

Identification of agencies and employees

The Commission has attempted to balance the need to inform the public sector and the wider Tasmanian community about this important issue while at the same time not 'pointing the finger' at individual employees. Therefore, in some of the case studies and in parts of the body of the report, it has not identified specific agencies where to do so would identify an

² Determination of the Integrity Commission Chief Executive Officer pursuant to delegation from the Board of the Integrity Commission, dated 1 November 2012.

employee. The gender of employees discussed in this report has been de-identified. Agency heads have been provided with information relevant to their agency which the Commission has drawn on in framing this report. It is a matter for the agency heads to decide how to respond to that information. However, the Commission wishes to emphasise that its overall conclusion is that it is the organisational, rather than the individual, failures that need to be addressed.

1.2 Background

Why is the management of gifts and benefits in Tasmanian State Service agencies an issue worth investigating?

State service employees – servants of the public, whose salaries derive from public funds – should never expect to get anything extra for doing what they are paid to do.³ Moreover, as public servants, they need to avoid the *perception* of getting anything extra for doing what they are paid to do.

It is therefore imperative that public servants maintain their impartiality and that any potential, actual or perceived conflicts of interest are managed appropriately. The importance of maintaining the impartiality of the State Service may, at times, be at odds with the aims of certain businesses and individuals, which – particularly in the procurement context – aim to build loyalty and favour by the provision of gifts and benefits.⁴

The reality of this situation is reflected by the frequency of offers of gifts and benefits. A survey undertaken by the New South Wales Independent Commission Against Corruption (ICAC) and Queensland's then Crime and Misconduct Commission indicated that, in 2007:

- in New South Wales, 12% of the public service employees surveyed had been offered a gift that they felt was designed to influence their professional judgment; and
- in Queensland, 15% of the public service employees surveyed reported that they had been offered a gift that they felt was designed to influence their professional judgment.⁵

Further, in 2011 ICAC reported on a survey of government suppliers. The survey found that 48% of suppliers believed the practice of offering gifts and benefits to public servants worth over \$20 occurred, and 36% said acceptance of such gifts occurred.⁶

It would be naïve to believe that the situation in Tasmania is much different to that in other states of Australia. The Commission's experience up to mid-2014 led it to believe that the receipt of gifts and benefits was indeed an issue in Tasmanian State Service agencies, thus the decision to conduct this investigation.

The receipt of gifts and benefits by public servants is a problem because 'it is difficult to imagine a real-life situation where there is no possibility that a [State Service] gift-recipient might appear to be compromised'.⁷ Moreover, it 'is a component of ethical behaviour to feel obliged to reciprocate when a kindness or gift is provided'.⁸ That is, employees who receive gifts will naturally and understandably feel obligated to the donor, and it is 'this perceived

³ Audit Office of New South Wales, *Managing gifts and benefits* (2013) 'Foreword'; Ombudsman New South Wales, *Gifts and benefits*, Public Sector Agencies Fact Sheet 7 (2012) 1.

⁴ State Government of Victoria Public Sector Commission, *Gifts, benefits and hospitality policy framework* (2012) 9.

⁵ Evalynn Mazurski and Susan Johnson, 'Corruption risks and prevention practices in New South Wales and Queensland public sectors' (presented at the Australian Public Sector Anti-Corruption Conference, Sydney, 25 October 2007) 13.

⁶ Independent Commission Against Corruption New South Wales, *Corruption risks in NSW government procurement: Suppliers' perceptions of corruption* (2011) 5.

⁷ Audit Office of New South Wales, above n 3, 19.

⁸ Gary Crooke QC, 'The Queensland Integrity Commissioner Role and functions: Conflicts of Interest matters and examples' (Paper presented at the Australian Public Sector Anti-Corruption Conference, Sydney, 24 October 2007) 6.

obligation to reciprocate that gives rise to the unacceptable conflict'.⁹ Gifts are generally given with the intention of creating that sense of obligation.¹⁰ And gifts are never actually free – apart from the expectation of something in return, they can also, for example, be factored into the cost of goods and services being provided.¹¹

Despite the importance of maintaining the impartiality of the State Service and the risks to that impartiality that are posed by gifts and benefits, guidelines and procedures regulating such matters can be seen by agencies and their employees as an unnecessary 'administrative burden'.¹² In considering this attitude, it is important to remember not to 'sacrifice principle on the altar of expediency' (emphasis added).¹³

*One does not have to be particularly sceptical to realise that commercial organisations have an obligation to shareholders, and are not in the business of expending their funds in the provision of benefits to others without the expectation of some return. **There is no Father Christmas.***¹⁴

Poor guidelines and procedures – or the poor application of good guidelines and procedures – facilitate misconduct and corruption,¹⁵ even among employees who would not otherwise be so inclined. It may lead to the development of a certain culture which cultivates misconduct; this can manifest in rationalisations such as:

- practice – 'this is the way we do things around here';
- ignorance – 'I didn't know I was not allowed to do this';
- entitlement – 'I work hard and I deserve this'; and
- private versus public – 'private companies do this, why shouldn't we'.¹⁶

It is therefore important that State Service agencies have clearly defined¹⁷ guidelines on gifts and benefits; that these guidelines are communicated to employees; and that the guidelines are rigorously applied and subject to regular review.¹⁸ It is also important that employees understand the rationale for such policies and procedures.¹⁹

⁹ Ibid.

¹⁰ Queensland Audit Office, *Auditor-General of Queensland Report No. 1 2000-2001: Results of Audits Performed for 1999-2000 as at 31 October 2000* (2000) 134.

¹¹ Ibid.

¹² Ibid 142.

¹³ Crooke QC, above n 8, 4.

¹⁴ Ibid 6.

¹⁵ Corruption and Crime Commission, *Report on the investigation of alleged public sector misconduct in relation to the purchase of toner cartridges in exchange for gifts outside government procurement policies and arrangements* (2011) xvii [14].

¹⁶ Melissa Watson, *Gifts and Benefits: A public sector perspective* (Slides of presentation given for the Office of the Public Sector Standards Commissioner) 7
<http://www.ccc.wa.gov.au/PreventionAndEducation/MRPForums/Documents/Forum_01July2010/OPSSC%20Gifts%20and%20Benefits.pdf>.

¹⁷ Australian Public Sector Commission, *APS Values and Code in practice: Sect 4.12 Gifts and benefits* <<http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/gifts-and-benefits>>; Victorian Ombudsman, *Conflict of interest in the public sector* (2008) 45.

¹⁸ The Integrity Coordinating Group, *Gifts, benefits and hospitality – A guide to good practice – 2. Requirements 1* <<http://icg.wa.gov.au/gifts-benefits-and-hospitality-guide-good-practice>>.

¹⁹ Victorian Ombudsman, above n 17, 49.

Even if an agency has clear guidelines that are rigorously applied, some employees may still intentionally flout them; in some circumstances this will be unavoidable.²⁰ However, having sound guidelines that are clearly communicated to employees makes it harder for such employees to claim that they were ignorant or confused.²¹

²⁰ For instance, one NSW ICAC investigation was into an employee of a state agency – TransGrid – which, for the most part, had appropriate policies and procedures in place, see Independent Commission Against Corruption New South Wales, *ICAC Report: Investigation into corrupt conduct associated with tendering for TransGrid work* (2009) 57.

²¹ Audit Office of New South Wales, above n 3, 'Foreword'; Independent Commission Against Corruption New South Wales, *ICAC Report: Investigation into allegations that staff from a number of local councils and other public authorities accepted secret benefits from suppliers and that staff from two local councils facilitated payment of false invoices from suppliers* (2012) 116. For a recent example of this, see Michaela Whitbourn, 'ICAC kickbacks inquiry: former Ausgrid worker Phillip Cresnar 'not trained in gifts policy'', *The Canberra Times* (online), 27 January 2015 <<http://www.canberratimes.com.au/nsw/icac-kickbacks-inquiry-former-ausgrid-worker-phillip-cresnar-not-trained-in-gifts-policy-20150127-12ypu9.html>>.

1.3 Investigation, research and audit: the methodology of Operation Kilo

In July 2014, Operation Kilo commenced with the Commission CEO sending out requests for information to eleven State Service agencies. An additional agency was later also requested to supply information, making a total of 12 State Service agencies subject to investigation. All nine 'government departments' as defined under the *State Service Act 2000* (Tas) (SSA), and three of the ten 'state authorities' under that Act were chosen to be subject to the investigation. The twelve agencies were:

1. Department of Education (DoE);
2. Department of Premier and Cabinet (DPaC);
3. Department of Justice (DoJ);
4. Department of Police & Emergency Management (DPEM) – only requested to supply information in relation to state servants employed under the State Service Act, not in relation to police officers employed under the *Police Service Act 2003* (Tas);
5. Department of Health and Human Services (DHHS);
6. Department of State Growth (DSG) – two policies and two registers reviewed (see below);
7. Department of Treasury and Finance (DTF);
8. Department of Primary Industries, Parks, Water & Environment (DPIPWE);
9. Tasmanian Health Organisation – South (THO-S) – not able to produce any form of gift register for the relevant period (see below);
10. Tasmanian Health Organisation – North (THO-N);
11. Tasmanian Health Organisation – North-West (THO-NW); and
12. Tasmanian Audit Office (TAO).

The agencies were initially requested to provide to the Commission their (then) current gifts and benefits policy, and their gifts and benefits register spanning the three financial years from 1 July 2011 to 30 June 2014. Some were later requested to supply additional information.

One agency, THO-S, could not provide any form of gift register for the period requested. Another agency, DSG, supplied two separate policies and registers. This was because although DSG is now one agency, relatively recently it was two separate agencies (the Department of Infrastructure, Energy and Resources (DIER) and the Department of Economic Development, Tourism and the Arts (DEDTA)). As of late-2014, the DSG still operated with two separate gifts and benefits policies and registers. Therefore, for much of this report, DSG still appears as two separate agencies. The Integrity Commission also audited its own guidelines and register. Thus, taking into account THO-S' lack of gift register, a total of 14 policies and 13 registers were subject to review under Operation Kilo.

While the Commission waited for the information from the agencies, it compiled a collection of resources from across all Australian jurisdictions. This included reports on investigations undertaken by other bodies, good practice guides, and good practice gifts and benefits management tools. This research is referred to extensively throughout this report.

By mid-December 2014, all requested information that could be supplied, had been supplied by the twelve agencies.

The information was analysed to obtain data on companies that offer gifts and benefits to Tasmanian state servants. Notices to produce records were issued to nine of these companies. Fourteen companies were also sent requests for information (i.e. were not issued with notices). Industries covered by these requests and notices included:

- building/construction/property management;
- food and beverage;
- vehicles;
- office fit-out and stationery;
- telecommunications;
- audit;
- medical/pharmaceutical; and
- information technology.

Analysis of the information produced by the agencies and the companies was used to compile a list of persons who could potentially provide further information at interview. A total of six state servants and one person from a private company were interviewed for Operation Kilo.

Meanwhile, an audit of the gifts and benefits policies and registers of the agencies was undertaken. The data was interrogated by asking a total of 57 audit questions.

At the completion of the investigation in June 2015, an investigation report was issued to the agencies. Each agency was also provided with extensive feedback on its own gifts and benefits policy, the contents of its register, and the information provided to the Commission by private companies. The Board of the Integrity Commission was provided with feedback on the Commission's policy and register. The agencies were given four weeks to provide a response. The draft model gifts and benefits policy (in the appendix of this report) was also workshopped with some state servants who are members of the Commission's Ethical Reference Group.

Scope of this report

The focus of this report is the Tasmanian State Service. The Integrity Commission's jurisdiction, however, extends beyond the State Service, to bodies such as local councils, the University of Tasmania, and government business enterprises.²² Many of the principles discussed in this report – particularly in the chapter on good practice, and the tools in the appendices – are applicable to all of the bodies within the Commission's jurisdiction, and indeed may even be useful in the private sector.

The Commission therefore urges all Tasmanian public authorities, as recipients of taxpayer funds, to carefully consider this report and, where applicable and necessary, alter their policies and procedures to conform to good practice and community expectations.

Structure of this report

This report covers the three main areas from which Tasmanian State Service gifts and benefits management policies, practices and procedures should be derived.

Chapter 2 covers legislation and regulations; this includes the:

- State Service Act; and
- State Service Regulations.

Chapter 3 covers mandatory State Services policies; this includes:

- Employment Direction No. 8 – Gifts and Benefits (ED8); and
- Treasurer's Instructions No. 1101 and No. 1201 (TI 1101 and TI 1201).

²² See *Integrity Commission Act 2009* (Tas) s 5 for a full list of 'public authorities' that fall under the Commission's jurisdiction.

Chapter 4 covers good practice information, which has been gathered from every Australian jurisdiction.

The report sets out what each of the above three areas require of State Service agencies and their staff, and compares it to the information gathered in the Operation Kilo investigation. The report includes case studies, and tables of information gathered from the audit into policies and registers. A number of tools and models are located in the report's appendix. A series of recommendations, aimed at improving practices across the service, are made in the report's conclusion.

Chapter 2: Legislation and regulations

Summary

The State Service Act and the State Service Regulations form the foundations of all Tasmanian State Service regulations, Employment Directions, policies and guidelines on gifts and benefits. The Code of Conduct in the SSA is a source of authority for heads of agencies, and provides a mandatory ethical framework by which all state servants (including heads of agencies) must abide. As such, the Commission expected to see the Code of Conduct emphasised in agency gifts and benefits guidelines, yet most guidelines failed to meet even basic requirements in relation to the SSA and, more specifically, the State Service Code of Conduct. Only 50% of the guidelines mentioned the Code of Conduct. Less than 40% mentioned the section of the Code of Conduct most relevant to gifts and benefits.

Seventy-one percent of guidelines did, however, mention the SSA in some way. All 14 of the guidelines state that gifts must be declared to the head of the agency (as required under the SSR) or their delegate, and all 14 do provide some kind of process for doing so.

Nevertheless, the failure of agency guidelines to emphasise the SSA and the Code of Conduct could potentially lead to employees devaluing or misunderstanding the guidelines. It could make it hard for employees to identify why the guidelines are important, why they should comply with them, and why the guidelines are of any relevance to their role.

2.1 The State Service Act & State Service Regulations

2.1.1 Explanation

The Tasmanian State Service Code of Conduct is contained in s 9 of the SSA. Two provisions under s 9 are of preminent²³ relevance to gifts and benefits.

Section 9(11) states:

*An employee must not make improper use of –
(a) information gained in the course of his or her employment; or
(b) the employee's duties, status, power or authority –
in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.*

Section 9(12) states:

An employee who receives a gift in the course of his or her employment or in relation to his or her employment must declare that gift as prescribed by the regulations.

'Employee', as defined in ss 9(11)–(12), includes the head of agency (who is an 'officer' under SSA s 3).²⁴ The head of agency for each government department and state authority is specified in Schedule 1 of the SSA.

The 'regulations' mentioned in s 9(12) are the State Service Regulations. In accordance with the SSA, the SSR specify in reg 12:

For the purposes of section 9(12) of the [State Service] Act, a gift must be declared to the relevant Head of Agency.

Thus, in order to accord with the SSA, a State Service employee who receives a gift in the course of his or her employment, or in relation to his or her employment, must declare that gift to their head of agency. The SSA and SSR do create a 'loophole' for heads of agencies, as technically the legislation provides that they are to declare gifts to themselves.

²³ Other relevant sections include, but are not necessarily limited to, s 9(8): 'An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.'

²⁴ *State Service Act 2000* (Tas) s 9(16).

2.1.2 Findings

State Service Act

The audit examined the gifts and benefits guidelines of each State Service agency to determine whether they made some kind of reference to either or both of SSA ss 9(11) and (12).²⁵ As can be seen from the table below, most guidelines failed to meet even basic requirements in relation to the SSA and, more specifically, the State Service Code of Conduct.

Eight of the 14 guidelines make no reference to either ss 9(11) or (12). Of these, six also make no reference to the State Service Code of Conduct,²⁶ and four make no reference to the SSA.

Five of the guidelines refer to only SSA s 9(12) – four specifically, and one with the wording, 'The *State Service Act 2000* requires that an employee or officer who receives a gift in the course of his or her employment must declare the gift to the relevant Head of Agency.'

Only one of the guidelines refers to both ss 9(11) and (12) – albeit this reference is not satisfactory, as the sections are merely included in a list of 'related documents' given at the end of the guidelines (the text of the sections is not included).

State Service Regulations

The Commission examined the guidelines to determine whether they:

- in some manner, state that employees who receive a gift in the course of their employment, or in relation to their employment, must declare that gift to the head of the agency (or their delegate); and
- outline a gift declaration process for employees to follow e.g. by directing them to complete a particular form, to gain the approval of a particular manager, etc. etc.

All 14 of the guidelines state that gifts must be declared to the head of the agency or their delegate, and all 14 provide some kind of process for doing so.

Some guidelines exclude certain gifts from this stipulation – for example, in some agencies there is no need to declare 'token' gifts. One of the agencies has overly complicated guidance, and it is difficult to tell exactly what does and does not have to be declared; this agency also has two different forms for making gift declarations. Conversely, another agency has overly simple guidance: the full extent of instructions to employees on how to declare a gift is that they 'must disclose, within two weeks, that gift to [their] General Manager (or equivalent)'. There is no mention of the gift declaration form (even though the agency does have one), or any approval process.

²⁵ This could be as minor as listing the sections as 'relevant', or reproducing the wording of the sections.

²⁶ Four of these guidelines did, however, discuss or list as relevant 'Employment Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct'.

Table 1: State Service Act

	Guidelines refer to:				% of elements met by agency guidelines
	SSA s 9(12)	SSA s 9(11)	State Service Act	Code of Conduct	
DoE	x	x	x	✓	25%
DPaC	✓	x	✓	✓	75%
DoJ	x	x	x	✓	25%
DPEM	x	x	x	x	0%
DHHS	x	x	✓	x*	25%
DIER (DSG)	✓	x	✓	✓	75%
DEDTA (DSG)	✓	x	✓	✓	75%
DTF	x	x	x	x*	0%
DPIPWE	✓	✓	✓	✓	100%
THO-S	x	x	✓	x*	25%
THO-N	✓	x	✓	x	50%
THO-NW	x	x	✓	x*	25%
TAO	x	x	✓	x	25%
Integrity Commission	✓	x	✓	✓	75%
% of guidelines	36%	7%	71%	50%	

* These guidelines did discuss or list as relevant 'Employment Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct'.

Chapter 3: Mandatory State Service policies

Summary

Employment Directions and Treasurer's Instructions (TIs) are mandatory State Service-wide policies with which employees, heads of agencies and agency guidelines must comply. One employment direction (*Employment Direction No. 8 – Gifts and benefits*) and two TIs (the 'procurement principles') are relevant to gifts and benefits, and should form the basis of agency guidelines and practices on gifts and benefits.

The Commission's audit and investigation revealed that Tasmanian State Service agencies are largely failing to adhere to ED8 and the TIs in theory, practice or spirit. In particular, the guidelines in each agency fail to adequately emphasise and explain the issue of conflict of interest, which is central to ED8. Eight of the 14 guidelines make no reference to either of the relevant TIs.

This has resulted in an almost complete failure to apply ED8 and TI conflict of interest requirements in practice. Every single set of agency gift records supplied to the Commission included accepted gifts which, in the opinion of the Commission, should have been refused. In nine of the gift records, it appeared that government buyers had accepted gifts. This information was supported by the interviews undertaken by the Commission, which indicate that acceptance of gifts and benefits may be relatively routine for state servants working in the procurement area. The interviewees had been given no or little training in their agency's policy, and did not understand the risks involved.

Records supplied by companies issued with notices to produce by the Commission indicate that the majority of gifts are given to government buyers, and that a relatively small percentage of these gifts are declared. Indeed, some government buyers appear to be regular acceptors of gifts from multiple companies. Moreover, it seemed apparent that most senior employees (including heads of agencies) viewed the gift declaration process as just that – a declaration process – not an *approval* process. This attitude is further evinced by the small number of instances where agency records indicated that approval to accept the gift was refused.

All of the agencies do, however, have gifts guidelines, so they are meeting their responsibilities under ED8 in this regard. Some of the more practical requirements of ED8 are also being met by the majority of agency guidelines, but their failure to adequately clarify, in plain language, which gifts are acceptable or unacceptable is a problem which needs to be remedied. It is critical that agency guidelines identify a clear process that is easy for both employees to understand, and for decision makers to apply. At this stage, most guidelines are failing to meet this basic objective.

3.1 Employment Direction No. 8 – Gifts and benefits

3.1.1 Explanation

Risks deriving from gifts and benefits will be different between agencies, and even between different roles within the same agency. For instance, it is usually appropriate for a nurse to accept a ‘thank you’ gift of flowers from a grateful patient on discharge from hospital, but it is not acceptable for a procurement officer working in the same hospital to receive any gift from suppliers (regular, potential or former), regardless of the value. It is thus not overly helpful to establish a set of comprehensive rules which apply across the State Service,²⁷ as even within the same agency there will be a certain level of complexity.²⁸ A good approach is for a minimum standard to be set across the public sector, with agencies developing their own specific guidelines.²⁹ This is essentially the case in Tasmania (and most Australian jurisdictions).³⁰

In Tasmania, these minimum standards are set by a state-wide ‘direction’ about gifts and benefits guidelines. Issued on 4 February 2013, ‘Employment Direction No. 8 – Gifts and benefits’ (ED8) is a policy with which both agencies and their employees are required to comply. These ‘Employment Directions’ (EDs) are issued in accordance with s 17 of the SSA by the ‘Employer’ – that is, the Minister administering the SSA.³¹ EDs are managed by the State Service Management Office, in the Department of Premier and Cabinet.

ED8 replaced the ‘Commissioner’s Direction No. 14: Gifts and benefits’ (CD14), which was first issued in July 2003. ED8 is substantially the same as CD14. ED8 provides broad direction about gifts and benefits guidelines, and imposes certain responsibilities on heads of agencies. It applies to ‘employees’ and ‘officers’ as defined in the SSA.

Establishing and maintaining the guidelines

Clause 6.1 of ED8 lists the main responsibilities of heads of agencies in regard to their agency’s gifts and benefits guidelines (emphasis added):

The Head of Agency must ensure that:

- i. the Agency has guidelines relating to the giving and receiving of gifts and benefits that comply with the framework below;³²*
- ii. 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***
- iii. the Head of the State Service is provided with a copy of the Agency guidelines and any subsequent revisions.*

This provision appears to require that state servants declare not just all gifts received, but all gifts *offered*.

²⁷ Australian Public Sector Commission, above n 17.

²⁸ Audit Office of New South Wales, above n 3, 2.

²⁹ Ibid 19.

³⁰ The exception is Queensland, which has a single policy that applies to all state service agencies, see Queensland Government Public Service Commission, *Directive No. 22/09: Gifts and benefits* (2010). For an example from another state, see the Victorian equivalent of ED8 in State Government of Victoria Public Sector Commission, above n 4.

³¹ *State Service Act 2000* (Tas) s 3(1).

³² This is a reference to the requirements listed in Employment Direction No. 8 Gifts and benefits cl 6.2.1.

Clause 6.4 of ED8 stipulates that the head of agency must review the agency's guidelines at least once every four years.

Providing a rationale for the guidelines: conflicts of interest

The foundation of ED8 is the direction in cl 6, which states:

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.

Content of the guidelines

ED8 provides some basic elements for gifts guidelines, with which individual agency gifts and benefits guidelines should align.

Defining a 'gift'

Clause 3 of ED8 gives the following definition of 'gift' (emphasis in original):

'Gift' means any gratuity or benefit gained by an officer, employee, or their immediate families (i.e. spouses, partners and dependent 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 full value or the provision of a benefit which has a financial or commercial value for less than full value; or*
- provision of hospitality (e.g. accommodation), travel (e.g. airfares), or entertainment for less than full value.*

'Benefit' is not defined in ED8.

Clarifying acceptable and unacceptable gifts

Under ED8 cl 6.2.1, each head of agency is to:

[D]evelop appropriate Agency guidelines to ensure that:

- i. government or Agency procurement decisions are not influenced by the receipt of gifts;*
- ii. any officer or employee engaged in procurement processes is made aware of the statement in the Handbook for Government Procurement issued by the Department of Treasury and Finance³³ that "it is a requirement that all Government buyers decline gifts, gratuities or any other benefits which may*

³³ This appears to be an out-dated reference. The *Handbook for Government Procurement* was published in 1997, and does not appear to be referenced at all on the Tasmania Government 'Buying for Government' website <<http://www.purchasing.tas.gov.au/buyingforgovernment/>>.

- influence, or might be deemed to influence, equity or impartiality in procurement decisions"; and*
- iii. *clarity is provided in relation to:*
- *what constitutes a gift, for example sponsored travel, hospitality, entertainment, payments or commercial/promotional objects;*
 - *any gifts that are not to be accepted in any circumstances – for example illegally obtained property, drugs or gifts intended to influence Agency decisions;*
 - *any gifts deemed to be acceptable, for example souvenirs, mementos, craft, remembrances or other tokens bestowed at an official function, marks of courtesy or of a seasonal nature of a minor value or gifts from personal friends and family members in a genuinely personal capacity and which do not give rise to or create the appearance of a conflict of interest; and*
 - *the period of time in which a gift is to be reported.*

Sponsored travel; functions, entertainment, hospitality

Clause 6.2.5 of ED8 deals with functions, entertainment and hospitality, which are all to be considered gifts.

Sponsored travel is dealt with under cl 6.2.4. Although not defined in ED8, 'sponsored travel' generally is known to include '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'.³⁴ ED8 stipulates that all sponsored travel is to be considered a 'gift', and as such is to be reported to the head of agency.

ED8 allows sponsored travel to be approved if it is 'considered to be of benefit to the State'; however, it also warns the head of agency to be mindful of avoiding conflicts of interest, and the appearance of them.

Breaches of the guidelines

Clause 6.3 stipulates that all breaches of the agency's guidelines on giving and receiving gifts are to be dealt with in accordance with 'Employment Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct' (ED5).

Gift giving

Clause 6.2.2 stipulates that the 'giving of gifts, other than in accordance with the official duties of employees or officers, is refrained from in any circumstances that would give rise to or create the appearance of a conflict of interest'.

³⁴ Commissioner for Public Sector Employment, *Commissioner for Public Sector Employment guideline: Gifts and benefits* (2014) 5 <<http://files.oper.sa.gov.au/files/gifts-and-benefits.pdf>>.

Record keeping – the ‘gift register’

Although ED8 does not say anything specifically about a ‘gift register’ or the recording of gifts, it is clear that ED8 requires certain things to be considered when accepting gifts. These include:

- under cl 6, any accepted gifts must not reveal a conflict of interest – or the appearance of a conflict of interest – between the public duty and private interests of an employee;
- under cl 6.2.1, procurement officers should not accept gifts which may influence, or might be deemed to influence, equity or impartiality in procurement decisions; and
- under cl 6.2.4, any accepted offers of sponsored travel must be of benefit to the state.

3.1.2 Findings

Establishing and maintaining the guidelines

The Commission examined the guidelines of each of the agencies to determine if the head of agency had met their responsibility under ED8 to:

- establish gifts and benefits guidelines within their agency; and
- review those guidelines at least once every four years.

The Commission also looked at whether the guidelines require all gift offers to be declared, including those that are declined.

All agencies have gifts and benefits guidelines, so all current heads of agency have met their responsibilities in this respect. Only two of the guidelines require all offers of reportable gifts (including those declined) to be declared.

Five of the agencies have guidelines that were reviewed/introduced in the second half of 2014 (that is, after the Commission requested these guidelines for the purpose of this investigation), and a further two agencies informed the Commission that their guidelines are currently undergoing review. This does not include the DSG which, at some stage in the near future, will also have to review and merge its two separate gifts and benefits guidelines.

It was not possible to determine whether six of the 14 guidelines had been subject to four-yearly reviews. Of the remaining eight guidelines, it appeared that only one had been subject to regular review.

Table 2: Establishing and maintaining the guidelines

	Guidelines:					
	Established in the agency	Currently undergoing review	Reviewed or introduced since end June 2014	Last reviewed in	Reviewed at least once every four years [#]	Require all offers to be declared
DoE	✓	✓	n/a	March 2013	✓	×
DPaC	✓	n/a	✓ (July – September 2014)	September 2007	×	×
DoJ	✓	n/a	✓ (October – November 2014)	Unknown	Unknown	×^^
DPEM	✓	×	Unknown	Unknown	Unknown	×^^
DHHS	✓	n/a	✓ (July 2014)	2007	×***	×^^
DIER (DSG)	✓	×	×	Unknown*	Unknown	×
DEDTA (DSG)	✓	×	×	February 2006	×	×
DTF	✓	×	×	January 2014	Unknown	×
DPIPWE	✓	×	×	June 2011	Unknown	×
THO-S	✓	n/a	✓ (July – November 2014)	n/a**	Unknown**	×^^
THO-N	✓	✓	n/a	June 2007	×	×
THO-NW	✓	n/a	✓ (October 2014)	June 2007	×***	×^^
TAO	✓	×	×	October 2013	×^	✓
Integrity Commission	✓	×	×	October 2010	×	✓
% of guidelines	100%	14%	36%	n/a	7%	14%

[#] As indicated by regularity of the agency's review of the guidelines to date.

* References in there guidelines indicate that they have been in place for some time.

** This agency previously had no guidelines in place.

*** Although note that the new guidelines stipulate that they are to be reviewed within the next four years. It is uncertain, given past agency practice, whether this policy will be followed in practice.

^ This agency's guidelines state that they are to be reviewed in October 2018 – five years after their most recent review in October 2013.

^^ These guidelines state that offers of gifts which the employee wishes to accept must be declared – but the guidelines are silent on what to do if the employee declines the gift on the spot, or does not wish to accept the offer.

Providing a rationale for the guidelines: conflicts of interest

The issue of 'conflicts of interest' is central to ED8, and the avoidance of conflicts of interest caused by gifts and benefits appears to be the rationale for all directions within ED8. The Commission examined each of the 14 guidelines to determine if they:

- explain conflicts of interest in any way; and
- refer employees to the agency's conflict of interest guidelines.

The Commission also examined the gift records of each agency (which could supply such records) for the three year period from 1 July 2011 to 30 June 2014, to determine if:

- there is any evidence that one or more of the gifts involved a consideration of the issue of conflicts of interest;
- any of the accepted gifts involved, in the opinion of the Commission, an unacceptable conflict of interest (i.e. the gift should have been declined); and
- any recorded gifts were declined by employees.³⁵

Four of the guidelines do not explain conflicts of interest in any way or refer to the agency's conflict of interest guidelines. Three of those guidelines make no reference at all to the issue of conflicts of interest (this includes the Commission's own guidelines).

Generally, where some explanation of conflict of interest is given in agency guidelines, it is a simple statement that the guidelines are aimed at ensuring there is no conflict between the 'public duty and private interests' of the employee. Three agencies include 'conflicts of interest' in the definitions section of their guidelines – for example, one agency defines it as: 'an actual, potential or perceived conflict between a worker's private interests and their duties, responsibilities or obligations as a worker.' The Commission assessed that none of these definitions or explanations are adequate. Only one agency has an adequate explanation of conflicts of interest in its guidelines; this agency has merged its conflicts of interest and gifts and benefits guidelines into one document.

It is therefore perhaps not surprising that the agency gift records demonstrated significant lack of knowledge about the issue of conflicts of interest. On the few records where the matter was clearly considered, it was most often dismissed as a 'non-issue'. Every set of records supplied to the Commission by agencies included accepted gifts which, in the opinion of the Commission, should have been refused on the basis of conflict of interest. Moreover, it seemed apparent that most senior employees viewed the gift declaration process as just that – a declaration process – not an *approval* process.

³⁵ Under cl 6.1, gift offers must be declared, and thus one would expect to see declined gifts on agency records. However, as noted above, the majority of agencies have not included this aspect of ED8 in their guidelines. Nevertheless, one would still expect to see gifts on the agency records that had been declined due to unacceptable conflicts of interest.

Table 3: Providing a rationale for the guidelines: conflicts of interest (COI)

	Guidelines:				Register/records:			% of elements met by agency guidelines and/or register
	Refer to COI	Explain COI in some way#	Explain COI adequately#	Refer to the agency's COI guidelines	Indicates that COI is being considered^^	Lacks gifts which show any COI	Includes one or more declined gifts	
DoE	✓	✓	x	✓	x	x	x	43%
DPaC	✓	x	x	x	✓	x	x	29%
DoJ	✓	✓	x	✓	x	x	Unclear***	50% (of 6 elements)
DPEM	x	x	x	x	x	x	✓	14%
DHHS	✓	✓	x	✓	✓	x	✓	71%
DIER (DSG)	✓	✓	x	x	x	x	x	29%
DEDTA (DSG)	✓	✓	x	x	✓	x	✓	57%
DTF	✓	✓	x	x*	x	x	x	29%
DPIPWE	✓	✓	✓	✓**	✓	x	x	71%
THO-S	✓	✓	x	✓	n/a^	n/a^	n/a^	75% (of 4 elements)
THO-N	✓	✓	x	x	x	x	x	29%
THO-NW	✓	✓	x	✓	x	x	x	43%
TAO	x	x	x	x	x	x	x	0%
Integrity Commission	x	x	x	x	x	x	✓	14%
% of guidelines/ registers	79%	71%	7%	43%	31% (of 13 registers)	0% (of 13 registers)	25% (of 12 registers)	

This refers to a general explanation of conflicts of interest – not an explanation of the link between gifts and benefits and conflicts of interest.

* This agency has conflict of interest guidelines (they were forwarded to the Commission), but they are not referred to in the gifts and benefits guidelines.

** This agency's conflicts of interest guidelines are merged with their gifts and benefits guidelines into one document.

*** There are several gifts on this agency's register which the agency was unable to confirm as declined or accepted.

^ This agency had no records of any gifts that fell within the three-year audit period.

^^ This does not necessarily mean that the agency rejected gifts that involved conflicts of interest; rather, it means that, for at least one of the gifts on the register, there is evidence that the issue was raised..

Case study 1: Networking opportunity, or unacceptable conflict of interest?

In December 2011, three Agency L employees who worked in a team focusing on investment in Tasmania were offered the opportunity to attend a cricket test match at Bellerive Oval. The invitation, from an international company, included lunch and was held on a weekday. According to the employees, the day was to be hosted by the CEO of the company, and represented an 'excellent investment attraction, aftercare and networking opportunity'.

This particular company has been the beneficiary of significant state and federal grants, and Agency L's 2012–13 annual report states 'We also helped [the company] by providing \$850 000 towards its expansion infrastructure costs.' In its 2011-12 annual report, Agency L 'formally recognised' the company as a 'Tasmanian Employer of Choice'.

All three employees were approved to attend the cricket match. Comments from the 'agency executive' for two of the employees state:

[Employee 1] in [their] new role will not be involved at all in decisions regarding the current [company] grant deal, and [Employee 2], while having a client management relationship is also not part of the decision making authority.

Comments from the 'divisional head' on the gift declaration form of the third employee state:

There are no known current or future business negotiations or activities with [the company] involving [Employee 3] and other officers attending, on which this invitation may have a bearing on or be deemed to be aimed at influencing or influence any decision making related [sic]. This event is deemed to be a genuine networking event which will clearly benefit the Department's core business and is not aimed at, or deemed as influencing the activities of the Department. Attending the event will establish more effective communication and working relationship between the Department and the senior executives of [the company].

The Commission issued the company with a notice to produce records. The company indicated that they had some records of the event, but none of the emails of the company's attendees on the day held any information about the event. Company staff could only name one of the three agency attendees at this event that was supposedly about building networks and relationships.

The invitations to this event should not have been accepted. The gift declaration forms fail to explain how the event could 'clearly benefit the Department's core business'. Instead, the event presents as an opportunity to spend a work day at the cricket. It seems unlikely that 'networking' with the company's CEO presented any great benefit to the Tasmanian government, but instead was possibly an opportunity to network at a personal level. The establishment of a 'special relationship' between an agency and a private company is in itself inappropriate.³⁶ This is particularly so with this agency which is in a position to (and after this event did) make favourable decisions in relation to the company. The agency risked negative publicity in allowing its employees to accept such gifts. While these employees may not themselves have had any direct authority over decisions related to the company (although it appears that Employee 1 may have in their past role), the nature of the relationship between the agency and the company means that the invitations should have been declined.

³⁶ New South Wales Public Service Commission, *Behaving Ethically: A guide for NSW government sector employees* (2014) 134.

Content of the guidelines

The Commission examined the contents of the 14 guidelines in more detail and compared them to the directions in ED8. This included testing whether the guidelines:

- include a definition for the word ‘gift’ and, if so, whether it accords with that given in ED8;
- specify ‘the period of time in which a gift is to be reported’;
- stipulate that functions, entertainment and hospitality are to be considered gifts;³⁷
- stipulate that all sponsored travel is to be considered a gift; and
- state that all breaches will be dealt with in accordance with ED5.

For the results of this examination, see *Table 4*.

‘Acceptable’ gifts

The Commission also assessed whether each of the guidelines clarify which gifts are ‘acceptable’. In making this assessment, the Commission did note that the meaning of the word ‘acceptable’ within ED8 cl 6.2.1(iii) is not clear.³⁸ Applying cl 6.2.1(iii) broadly, however, the audit still determined that two of the guidelines do not provide sufficient guidance to employees on which gifts are ‘acceptable’ – that is, they do not:

- allow certain defined gifts to be accepted without declaration; nor
- provide any real guidance on which gifts, if declared, are likely to be approved for acceptance.

Although one of these two guidelines does state that gifts valued at under \$20 ‘will be considered more favourably for them to be kept by the recipient’, the Commission did not assess this as providing a sufficient level of guidance. This agency does, however, include the Commission’s gifts flowchart in its guidelines.

Even in the remaining 12 guidelines, where some level of guidance is provided about ‘acceptable’ gifts, in general the Commission assessed that it is deficient, unclear or confusing. Often the main ‘test’ is that acceptable gifts are those that do not involve any conflicts of interest – and given the generally insufficient guidance on conflicts of interest in agency guidelines, this test is unlikely to be applied appropriately.

³⁷ The test to determine if the guidelines stipulate that functions, entertainment and hospitality are to be considered gifts was applied broadly; there was no requirement to replicate the exact wording of ED8 cl 6.2.5. However, if the agency only replicated the exact wording of the ED8 definition of gift – that gifts include the ‘provision of hospitality (e.g. accommodation) ... or entertainment for less than full value’ – the Commission did not consider this sufficiently clear.

³⁸ It is not clear whether ED8 is directing heads of agency to clarify which gifts are ‘acceptable’ because they do not have to be declared, or which gifts are acceptable because – if declared – they are likely to be approved.

Table 4: Content of the guidelines

	Guidelines:					% of elements met by agency guidelines
	Define 'gift' and definition accords with ED8	Specify time period	State that functions, entertainment & hospitality are gifts	State that sponsored travel is a gift	Mention ED5	
DoE	✓	✓ w/in 5 working days	✗	✗	✓	60%
DPaC	✓	✓ w/in 5 days of receipt	✗	✗	✗	40%
DoJ	✓	✓ w/in 5 working days	✓	✓	✗	80%
DPEM	✗ no definition	✓ w/in 5 working days	✗	✗	✗**	20%
DHHS	✓	✗	✓	✓	✓	80%
DIER (DSG)	✓	✓ w/in 5 working days	✗	✓	✓	80%
DEDTA (DSG)	✓	✓*	✗	✓	✓	80%
DTF	✓	✗	✓	✓	✓	80%
DPIPWE	✓	✓ w/in 2 weeks	✓	✓	✗^	80%
THO-S	✓	✗	✓	✓	✓	80%
THO-N	✓	✗	✓	✓	✓	80%
THO-NW	✓	✗	✓	✓	✓	80%
TAO	✓	✗	✗	✓	✗	40%
Integrity Commission	✗	✗	✓	✗	✗	20%
% of guidelines	86%	50%	57%	71%	57%	

* This guideline stipulates that the gift must be reported to the divisional head as soon as practicable, who then must report it to the corporate services director within two weeks.

** This guideline is contained in an agency manual, which may set out the potential consequences of breaches in another section.

^ This guideline does not mention the consequences of breaching the gifts guideline, but does discuss the consequences of breaching the conflicts of interest guideline.

Case study 2: Inappropriate policies and procedures

DPaC's guidelines explicitly state that certain forms of hospitality are not gifts:

Hospitality which is directed at establishing networking links between [DPaC] employees and persons associated with an organisation or industry, or at introducing a product or service to a [DPaC] employee as part of general business is acceptable ... the occasional provision of tickets to entertainment events are not normally regarded as gifts [unless there is a potential conflict of interest] ... Working lunches and dinners associated with a particular project or task are also not usually considered as gifts.

This guidance is deficient in a number of respects, including:

- hospitality provided to employees while introducing them to a product or service creates an inherent conflict of interest – it is in the personal interest of the employee to accept the hospitality, but their role requires them to assess new products and services in accordance with set criteria (and not in accordance with the personal benefits which they may derive from the company);
- tickets to entertainment events should always be regarded as gifts – for most state servants, there will never be a sufficient connection to their work role to justify the acceptance of such tickets;
- working lunches and dinners, when provided by any organisation other than the employer, are always to be considered gifts. Whether such gifts are acceptable will depend on factors such as the type of meal provided (e.g. a sandwich or a meal at an expensive restaurant) and the context (e.g. is the employee a procurement officer?); and
- the establishment of a 'special relationship' between an agency and a private company is in itself inappropriate.³⁹

It has come to the Commission's attention that the paragraph above (from DPaC's guidelines) was taken from one of its own reports. In 2011, the Commission released a report titled *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania*.⁴⁰ The report included, in its appendix, a proposed gifts and benefits policy for Tasmanian Government ministers.⁴¹ It appears that a number of government agencies have adopted (selected) aspects of this draft policy into their own gifts guidelines.

However, the role performed by government ministers (elected government officials) and the role performed by public servants (employed under the State Service Act) is substantially different. It is inappropriate to apply State Service policies to ministers, and vice versa. As such, some aspects of the proposed ministerial policy adopted by agencies are appropriate for state servants, but others – like the above, especially when edited selectively – are not. It was not the intention of the Commission to mislead agencies about the applicability of the proposed policy to government agencies. The Commission appreciates that, without a model gifts policy for government agencies, the proposed ministerial policy may have appeared to be an appropriate substitute. After the publication of this report, agencies could more appropriately refer to the model policy developed by the Commission (see *Appendix 1: Model gifts and benefits policy template*), which is broadly applicable to government agencies.

³⁹ New South Wales Public Service Commission, above n 36, 134.

⁴⁰ Integrity Commission, *Codes of Conduct for Members of Parliament, Ministers and Ministerial Staff in Tasmania* (2011).

⁴¹ Ibid 185.

Record keeping – the ‘gift register’

The Commission examined whether:

- any accepted gifts on the gift records of the agencies reveal a conflict of interest;
- procurement officers had accepted gifts which may influence, or might be deemed to influence, equity or impartiality in procurement decisions; and
- sponsored travel which had been accepted appeared to have been appropriate.

The findings on these aspects of the audit are dealt with in greater detail in other areas of the report; briefly:

- the records of all agencies included accepted gifts which should have been refused due to conflicts of interest;
- the records of most agencies indicate that employees in procurement had accepted gifts from companies with which they do business – it is difficult to see how this could not be (at least seen to be) influencing ‘equity or impartiality in procurement decisions’; and
- five of the 13 sets of records contained one or more instances of accepted sponsored travel.

3.2 Treasurer's Instructions No. 1101 and No. 1201

3.2.1 Explanation

Treasurer's Instructions (TIs) are State Service wide policies issued by the Treasurer. TIs are issued under the authority of the *Financial Management and Audit Act 1990* (Tas) and require compliance by all heads of agency.⁴² The two TIs that set out procurement principles for government buyers both mention gifts and benefits. Clause 2(c)(v) of both 'Treasurer's Instruction No. 1101 – Procurement Principles: goods and services' (TI 1101) and 'Treasurer's Instruction No. 1201 – Procurement Principles: building and construction/roads and bridges' (TI 1201) state:

Government buyers involved in procurement must decline gifts, gratuities, or any other benefits which may influence, or might be deemed to influence, equity, or impartiality.

This is a mandatory part of the policies.⁴³

However, the 'Purchasing Principles' section of the Tasmanian Government website 'Winning Government Business'⁴⁴ states more unequivocally (and preferably, in the Commission's view):

*Government buyers cannot accept gifts or any other benefits from suppliers.*⁴⁵

This seems to conflict with the actual Purchasing Principles TIs (1101 and 1201), which suggest that gifts will only be refused if they *may* influence the government buyer (or might be deemed to do so).

The Tasmanian Government also publishes a booklet 'A Guide for Government Buyers' which states that the principle of 'conducting purchasing activities ethically and in accordance with the Procurement Code of Conduct' means, in practice 'ensuring that decisions are not influenced by self-interest or personal gain (e.g. government buyers must not accept gifts or any other benefits from suppliers)'.⁴⁶

⁴² Treasurer's Instruction No. 105 – Compliance cl 1.

⁴³ Some parts of the policy are 'for the purpose of providing guidance only'.

⁴⁴ Tasmanian Government, *Winning Government Business*
<<http://www.purchasing.tas.gov.au/winninggovernmentbusiness/>>.

⁴⁵ Tasmanian Government, *Purchasing Principles*
<<http://www.purchasing.tas.gov.au/winninggovernmentbusiness/getpage.jsp?uid=C528898C7747AF92CA2574AA0018DC02>>.

⁴⁶ Tasmanian Government Department of Treasury and Finance, *Purchasing Goods and Services: A Guide for Government Buyers* (2014) 5.

3.2.2 Findings

The Commission examined whether the 14 guidelines:

- referred to either or both TI 1101 or TI 1201 in any way – this could be as minor as listing them as a relevant document; and
- provided any extra guidance to procurement officers/government buyers, or directed them to extra guidance.

Eight of the guidelines make no reference to either of the relevant TIs. Of the six guidelines which do mention the TIs in some way:

- three do not mention the TIs specifically, but do include the ‘test’ given in the TIs;
- two specifically mention TI 1101, and devote a section to the matter; and
- one lists TI 1101 as a related document.

Ten of the 14 guidelines do, however, provide some form of extra guidance for government buyers, or direct them on where to find it. This extra guidance ranges from this rather vague statement in the DHHS guideline: ‘[e]mployees involved in procurement processes must comply with this procedure and any other relevant obligation applicable to procurement’, to the THO-N guideline, which includes an entire additional section for ‘officers involved in purchasing, tenders or disposals’.

The Commission also examined the gift records of each agency to see if government buyers had declared gifts between July 2011 and June 2014. In nine of the 13 sets of records produced, it appeared certain that government buyers had accepted gifts. In a further three sets of records, it was possible that government buyers had accepted gifts.⁴⁷ Some of the gift declaration forms stated that the gift had been given because of the ‘relationship’ the government buyer has with the company. Indeed, some government buyers were regular acceptors of gifts from multiple companies. It is difficult to see how such gifts could possibly not breach the TI 1101 requirement that government buyers decline gifts that ‘may influence, or might be deemed to influence, equity, or impartiality’. Once again, these matters demonstrate the lack of understanding in the Tasmanian State Service of the meaning and importance of ‘conflicts of interest’.

In only one set of records was there no evidence that government buyers had accepted gifts. However, a more recent gift on these records (i.e. one that fell outside the scope of the audit) provided evidence of a government buyer accepting an obviously inappropriate gift; this gift is discussed in *Case study 3*.

As part of its investigation, the Commission issued notices to nine companies with offices in Tasmania, requesting the records of gifts and benefits that they had provided to employees from the 12 agencies audited. The overwhelming proportion of gifts reported by these companies had been given to government buyers.

For more information on government buyers, see pages 89 and 94.

⁴⁷ Not all gift records included the position title and/or business unit of the employee accepting the gift, thus it was sometimes difficult to determine if the employee was a government buyer.

Table 5: Treasurer's Instructions No. 1101 and No. 1201

	Guidelines:		Register:	% of elements met by agency guidelines and register
	Refer to TI 1101 and/or TI 1201	Provide extra guidance for govt. buyers, or directs them to extra guidance	Indicates that govt. buyers have not accepted gifts	
DoE	✓	✓	Possibly	100% (of 2 elements)
DPaC	x	x	x	0%
DoJ	✓	✓	Possibly	100% (of 2 elements)
DPEM	x	x	x	0%
DHHS	x	✓	x	33%
DIER (DSG)	x	x	✓*	33%
DEDTA (DSG)	✓	✓	x	67%
DTF	✓	✓	x	67%
DPIPWE	✓	✓	x	67%
THO-S	x	✓	n/a^	50% (of 2 elements)
THO-N	✓	✓	x	67%
THO-NW	x	✓	x	33%
TAO	x	x	Possibly	0% (of 2 elements)
Integrity Commission	x	✓	x	33%
% of guidelines/registers	43%	71%	10%	

^ This agency had no records of any gifts that fell within the three year audit period.

* But see Case study 3.

Case study 3: \$199 Reward for a government buyer

The gift records of DIER include a \$199 Johnny Walker gift box given to an employee by a company in late July 2014 as a 'thank you for obtaining a letter of engagement' (for the provision of a contract). The employee noted that it was the first time the company had given such a gift. The employee initially valued the gift at \$100, but a subsequent internet search by their general manager valued it at \$199.

The gift declaration includes a series of emails between four people – the employee, a manager, a general manager, and a director (who appears to be the manager of the gift register). In one of the emails, the director tells the manager:

As long as you have believe there is no perceived conflict of interest in the relationship between [the employee] and the [company] then you are able to recommend to [the general manager] that [the employee] retain the gift. Considering this procurement [went] through the [proper] process and that three quotes were obtained and it was assessed against value for money principles then I would say it is OK for [the employee] to retain subject to the [general manager's] approval. If it had not gone through the [proper] process then it would have to be reconsidered. There are previous examples of gifts been [sic] retained by the recipient up to \$200.

Exactly what the director means by 'previous examples of gifts [being] retained by the recipient up to \$200' is unclear.

The manager then writes to the general manager, stating that their assessment of the gift against the agency's guidelines identified the following:

1. *From an internet search I value the gift at \$199.*
2. *[The employee] has been dealing with [the company] since May 2008.*
3. *A 12 month contract for [a service] was awarded to [the company] in March 2014.*
4. *The contract went through the Departmental Procurement Committee (DPC), three quotes were obtained and the contract was awarded after it was assessed against value for money principles.*
5. *[The employee's unit] has placed 3 orders ... at value of \$12,315 since the contract was awarded, this could extend to another 1 or 2 orders with the value of the 12 month contract being approximately \$20,000.*
6. *This is the first gift received by a [a member of the employee's unit] from [the company] except for small bags of lollies which are received with each order.*
7. *[The director] has advised that there are previous examples of gifts being retained by the recipient up to \$200.*

Following this email, the general manager approved the gift, noting 'retention of gift approved as procurement has been through [the proper processes]'.

The acceptance of this gift should never have been approved because:

- the employee was personally rewarded for the government engaging the services a company – a process which should have been on merit, and which should have had nothing to do with any personal decisions of that particular employee;
- other companies that applied for the same contract could justifiably make a claim of bias in the procurement process (regardless of whether the process was actually biased); and
- the employee will henceforth have an inherent conflict of interest in dealing with the company (knowing, as they do, that they could once more gain personally from the awarding of government business to the company).

It is unclear to the Commission exactly how the employee's manager, general manager and director could have concluded that there was no conflict of interest involved in this gift, and that it was acceptable.

Case study 4: Procurement – the land of milk and honey

The Commission interviewed six public servants as part of Operation Kilo. One of the interviewees, Employee G, stated that they had worked in the public service for a long time. However, it was not until they started working in asset management (i.e. procurement) that they encountered gifts and benefits. Employee G stated that this was because of 'the nature of the work in that area ... it's more client focused, so you're dealing more with external contractors and external parties'.

When they first started as the manager of an asset area, Employee G's staff were in the practice of accepting gifts and benefits without making declarations or gaining approval. Employee G said that they had worked to change the culture in their branch; they even sent out reminders to their staff at Christmas about their responsibilities. The cultural change which Employee G brought about among their staff was one of declaration of gifts. Although they admitted that the practice would not be well perceived by the public, they still allowed their staff to accept gifts and benefits:

It's better that we declare it and then I don't have a problem with lower level staff going [to events] who don't have the ability to make a decision or to influence a decision around contracts or tenders or anything like that ... I guess I've of taken the view that for myself when I sought gifts and benefits to be received that it's either on the basis of the networking and the benefit that the organisation might get out of that as opposed to my benefit from it.

Employee G justified the practice of accepting gifts and benefits by stating that:

- once the agency has a contract with a company, the relevant employees have a responsibility 'to have a reasonable relationship with that party to get the best outcome for your project or whatever you're trying to achieve'; and
- contract managers often get called out of hours, suffer abuse from other employees when things don't work, and generally have to work odd hours in comparison to others. Essentially, they saw the gifts and benefits as rewards for the employees doing this additional stressful work. When questioned, Employee G did confirm that contract managers could claim work time (through their employer) for their out of hours work.

Gift acceptance practices create jealousies among staff within the same agency

In at least one of the agencies it appeared that the agency's gift acceptance practices had created a culture of 'us and them' between certain staff, and inadvertently provided a justification for the acceptance of large value gifts by procurement staff. One interviewed staff member's (Employee C) morale seemed to be particularly low, due to the sense of injustice they felt about their agency's practices. The previous practice in this agency had been to allow the acceptance of all declared gifts. At interview, Employee C stated that approval for gifts was not required – the process was simply one of declaration.

This agency provides health services, and, according to Employee C, professional healthcare employees may take advantage of an internal agency fund to undertake continued professional development. Employee C is not such an employee – they are a government buyer. As such, Employee C and their unit do not have access to this fund. It was the understanding of Employee C that the funds had been used to procure benefits for healthcare professionals. Employee C alleged, for example, that the fund had been used to pay for helicopter flights for those staff members. The accuracy of this information was not verified by the Commission.

Employee C also alleged that healthcare professionals regularly accepted gifts and benefits from private companies. This was in fact borne out by the gift records produced by the

agency, and by information produced by some companies to the Commission.

As a manager, Employee C was aware that their staff were, on average, paid a lot less than the professional staff who regularly received these extra gifts as part of their role. This was not seen as fair by Employee C, and they used it as justification (including in discussions with their managers) for the acceptance of high value gifts from suppliers. This included thousands of dollars' worth of gift vouchers and other items which were raffled off; the cash proceeds were shared among the social club of Employee C's unit (see *Case study 12*).

Employee C's sense of injustice even came down to items as small as cups of coffee, which were specifically mentioned by Employee C. Why, they asked, if these other staff can accept coffee paid for by company representatives at cafés, can my staff not accept some gifts and benefits too? This not only demonstrates the dangers in allowing certain staff to routinely accept gifts, it also shows that the value of the gift is not necessarily the important factor.

It is the opinion of the Commission that the past gift acceptance practices of this agency, and the lack of clarity and transparency about the process (including what was accepted by other staff), has directly contributed to this high risk staff member's inappropriate acceptance of gifts.

Chapter 4: Good practice

Summary

Thus far this report has covered mandatory rules and regulations to which State Service agencies and their employees must adhere. However, given the out-dated nature of ED8 (being substantially the same as a policy released in 2003), the Commission found it useful to compare ED8, the two relevant TIs, and agency guidelines and gift registers to contemporary good practice principles on gifts and benefits. The Commission's research into good practice included the collection and collation of guidelines, good practice reports, and investigation reports from across all Australian jurisdictions.

Through its research, the Commission has found that the minimum standards set by ED8 and the section of the TIs relevant to gifts are far from meeting good practice standards. In several instances they are in direct contradiction. The Commission has concluded that ED8 and the TIs are confusing, open to misinterpretation, and not stringent enough.

As might be expected, given the deficiencies of ED8 and the TIs, agency guidelines and practices are also falling far short of good practice standards. In a number of cases, the guidelines lacked detail, were confusing, or simply made no sense. Moreover, the Commission has found that training and guidance offered to staff – especially high risk staff – is either non-existent or inadequate.

As compared to good practice standards, specific findings about the guidelines of the agencies include that:

- almost all of the guidelines fail to provide an adequate and clear rationale for their existence, although only two guidelines fail to provide any reason for their existence;
- 12 of the guidelines provide no explanation of the relationship between conflicts of interest⁴⁸ and gifts;
- only two of the guidelines require that all offered gifts – not just accepted gifts – be declared;
- only one of the guidelines proceeds on the assumption that no gifts are acceptable;
- half of the guidelines prohibit employees from receiving gifts of cash;
- only one guideline prohibits in any way the receipt of cash-like gifts;
- none of the guidelines emphasise or highlight as important the relationship between the giver and the receiver;
- in many of the guidelines, the existence of an 'approval' process has to be inferred (i.e. it is not directly obvious that retention of gifts must be approved by a supervisor or manager);
- none of the guidelines provide adequate and clear guidance on how to decide if a gift is acceptable;
- a number of past and present guidelines exclude things such as hospitality, events and functions from their scope, deeming them not to be gifts;
- only five of the guidelines give any warning about the potential consequences of non-compliance; and
- only one of the guidelines warns that the acceptance of gifts may, in some circumstances, constitute the criminal offence of bribery.

⁴⁸ As reported in *Chapter 3: Mandatory State Service policies*, only one guideline adequately explains conflicts of interest, and three guidelines make no reference to conflicts of interest at all. Few of the guidelines make any reference to the agency's conflict of interest guidelines.

The Commission's audit of the agencies' gift registers/records identified that none were fully compliant with their own guidelines, ED8, the TIs, the SSA and the SSR – much less good practice. It was evident that the gift records (if they existed) were rarely, if ever, subject to audit, monitoring or review.

The guidelines and practices of a number of the agencies suggested to the Commission that the presumption is that all gifts are acceptable – as long as they are declared. This attitude was also evident during interview with some state servants. Meanwhile, records produced by gifting companies indicate that many state servants are not declaring gifts at all, or declaring them selectively. Specific findings about gifts accepted by employees of the agencies include that:

- the majority of declared gifts appear to have been 'rubber stamped' by the employee's manager, with little thought given to whether they should have been approved;
- few of the declared gifts appeared to meet the 'public interest' test – that is, they were purely of personal benefit to the employee, and of no or little benefit to the agency/government/state/public;
- many staff who are discretionary decision makers accept gifts – the records indicate that licensing officers, regulators, auditors, healthcare professionals, builders, trainers and investment specialists have all accepted, what the Commission considered to be, inappropriate gifts;
- government buyers frequently accept inappropriate gifts – indeed, these employees seemed to be some of the most likely to accept gifts, and there were several instances of individual employees accepting multiple gifts, over time, from multiple suppliers;
- sponsored travel is a commonly accepted gift in Tasmanian health agencies – even when the agency's own guidelines prohibit it; and
- 11 of the sets of records included one or more accepted 'Christmas' gifts.

None of the gift declaration forms or gift register templates met good practice requirements. When asked for further details about gifts on their registers, agencies were often simply unable to supply any more information. Even on the few gift declaration records that did ask employees to identify matters such as the reason for the offer, the answers given failed to identify or address the impropriety of the gift. If requested to do so, most employees failed to accurately identify a conflict of interest or, if they did identify it, dismissed it as irrelevant. There was no evidence that these kinds of inaccuracies are being identified and dealt with by supervisors, managers or heads of agencies.

4.1 Setting the scene: guideline basics

4.1.1 Explanation

According to contemporary good practice, agency guidelines on gifts and benefits should be stand-alone – not, for instance, contained within the code of conduct.⁴⁹ The guidelines should explain to public sector employees why the offer and acceptance of gifts poses a risk to both themselves and their agency⁵⁰ and why gifts could lead to an unacceptable conflict of interest. That is, the guidelines must provide a rationale for their existence.

As an additional step, it is good practice to explain to staff how conflicts of interest:

*can increase vulnerability to corruption. This contextual information can help employees have a better understanding of the gravity of issues that can arise from conflicts, and therefore appreciate the need to declare relevant matters.*⁵¹

Guidelines should reference all other relevant policies, such as the agency's conflict of interest guidelines and any relevant procurement guidelines.⁵² The agency should ensure that these policies do not conflict in any way.⁵³

A contact officer/area should be identified for employees who are unsure about a particular decision,⁵⁴ and for reporting potential breaches.⁵⁵ This person/area will be a vital source of support for employees who are placed in difficult ethical decisions.

Agencies, especially those that have many employees who operate in a discretionary decision making environment, should consider making their guidelines publicly available.⁵⁶

⁴⁹ Corruption and Crime Commission, above n 15, 89.

⁵⁰ The Integrity Coordinating Group, above n 18, 3; for an example of this, see The Integrity Coordinating Group, *Gifts, benefits and hospitality – A guide to good practice – Information for public officers 1* <<http://icg.wa.gov.au/gifts-benefits-and-hospitality-guide-good-practice>>.

⁵¹ Independent Broad-based Anti-corruption Commission, *A review of integrity frameworks in six Victorian councils* (2015) 15.

⁵² Queensland Audit Office, above n 10, 140.

⁵³ In some jurisdictions, it has been found that two policies within the same agency may conflict, for example in regard to which gifts should be reported, for instance see Independent Commission Against Corruption New South Wales, *ICAC Report: Attempts to improperly influence a Ku-ring-gai Council officer* (2009) 16.

⁵⁴ ICAC NSW telephone advice services report frequent requests for advice on whether a gift could be accepted, see Mazurski and Johnson, above n 5, 13; Queensland Audit Office, above n 10, 139; New South Wales Public Service Commission, above n 36, 40.

⁵⁵ The Integrity Coordinating Group, above n 18, 2.

⁵⁶ For example, the Northern Territory Department of Infrastructure's gifts and benefits guidelines are publicly available, see Northern Territory Government Department of Infrastructure, *Gifts and benefits policy and procedure* (2012) <<http://www.nt.gov.au/infrastructure/publications/policies/documents/Gifts-Benefits-policy.pdf>>.

Scope of the guidelines

Offered and accepted gifts

It is now commonly accepted that guidelines should focus not just on gifts received, but on all gifts offered.⁵⁷ This will allow an agency, through review of the gift register, to identify trends in both those offering gifts and those potentially receiving them.⁵⁸

*A public authority that shifts the focus from gifts received to gift-offers, promotes the declining of gifts as the norm and builds this philosophy into its organisational culture, is more likely to gather an accurate register of attempted influence than an authority in which gift acceptance is tolerated or encouraged.*⁵⁹

Keeping a record of declined gifts is especially important in the procurement context.⁶⁰

Bequests

In the Commission's view, bequests granted through a will to State Service employees by virtue of their employment should be declared to the agency and managed appropriately, even if it is not possible to refuse them. This allows any perceived, potential or actual conflicts of interest – and risks posed to the agency by such bequests – to be managed. The Integrity Commission training scenario 'A kind bequest turns sour'⁶¹ illustrates some problems that may arise from work-related bequests.

Philanthropic donations

Purely philanthropic donations (most relevantly, to hospitals and schools) should be made to the agency as a whole, not to individual business units or individual employees. Donations such as this are not 'gifts' that fall within the definition of ED8 and should not be dealt with as such. Relevant agencies should have a completely separate set of guidelines and procedures to deal with philanthropic donations. If there is the potential for conflicts of interest to arise out of donations – for example, a donation from a company that tenders for work with the agency – the agency needs a set of procedures to manage this, for example by employing an independent body to undertake the tender process.⁶² Another option is for the agency to establish an independent foundation to manage donations.⁶³

⁵⁷ See, for example, Corruption and Crime Commission, above n 15, xvii [14]; State Government of Victoria Public Sector Commission, above n 4, 19.

⁵⁸ Corruption and Crime Commission, above n 15, 46 [234]; Independent Broad-based Anti-corruption Commission, above n 51, 5–7.

⁵⁹ Corruption and Crime Commission, above n 15, 46 [234].

⁶⁰ Government of Western Australia Public Sector Commission, *Transcript – Tuesday 2 July 2013: Integrity Coordinating Group Forum* 26 <<http://icg.wa.gov.au/gifts-benefits-and-hospitality-guide-good-practice>>.

⁶¹ Integrity Commission, *Scenario: Gifts and benefits – A kind bequest turns sour* <http://www.integrity.tas.gov.au/_data/assets/pdf_file/0004/280507/A_Kind_Bequest_Turns_Sour_-_Gifts_and_Benefits_scenario.pdf>.

⁶² Government of Western Australia Public Sector Commission, above n 60, 28.

⁶³ For example, the Royal Children's Hospital in Melbourne has its own foundation, see their website at Royal Children's Hospital Foundation <<http://rchfoundation.org.au/>>. The foundation publishes information on how donated funds are spent, see Royal Children's Hospital Foundation, *How donated funds are invested and spent* <<http://rchfoundation.org.au/?page=About-Us-How-funds-are-spent>>.

Definitions

The guidelines should include definitions of all relevant terms,⁶⁴ for example ‘gift’, ‘benefit’, ‘nominal’ or ‘token’. In order to avoid confusion, definitions should be straightforward and simple.⁶⁵ If more than one of the agency’s guidelines defines, for example, a ‘gift’, the definition must be the same across all policies. The Northern Territory Department of Infrastructure’s (DOI) guidelines contain simple definitions which may be used as a model by Tasmanian agencies:

- a ‘gift’ is any item of value offered over and above your normal salary or employment entitlement;
- a ‘benefit’ is a non-tangible item of value offered over and above your normal salary or employment entitlement; and
- a ‘bribe’ is a gift or benefit offered to or solicited by a member of staff to influence a person to act in a particular way.⁶⁶

Another useful definition of gift, used by the West Australian Auditor-General, is:

*any item of value, including goods, services, money or hospitality offered to or received by an employee, without payment, as a consequence of their employment.*⁶⁷

Some gift guidelines may exclude certain gifts from their gift declaration requirements – for example, ‘token’ or ‘nominal’ gifts. It is critical that such terms are defined clearly and succinctly. According to the Audit Office of NSW, ‘[t]oken gifts or benefits are usually mass produced promotional items that are less than the reportable value of \$25’.⁶⁸ Another good indicator of a token gift is that it is not targeted at any one individual – it is offered as a matter of course during, for example, a meeting or training (‘normal work interactions’).⁶⁹

The guidelines should also:

- include examples of gifts and benefits⁷⁰ – for instance, benefits may include loyalty bonus points, discounts, preferential treatment,⁷¹ invitations to events, and job offers;⁷²
- make it clear that hospitality that goes above and beyond ‘common courtesy’ is to be considered a gift;⁷³ and
- exclude gifts ‘made by a personal friend or family member, in a purely personal capacity’.⁷⁴

⁶⁴ Corruption and Crime Commission, above n 15, 42 [214].

⁶⁵ Independent Commission Against Corruption New South Wales, *Corruption risks in NSW Government procurement: The management challenge* (2011) 33.

⁶⁶ Northern Territory Government Department of Infrastructure, above n 56, cl 3.

⁶⁷ Office of the Auditor General Western Australia, *Audit Results Report: Annual 2011-12 Assurance Audits* (Report No. 14, 2012) 43.

⁶⁸ Audit Office of New South Wales, *Gifts and Benefits: Policy* (2013) 6

<<http://www.audit.nsw.gov.au/About-Us/Accessing-Information/Open-Access-Information#Q3>>.

⁶⁹ Victorian Ombudsman, above n 17, 48.

⁷⁰ Victorian Ombudsman, *Own motion investigation into Greyhound Racing Victoria* (2012) 44.

⁷¹ Commissioner for Public Sector Employment, above n 34, 3–4.

⁷² State Government of Victoria Public Sector Commission, above n 4, 3.

⁷³ Commissioner for Public Sector Employment, above n 34, 3.

⁷⁴ Queensland Audit Office, *Auditor-General of Queensland Report No. 10 2002–03: Results of Audits Performed for 2001–02 as at 30 April 2003* (2003) 78.

4.1.2 Findings

All but one of the 14 guidelines were 'stand-alone' – although one was a merged conflict of interest and gifts and benefits guideline. However, overall, the Commission assessed that only one of the 14 guidelines provided an adequate and clear rationale. Employees reading the guidelines could not be expected to understand:

- the risk that gifts and benefits pose to the reputation of the State Service, the government, and its employees;
- why the acceptance of gifts and benefits leads to unacceptable conflicts of interest; and
- the risk posed by gifts to the employee's disciplinary record and employment situation, and the potential for criminal charges.

The inadequacy of the 14 guidelines, coupled with the gift records produced by the agencies, demonstrates that agencies lack an understanding of the importance of this issue. Twelve of the 14 guidelines provided no explanation of the relationship between conflicts of interest⁷⁵ and gifts – that is, there was no explanation of why the receipt of gifts and benefits leads to conflicts of interest. This may seem like an obvious connection that need not be spelt out in black and white; however, the declared gifts on the records produced by the agencies indicate that there is a need for this to be explained to all levels of the Tasmanian State Service. The two guidelines which did provide some explanation of the link could, in the opinion of the Commission, be improved upon, but they are a start. As an example, this was the extent of the explanation given in the (now former) DoJ guidelines:

It is important that no conflict exists, or appears to exist, between official duties and private interests of employees and officers of Department of Justice, Tasmania. ... Although guidelines allow for activities such as working meals, you should remember that your participation may lead to a perception or suspicion of undue influence, preferential treatment, or anti-competitive advantage.

The guidelines fared better in relation to providing a rationale, with only two of the 14 guidelines failing to provide any reason for their existence. However, the Commission assessed that none of the rationales provided an entirely adequate explanation (apart from the rationale provided in its own guideline). For instance, DPaC's guidelines state that their purpose is to 'explain what gifts are, provide for their recording, and explain what can be accepted'. The DEDTA guidelines state that their objective is to 'make the policy and procedures surrounding giving and receiving gifts accessible for all staff'. However, these two guidelines do not state that the acceptance of gifts and benefits may lead to inappropriate conflicts of interest, damage the public image of the agency and the government, and lead to disciplinary action, dismissal and even bribery charges. A better rationale was provided in the THO-S guidelines, which state that 'the inappropriate giving or receiving of gifts and benefits poses a significant risk to [THO-S] integrity and public trust'. The Commission's own guidelines – which it did assess as having an adequate rationale – state:

Maintaining the good reputation of the Integrity Commission is essential in order to promote community confidence in the Commission and in order for it to properly carry out its functions. The general public and public authorities must be secure in the knowledge that staff or Board members of the Commission are not influenced by gifts, benefits, hospitality or bribes. It is therefore essential that we try to avoid any real or perceived

⁷⁵ As reported in *Chapter 3: Mandatory State Service policies*, only one guideline adequately explains conflicts of interest, and three guidelines make no reference to conflicts of interest at all. Few of the guidelines make any reference to the agency's conflict of interest guidelines.

attempts to improperly influence us in the performance of our functions by accepting gifts, benefits, hospitality or bribes.

...

Creating a perception that we can be influenced by the giving of gifts, benefits or hospitality is just as damaging to our reputation as actually being influenced in this way. It is therefore important to have a clear policy to guide staff in relation to these situations.

...

This policy establishes a common understanding of appropriate conduct expected of all Board members and staff working at the Commission in relation to gifts, benefits and hospitality.

As noted in Chapter 3, only two of the 13 agencies (the TAO and the Commission) require that all gift offers – not just gifts accepted – be declared. However, TAO did not have any declined gifts on its register, which casts doubts upon whether employees are actually declaring all gift offers.

Table 6: Setting the scene: guideline basics

	Guidelines are:	Guidelines have:					Guidelines require:	% of elements met by agency guidelines
	Stand-alone	Explanation of relationship between COI and gifts	Rationale	Contact officer/area	Definitions section	Defined all relevant terms	All gift offers to be declared in writing	
DoE	✓	x	✓	✓	x	x	x	43%
DPaC	✓	x	✓	✓	✓	✓	x	71%
DoJ	✓	✓	✓	✓	✓	x	x	71%
DPEM	x	x	x	✓	x	x	x	14%
DHHS	✓	x	✓	✓	✓	✓	x	71%
DIER (DSG)	✓	x	✓	✓	✓	x	x	57%
DEDTA (DSG)	✓	x	✓	✓	✓	x	x	57%
DTF	✓	x	x	✓	x	x	x	29%
DPIPWE	✓*	x	✓	✓	x	x	x	43%
THO-S	✓	x	✓	✓	✓	✓	x	71%
THO-N	✓	✓	✓	x	x	x	x	43%
THO-NW	✓	x	✓	x	✓	✓	x	57%
TAO	✓	x	✓	✓	✓	x	✓	71%
Integrity Commission	✓	x	✓	x	✓	x	✓	57%
% of guidelines	93%	14%	86%	79%	64%	29%	14%	

* Although this agency has merged its conflict of interest and gifts and benefits guidelines into one document.

Case study 5: A free lunch

The gift records of DPIPWE include a declaration from an employee about a lunch paid for by representatives of a company. The lunch had followed 'a meeting regarding the sale and lease of Crown land' (presumably to the company). The employee states that they had been unaware, prior to accepting the invitation, that the company intended to pay for the lunch. In the section of the gift declaration form which requires the employee to consider conflicts of interest, the employee notes that there may be an:

Unlikely, but possible, claim that lunch served as an inducement to encourage me to favourably view [the company's] application to purchase the water space component of their leasehold.

The lunch was approved apparently without comment by the employee's managers.

In the Commission's view, discretionary decision makers (i.e. employees such as this team leader, who are considering applications) should not be having lunch with any client organisation (i.e. an organisation which they have previously, presently or will likely in future have to make a discretionary decision about). Moreover, these employees certainly should not be allowing such companies to pay for that lunch.

This gift declaration form evinces an unacceptable and actual conflict of interest between the employee's personal interest in accepting a free lunch and their work role, as a discretionary decision maker, and should not have been accepted by the employee, much less approved without comment by their managers. It is also concerning that the 'perceived' conflict of interest, which is even more apparent, was not identified by the employee or their manager.

Do Employment Direction No. 8 and Treasurer's Instructions No. 1101, No. 1201 comply with good practice?

ED8 does not explain why the acceptance of gifts may give rise to a potential, perceived or actual conflict of interest – nor does it provide a clear explanation of the risks posed by gifts and benefits.

Scope of the guidelines

Offered and accepted gifts

Clause 6.1(ii) of ED8 appears to suggest that the offer of any gift should be declared. However, this is not made clear in other sections of ED8 (for instance, clause 6.2.3, which explains that received gifts must be declared).

Although the two TIs appear to place higher standards on procurement officers, they do not offer any specific guidance in this regard. They do not state that all offers made to procurement officers should be recorded.

Bequests

Although the Commission understands the rationale behind the exclusion of gifts given by way of a will from the definition of 'gift' in ED8 (that it may be difficult to refuse a bequest), it does not agree that work-related bequests should not be declared to, and managed appropriately by, the agency. A number of the agency guidelines (justifiably, in the Commission's opinion) excluded this section of the ED8 gift definition from their own definition of 'gifts'.

Definitions

The definition of 'gift' given in ED8 is long and overly complicated. The 58-word sentence relies heavily on the legislative language of the SSA and is difficult to follow. It also contains two bracketed sections which should not be included in the 'definition' at all; moreover, there is no definition of 'benefit'. Instead, a benefit appears to be included as a type of gift, despite the fact that the policy is titled 'gifts **and** benefits'.

ED8 does deem 'gifts from personal friends and family members in a genuinely personal capacity and which do not give rise to or create the appearance of a conflict of interest' to be acceptable.⁷⁶

⁷⁶ Employment Direction No. 8 – Gifts and benefits cl 6.2.1(iii).

4.2 Processes and procedures: declining gifts

It is critical that the guidelines include sufficiently detailed instructions⁷⁷ about the procedures to follow on gifts – both from the perspective of the employee who is offered the gift, and from the perspective of their supervisor, who may have to decide whether the gift is acceptable or not.⁷⁸ But while guidelines do need to be comprehensive, they also need to be straightforward, and – as far as possible – they should not be open to misinterpretation.⁷⁹

4.2.1 Explanation

*Gifts and public officials do not mix. There are very few reasons for public officials, especially those working in procurement, to ever accept personal gifts from a supplier. Gifts create perceptions of a conflict of interest, and managers, colleagues and the public are right to question why they are offered and sometimes accepted.*⁸⁰

The starting point for any adequate public service gift policy should be that all gifts are to be declined. Some general guidance should be provided on how to decline gifts politely, as employees may worry that declining a gift causes offense.⁸¹ It is, however, easier to refuse the first offer than the tenth,⁸² and it is not usually impolite to decline.⁸³ If employees are clear about the guidelines and their applicability, this will empower them to decline gifts by stating that they are simply unable to accept the offer due to the guidelines;⁸⁴ this also prevents the decision being seen as a personal one.⁸⁵

Receipt of gifts by family members and during leave periods

The guidelines should be clear that any offers of gifts to family members of State Service employees (during the course of their employment) should be declined and reported.⁸⁶ Any such gifts are clearly gratuitous, lack any real connection to the workplace, and are designed purely to influence the employee. Offers of hospitality that extend to family members and/or friends are ‘high risk’⁸⁷ and should be refused.

The guidelines should also be stated to apply during periods of leave taken by employees, including extended leave.⁸⁸

⁷⁷ Corruption and Crime Commission, above n 15, 41 [211].

⁷⁸ Audit Office of New South Wales, above n 3, 3.

⁷⁹ Independent Commission Against Corruption New South Wales, above n 21, 116.

⁸⁰ Independent Commission Against Corruption New South Wales, above n 65, 32.

⁸¹ Government of Western Australia Public Sector Commission, above n 60, 8; The Integrity Coordinating Group, above n 18, 3.

⁸² Government of Western Australia Public Sector Commission, above n 60, 10.

⁸³ Crooke QC, above n 8, 7.

⁸⁴ Government of Western Australia Public Sector Commission, above n 60, 8, 13; Queensland Government Public Service Commission, above n 30, cl 7.1.

⁸⁵ Government of Western Australia Public Sector Commission, above n 60, 13; Queensland Government Public Service Commission, above n 30, cl 7.1.

⁸⁶ New South Wales Public Service Commission, above n 36, 39. For examples, see Northern Territory Government Department of Infrastructure, above n 56, cl 2; The Integrity Coordinating Group, above n 18, 1.

⁸⁷ New South Wales Public Service Commission, above n 36, 41.

⁸⁸ See, for example, Northern Territory Government Department of Infrastructure, above n 56, cl 2.

Gifts that should never be accepted

The offer of certain gifts should never be accepted by state servants. This includes illegal items such as drugs, access to new jobs or promotions, access to confidential information,⁸⁹ cash,⁹⁰ any monetary equivalents such as gift vouchers, gift cards, and items which are readily converted to cash (e.g. lottery tickets, 'scratchies', shares,⁹¹ credit cards, debit cards with credit on them, prepayments such as phone or internal credit, and some memberships).⁹² Accepting gifts such as these may constitute the criminal offence of bribery.

Reward points

Some agencies may consider allowing gifts derived from purchase incentive schemes that are offered to all customers as a matter of course – such as gift cards – to be accepted for use by the agency.⁹³ However, in allowing this practice the agency will need to be diligent in ensuring that:

- employees are not soliciting such gifts;
- employees are not accepting the gifts for personal use;
- employees are not over-ordering to receive more of the gifts;
- the gifts are genuinely useful to the agency; and
- the cost of the gifts is not being factored into charges invoiced to the agency.

As far as possible, agencies must ensure that their employees do not personally benefit from the expenditure of public funds. This includes prohibiting employees from personally accumulating reward points for official travel, including with airlines and hotels. This is a generally accepted principle across most Australian public services;⁹⁴ however, it does not yet seem to be an established practice in Tasmanian government agencies (see *Case study 12*).

⁸⁹ Police Integrity Commission, *Gifts and Benefits Policy and Procedure* (2012) 8 <<http://www.pic.nsw.gov.au/files/File/Gifts%20&%20Benefits%20Policy.pdf>>.

⁹⁰ Australian Government Department of Foreign Affairs and Trade, *Conduct and Ethics Manual: Chapter 6: Gifts, Benefits, Hospitality, Sponsored Travel and Sponsorship* <http://www.dfat.gov.au/publications/conduct-ethics/chapter_six.html>; Ombudsman SA, *Part 1- Ethical conduct* (Operational Policy, 2014) 3 <<http://www.ombudsman.sa.gov.au/about-us/our-operational-policies/>>; Commissioner for Public Sector Employment, above n 34, 4.

⁹¹ Queensland Government Public Service Commission, *Guideline: Gifts and Benefits* (2010) cl 6.2; Government of Western Australia Public Sector Commission, *Conduct guide* (2012) 20 <<http://www.publicsector.wa.gov.au/public-administration/official-conduct-and-integrity/conduct-guide>>; The Integrity Coordinating Group, above n 18, 1.

⁹² NSW Government Department of Premier and Cabinet, *Model Code of Conduct for Local Councils in NSW* (2013) 15.

⁹³ This is allowed by the Ombudsman NSW, see Ombudsman New South Wales, *Gifts and benefits* (2011) 4 <<https://www.ombo.nsw.gov.au/news-and-publications/publications/our-policies/policy-docs>>.

⁹⁴ For instance, in the Commonwealth Australian Public Service, use of frequent flyer points may amount to misconduct or lead to criminal charges, see Australian Public Service Commission, *Sect 4.10 Using Commonwealth resources* <<http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/aps-values-and-code-of-conduct-in-practice/using-commonwealth-resources>>.

Maximum limits

There is some opinion that agencies should set maximum limits, beyond which all gifts are automatically declined, offered to charity,⁹⁵ or surrendered to the state.⁹⁶ The Commission has drawn no conclusions on the potential value of this as a broad policy to be applied in all agencies, although it is something that some agencies may wish to consider.

⁹⁵ For instance, the NSW Auditor-General recommends a maximum limit of around \$100, see Audit Office of New South Wales, above n 3, 'Foreword' – this maximum limit is applied in the NSW Auditor-General's internal gifts policy, see Audit Office of New South Wales, above n 68, 5; the Victorian Ombudsman recommends that anything other than a token gift be refused, see Victorian Ombudsman, above n 17, 47.

⁹⁶ For example, see Ombudsman Victoria, *Ombudsman investigation into the probity of The Hotel Windsor redevelopment* (2011) 65.

4.2.2 Findings

The Commission was disappointed by the lack of clear, simple and adequate guidance provided in the 14 guidelines, although it does acknowledge that to some extent this is due to the deficiencies of ED8. In a number of cases, the guidelines lacked detail, were confusing, or simply made no sense. The nature and extent of gifts that have been accepted by State Service employees further supports the assertion that the guidance provided in the TIs and ED8 is unclear and inadequate.

Only one of the guidelines proceeds on the assumption that no gifts are acceptable. The guidelines and practices of a number of the agencies suggested to the Commission that the presumption is that all gifts are acceptable – as long as they are declared. Moreover, the records of the single agency that proceed on the assumption that all gifts are unacceptable did not adhere to the agency's own guidelines. Not only were all the gifts on the agency's register accepted, many of the gifts were also inappropriate – thereby demonstrating that the presumption that all gifts should be declined is being ignored by the agency and its employees.

A number of the guidelines included a statement such as the following:

[Agency X] promotes a culture which encourages the view that if there is uncertainty or confusion regarding the appropriateness of giving or receiving a gift or benefit to take the 'if in doubt, declare' approach.

The Commission is of the view that this statement does not go far enough – the approach should be: 'if in doubt, **decline** and declare'.⁹⁷ This is particularly true of those agencies in which the apparent value of declaring an unethical gift was undermined by the practice of allowing all declared gifts to be accepted.

Receipt of gifts by family members and during leave periods

The majority of guidelines made no mention of gifts offered to the family members of employees, or gifts offered during periods of leave. Agency records included several gifts that were offered to both the employee and their partner – for instance, a dinner for two (from a fleet management company) at Me Wah restaurant in Hobart for an asset management services officer. This offer was subsequently declined by the employee, after learning that no other state servant had accepted the invitation. One employee won a gift of a 12 month RACT Ultimate Roadside Assistance Package – as a lucky door prize while attending the football as the guest of a company with which the agency does business. He declared that they intended to pass the gift on to their 18-year-old son. This gift was approved by the head of the agency.

There were no gifts that appeared to have been accepted during periods of leave, although there were several declarations that stated the employee intended to take up gifts of golf days and the like, in their own time.

⁹⁷ New South Wales Public Service Commission, above n 36, 39.

Gifts that should never be accepted

Half of the guidelines prohibited employees from receiving gifts of cash, and only one prohibited in any way the receipt of cash-like gifts. This guideline stated that gifts that must be declined included those 'involving the transfer of money or anything readily convertible to money, regardless of value'. There was no evidence on the register of this agency of employees receiving cash or cash-like gifts.

Several of the guidelines only mentioned 'cash' within the definition of gift, and two guidelines appeared to allow gifts of cash:

- DPEM: 'Members shall not solicit, accept or receive money or any gratuity or reward from any person without the express permission of the Commissioner. '
- DPIPWE: 'Gifts you must disclose include, but are not limited to: A gift of money'

As an example of good practice, during its investigation the Commission found at least one sub-agency, which regularly purchases items from external suppliers, that now no longer allows any gifts or benefits to be accepted by its employees. According to one of the persons interviewed by the Commission, all gifts and benefits were banned in 2013 by the sub-agency's then new director.

Case study 6: Cash and cash-like gifts – donations or bribes?

The gift records produced by THO-N included cash gifts – including one gift of \$1,000 – given to individual employees by clients. It appeared that these gifts may have been donations made to the hospital by grateful members of the public. The Commission contacted THO-N to confirm whether this was the case. In reply, the agency stated: 'We would assume that they would have been donations ... however with the previous practice we could not confirm this.' In other words, there were no records available about the circumstances of these gifts.

Needless to say, this highlights some serious deficiencies in both the agency's past practice and its record keeping. The Commission has recommended to this agency that it establish separate guidelines for the handling of philanthropic donations, and prohibit employees from personally accepting cash gifts in future. State service employees should certainly never be given financial 'tips' for doing their job, regardless of the virtue of their role.

Table 7: Processes and procedures: declining gifts

	Guidelines:					Register has:		% of elements met by agency guidelines and registers
	Proceed on premise no gifts are acceptable	Instruct on/prohibit family members accepting gifts	Instruct on/prohibit gifts during leave	Prohibit receipt of cash	Prohibit cash-like gifts	No evidence of cash gifts	No evidence of cash-like gifts	
DoE	x	x	x	✓	x	✓	✓	43%
DPaC	x	✓	x*	✓	✓	✓	✓	71%
DoJ	x	x	x	✓	x	✓	✓	43%
DPEM	x	x	x	x	x	✓	✓	29%
DHHS	x	x	x	x	x	✓	x	14%
DIER (DSG)	x	x	x	x	x	✓	x	14%
DEDTA (DSG)	x	x	x	✓	x	✓	x	29%
DTF	x	x	x	✓	x	✓	x	29%
DPIPWE	x	x	x	x	x	✓	✓	29%
THO-S	x	x	x	x**	x	n/a^	n/a^	0% (of 5 elements)
THO-N	x	x	x	✓	x	x	x	14%
THO-NW	x	x	x	x	x	✓	x	14%
TAO	✓	x	x	x	x	✓	x	29%
Integrity Commission	x	✓	x	✓	x	✓	x	43%
% of guidelines/registers	7%	14%	0%	50%	7%	92% (of 13 registers)	46% (of 13 registers)	

* This agency does not, however, allow sponsored travel during the employee's 'own time'.

** This agency does, however, appear to prohibit monetary 'token' gifts.

^ This agency had no records of any gifts that fell within the three-year audit period.

Do Employment Direction No. 8 and Treasurer's Instructions No. 1101, No. 1201 comply with good practice?

In general, guidance given in ED8 is, in the opinion of the Commission, unclear. For example, there is no clear statement that, in principle, State Service employees should refuse all offers of gifts. It is the Commission's observation that the simplest and clearest policies commence with a broad statement of this nature, and then give a concise, well-explained list of limited exceptions.

The Commission considers that ED8's guidance on which gifts should be declined is open to misinterpretation. ED8 appears to prohibit the acceptance of gifts which may be intended to influence agency decisions⁹⁸ and/or which may create a perceived or actual conflict of interest.⁹⁹ This information is scattered throughout several areas of ED8. It fails to further elaborate on these terms. This creates a risk for the State Service, in that any employee found to be inappropriately receiving gifts could simply claim that they did not believe the gifts were intended to influence agency decisions. Moreover, even if a gift is given innocently without any intent to influence, it may still be a source of influence, or create a perception of influence.

Similarly, the Commission considers the advice in the two TIs – that government buyers should decline gifts 'which may influence, or might be deemed to influence, equity, or impartiality' – to be overly broad and open to misinterpretation. The conflict between what is said on the government website and what is stated in the actual TIs is also a problem, and leaves the acceptance of gifts in the procurement context open to misinterpretation. The interviews conducted by the Commission and the totality of the evidence it considered indicates that government buyers (and their managers) are not properly applying the test of whether a gift may influence or might be deemed to influence them. It would be preferable if government buyers were prohibited from accepting any gifts from suppliers.

Receipt of gifts by family members and during leave periods

ED8 includes gifts to employees' 'immediate families (i.e. spouses, partners and dependent children)' within the meaning of the word 'gift'. There is, however, no specific prohibition on the acceptance of such gifts. Apart from in reference to sponsored travel, ED8 makes no mention of gifts received during leave periods.

Gifts that should never be accepted

In cl 6.2.1(iii), ED8 prohibits the receipt of illegal property. However, there is no prohibition on accepting cash, nor is there any reference to the potential for the receipt of cash to constitute bribery. The only place in ED8 in which money and cash-like gifts are mentioned is in the description of the word 'gift'.

⁹⁸ Employment Direction No. 8 Gifts and benefits cl 6.2.1(iii).

⁹⁹ Ibid cls 6, 6.2.1(iii), 6.2.4(ii).

4.3 Processes and procedures: accepting gifts

4.3.1 Explanation

It is entirely appropriate for guidelines to state that any accepted gifts automatically become the property of the agency, until and unless decided otherwise:¹⁰⁰

*Any gift acquired by a public official in the light of performance of his or her office is never the property of the public official, but is always the property of the department or the State. In turn, such department or government is obliged to deal with the property in the public interest and not for the benefit of an individual.*¹⁰¹

Acceptance of 'non-reportable' gifts

Setting a monetary threshold

Many public service agencies in Australia set a minimum value threshold; if a gift falls under this threshold, the employee may accept it without reporting it to the agency (and it does not have to be of demonstrable value to the agency, state or the general public). All gifts above the threshold will, in turn, be 'reportable'. The definition of a reportable gift may vary between agencies. In general, it should include gifts that are more than token/above a monetary threshold *and* token gifts/gifts under the threshold that are for some reason suspect e.g. they are cumulative, were offered to the family of a State Service employee, were offered during a procurement process, were offered in secret, and so on.

The rationale behind allowing certain gifts to be non-reportable is to avoid employees having to declare things such as the receipt of mass-produced promotional material (e.g. pens, notepads) given away at conference and training, and the receipt of basic hospitality (e.g. tea, coffee, sandwiches) received during a genuine business meeting or training course. If this is the genuine aim of the policy, the threshold value should be set at an appropriately low level; in the opinion of the Commission, this would be around \$20.¹⁰²

The relationship between the offeror and the receiver

Recent good practice literature warns against using a monetary value to define 'reportable' gifts.¹⁰³ This relatively new approach to gift policies, rather than focusing on the value of the gift, focuses on the relationship between the offeror and the receiver.¹⁰⁴ In the words of the West Australian Corruption and Crime Commission (CCC) (emphasis added):

*In terms of the risk of misconduct occurring, the monetary value of an offered gift is a relevant, but not necessarily determinative factor. The **overriding, critical factor is the***

¹⁰⁰ Corruption and Crime Commission, above n 15, 48 [248]; Northern Territory Government Department of Infrastructure, above n 56, cl 5.5; Queensland Government Public Service Commission, above n 30, cl 7.1; The Integrity Coordinating Group, above n 18, 2.

¹⁰¹ Crooke QC, above n 8, 5.

¹⁰² This is supported by a report from the Victorian Ombudsman, see Victorian Ombudsman, *Corrupt conduct by public officers in procurement* (2011) 42 [242].

¹⁰³ Office of Police Integrity Victoria, *Offers of gifts and benefits to Victoria Police employees* (2009) 14–5.

¹⁰⁴ Australian Public Sector Commission, above n 17; State Government of Victoria Public Sector Commission, above n 4, 12; Australian National Audit Office, 'Managing Conflicts of Interest', *AuditFocus* (Canberra), March 2006, 4 <<http://www.anao.gov.au/Publications/AUDITFocus>>.

*relationship between the gift-offeror/gift-giver and gift-recipient, particularly in the context of purchasing and procurement.*¹⁰⁵

Focusing on the value of the gift, rather than the relationship between the giver and the receiver, is 'seriously flawed';¹⁰⁶ it may hide the real issue and it is not always the best way to determine if there is a conflict.¹⁰⁷ As stated by the then Queensland Integrity Commissioner, Gary Crooke QC, 'whether it is appropriate for a public official to accept a gift can never universally be answered by mere reference to categories of values'.¹⁰⁸ Setting a threshold value can also encourage employees to undervalue gifts.¹⁰⁹

Another factor in considering whether to allow the acceptance of certain low value gifts is the business practices of some companies. Investigations undertaken in other jurisdictions have revealed that some companies begin 'grooming' State Service employees with smaller gifts. For example, this statement comes from a report published by the New South Wales ICAC:

*A supplier told the Commission that sales representatives were trained to offer small novelty items; the rationale being that people feel psychologically indebted to the sales representative when they accept items and are more likely to buy products.*¹¹⁰

As noted by the NSW Public Service Commission, 'Even gifts and benefits of modest value can be used to cultivate, over time, a relationship where a government employee feels an obligation or loyalty to the giver.'¹¹¹ This risk is particularly relevant in considering what might otherwise be thought to be inconsequential gifts such as regular coffees (see *Case study 4* and *Case study 7*).

In many cases, it may be impossible to know (even for the employee themselves) the true extent of influence, if any, an accepted gift would have.¹¹² Investigations in other jurisdictions have found that:

*[T]he provision of gifts ensured that the employees were not as motivated to look at the relative value and quality of the products of other suppliers, as they would be more inclined to deal with the companies that provided the gifts and benefits.*¹¹³

In some cases, employees receiving gifts have apparently failed to notice a significant price increase (up to double the initial price or more) in a product over a relatively short period of time (sometimes a matter of months).¹¹⁴ Even if the value of the gifts is initially low and apparently 'inconsequential', in certain cases, over time, the value of the gift increases with the value of the order:

¹⁰⁵ Corruption and Crime Commission, above n 15, xviii [17].

¹⁰⁶ Ibid 48 [246].

¹⁰⁷ Government of Western Australia Public Sector Commission, above n 60, 16.

¹⁰⁸ Crooke QC, above n 8, 7.

¹⁰⁹ The Integrity Coordinating Group, above n 18, 2; Queensland Audit Office, above n 10, 141. In Independent Commission Against Corruption New South Wales, above n 53, a council employee mistakenly valued an \$800 necklace at \$40, thus felt no pressing need to report it. If the council's policy had required anything other than token gifts be reported, the employee may have felt a greater urgency to report the item's receipt.

¹¹⁰ Independent Commission Against Corruption New South Wales, above n 65, 4.

¹¹¹ New South Wales Public Service Commission, above n 36, 37.

¹¹² Office of Police Integrity Victoria, *Managing conflict of interest in Victoria Police* (2010) 29; Victorian Ombudsman, above n 17, 45.

¹¹³ Independent Commission Against Corruption New South Wales, above n 21, 15.

¹¹⁴ For example, one employee in a West Australian investigation did not notice an increase from \$164 to \$399 in the price of the toner cartridges supplied by a company who gave that employee gifts, see Corruption and Crime Commission, above n 15, 24 [133]; this was a common theme in the investigations carried out into the same toner company in both Western Australia (see Corruption and Crime Commission, above n 15) and Victoria (see Victorian Ombudsman, above n 102).

*Once the value increased, sales people suggested it be sent to the official's house ... Concealing the receipt of gifts in this way inculcated a greater feeling of gratitude in the recipients, and also a fear of being found out.*¹¹⁵

Practices such as this are 'insidious because it proceeds on the pretense of friendship and is cloaked with false values that are used to seduce buyers'.¹¹⁶ This is supported by findings from Victoria:

*[O]nce a public officer accepts a gift, and fails to declare it, there is potential for that public officer to engage in a pattern of corrupt behaviour, placing them in a position that makes it difficult for them to discontinue purchasing or to decline gifts ...*¹¹⁷

Thus, setting a threshold monetary value will not of itself necessarily be effective in preventing acceptance of inappropriate gifts.

Allowing token gifts, but exercising judgment in all cases

The only sure way of avoiding a conflict of interest is to refuse a gift.¹¹⁸ Except in particular contexts (e.g. procurement), banning all gifts may not, however, be the most effective and beneficial policy – 'the key message is really about exercising judgement'.¹¹⁹ Even inexpensive 'token' gifts may give the impression of bias – for instance, a licensing officer displaying cheap promotional material from a particular licensee may give the impression of bias to colleagues and clients.¹²⁰

Thus, the best policy would have a default position of refusing any gifts above a token level, allow 'token' gifts (with a thorough and clear definition of 'token'), but also alert employees to the importance of considering their relationship with the giver, even when accepting token gifts.¹²¹ A policy such as this would also have to provide a clear explanation of the dangers of gifts.

Acceptance of 'reportable' gifts

Who should be the decision maker?

It is common for the intended recipient of a gift or benefit to have 'difficulty appreciating that if they're not actually influenced there may still be an issue',¹²² and that perceptions of influence can cause as much damage as actual influence:

*A perception that the process is corrupt is conducive to actual corruption, as suppliers may believe that the only way to get work is to offer a gift or benefit to a public official.*¹²³

Moreover, the recipient 'may feel a sense of social obligation to reciprocate a gift or may make unwarranted judgments about a supplier's benevolence, and such influences may be unconscious'.¹²⁴

¹¹⁵ Independent Commission Against Corruption New South Wales, above n 21, 15.

¹¹⁶ Ibid.

¹¹⁷ Victorian Ombudsman, above n 102, 5 [17].

¹¹⁸ Office of Police Integrity Victoria, above n 112, 29.

¹¹⁹ Government of Western Australia Public Sector Commission, above n 60, 20; Audit Office of New South Wales, above n 3, 16; State Government of Victoria Public Sector Commission, above n 4, 10.

¹²⁰ The Integrity Coordinating Group, *Gifts, benefits and hospitality – A guide to good practice – 1. Risk and reputation 2* <<http://icg.wa.gov.au/gifts-benefits-and-hospitality-guide-good-practice>>.

¹²¹ Ombudsman New South Wales, above n 93, 3.

¹²² Government of Western Australia Public Sector Commission, above n 60, 16.

¹²³ Independent Commission Against Corruption New South Wales, above n 65, 28.

¹²⁴ Independent Commission Against Corruption New South Wales, above n 6, 9.

Where an employee is considering accepting a reportable gift, they are therefore not the best person to make the decision;¹²⁵ someone in an independent¹²⁶ supervisory role needs to make decisions on what gifts may be accepted.¹²⁷ In the case of a head of agency, the decision to accept a gift should be discussed with and declared to a body/person vested with oversight responsibility, such as a board or the relevant minister.

Guidance on making the decision

The guidelines should include some guidance for managers, supervisors and employees to use in deciding whether it is appropriate to accept a gift, be it reportable or otherwise. In the words of Gary Crooke QC:

*The test as to whether an unacceptable conflict of interest exists is the view of a reasonable member of the public, properly informed. This is an objective test and means that self-righteousness in the mind of the person having the potential conflict is not to the point. Perception is reality.*¹²⁸

This means that the employee's confidence in their own integrity and their own opinion that their decisions are beyond reproach are irrelevant. If an agency is considering allowing the receipt of a non-token gift, pursuit of the public interest must be the 'dominant and manifest purpose' of that acceptance.¹²⁹ The gift must therefore satisfy the 'public interest' test – i.e. it must be established that:

- there is 'a direct link to an official purpose';¹³⁰ and
- the gift is of demonstrable benefit to the agency/state/government/public.¹³¹

The intent of the offer should always be considered,¹³² as well as what an impartial observer would think¹³³ – the decision maker should consider how it would look if the gifts acceptance was reported in the local newspaper. Factors that would influence the perception of an impartial observer include the scale/lavishness/expense/cost/value of the gift, the frequency of gifts, the degree of openness around the gift,¹³⁴ and the relationship between the giver and the receiver.¹³⁵ The kinds of gifts which pose the greatest risk to the reputation of the agency and the employee include when the gift:

- is offered or accepted in secret or occurs regularly;
- is from a person or organisation about which decisions are, or will be, made;
- is more than a token;
- has no link to the business of the authority or government; and/or

¹²⁵ Government of Western Australia Public Sector Commission, above n 60, 31; Crooke QC, above n 8, 4.

¹²⁶ For instance, the decision maker should not also have received an offer of a/the same gift from the same source.

¹²⁷ Office of the Auditor General Western Australia, above n 67, 45; The Integrity Coordinating Group, *Gifts, benefits and hospitality – A guide to good practice* – 5. Review 2 <<http://icg.wa.gov.au/gifts-benefits-and-hospitality-guide-good-practice>>.

¹²⁸ Crooke QC, above n 8, 4.

¹²⁹ Victorian Ombudsman, *Investigation into allegations of improper conduct involving Victoria Police* (2012) 35 [159].

¹³⁰ Queensland Audit Office, above n 10, 134.

¹³¹ Corruption and Crime Commission, above n 15, 50 [260]; Queensland Government Public Service Commission, above n 30, cl 7.2.1.

¹³² Audit Office of New South Wales, above n 68, 4; Police Integrity Commission, above n 89, 7.

¹³³ Ombudsman New South Wales, above n 93, 1; Police Integrity Commission, above n 89, 7.

¹³⁴ Ombudsman New South Wales, above n 93, 1.

¹³⁵ Police Integrity Commission, above n 89, 7.

- is cash or something easily converted to cash.¹³⁶

In Victoria, in deciding whether it is appropriate to accept a gift, employees are urged to consider the 'GIFT' test:

- giver – who is providing the gift, benefit or hospitality and what is their relationship to me?
- influence – are they seeking to influence decisions or actions?
- favour – are they seeking a favour in return for the gift, benefit or hospitality?
- trust – would accepting the gift, benefit or hospitality diminish public trust?¹³⁷

Flowcharts can also be helpful in the decision-making process, and the Integrity Commission's flowchart to assist in making decisions on gifts is included at page 142 of this report.¹³⁸

Responsibilities of heads of agencies, managers, and supervisors

Tone is set at the top, and it is the responsibility of all employees in a management role to set a good example for other employees.¹³⁹ If the secretary of an agency does not reject inappropriate gift offers, it can hardly be expected that the procurement officer will reject them:¹⁴⁰

*Nothing destroys morale more than management and leadership asking their staff to do one thing and then not doing it themselves.*¹⁴¹

Moreover, 'lax management facilitates unethical and corrupt conduct'.¹⁴² Those in management roles also need to ensure consistency in decision making, as it 'is hard to work within ... framework if you don't understand the rules'.¹⁴³

Disposal of accepted gifts

Where a gift is accepted (e.g. where refusal would cause genuine offence, for instance a gift from the visiting delegation of a foreign government), the guidelines should provide options for its disposal, potentially including donating it to charity and display within the agency.¹⁴⁴ It is vital that records indicate how gifts were allocated/disposed of – there needs to be an auditable trail of this process.¹⁴⁵

¹³⁶ The Integrity Coordinating Group, above n 120, 2.

¹³⁷ This test is printed in postcard form so that employees can easily display it and refer to it as necessary, see State Government of Victoria Public Sector Commission, *take the GIFT test* (2012) <<http://vpssc.vic.gov.au/products/a-z/view-products/gifts-benefits-and-hospitality-policy-framework.html>>. To view the postcard, see *Appendix 5: Victoria's 'take the GIFT test'*.

¹³⁸ Other helpful flowcharts are also available, see, for example, Ombudsman New South Wales, above n 93, 6; Audit Office of New South Wales, above n 68, 7.

¹³⁹ Crooke QC, above n 8, 4; The Integrity Coordinating Group, *Gifts, benefits and hospitality – A guide to good practice – 3. Raise awareness 2* <<http://icg.wa.gov.au/gifts-benefits-and-hospitality-guide-good-practice>>.

¹⁴⁰ Government of Western Australia Public Sector Commission, above n 60, 10.

¹⁴¹ Ibid.

¹⁴² Victorian Ombudsman, *Conflict of interest in the Victorian public sector – ongoing concerns* (2014) 3.

¹⁴³ St James Ethics Centre, *St James Ethics Centre Report: NSW Public Sector Ethics Stocktake* (Paper prepared for the NSW Public Service Commission, 2012) 30.

¹⁴⁴ Corruption and Crime Commission, above n 15, 48 [248].

¹⁴⁵ Victorian Ombudsman, above n 129, 41 [200].

Solicitation of gifts

Guidelines should be clear that under no circumstances is it appropriate for State Service employees to solicit gifts of any kind.¹⁴⁶ Any State Service employee who is aware of another employee soliciting gifts should report it immediately.¹⁴⁷

¹⁴⁶ Commissioner for Public Sector Employment, above n 34, 4; The Integrity Coordinating Group, above n 18, 1; Audit Office of New South Wales, above n 68, 3.

¹⁴⁷ Police Integrity Commission, above n 89, 7.

4.3.2 Findings

As might be expected from ED8's lack of focus on relationships, none of the guidelines emphasised or highlighted as important the relationship between the giver and the receiver. As an example, instead of focusing on relationships, DPaC's guidelines state (in accordance with ED8) that:

The key issue is whether the gift, benefit or hospitality is aimed at inappropriately influencing the employee in the exercise of some specific or general duty or influencing the decisions of the Department or Government.

This statement is not accurate – the key issue is not whether the gift was actually intended to influence, but whether it could be *perceived* as influencing or being intended to influence, and whether acceptance of the gift would be of public benefit.

Acceptance of 'non-reportable' gifts

Six of the 14 guidelines had no threshold for reportable gifts; these guidelines appeared to require that all gifts be declared.

Several of the agencies that did allow non-reportable gifts had acceptable definitions for gifts that fell under their reportable threshold. For example, this is from the DHHS guidelines:

'Items of a token nature' refers to items which hold minimal value, pose no conflict of interest risk and are consistent with community expectations to be received by a DHHS worker in the course of their employment with the TSS [Tasmanian State Service] or engagement with DHHS. Items of a token nature commonly include mementos, remembrances and marks of courtesy, such as flowers, chocolates and promotional items. ... Items of a token nature may be accepted without declaration following thorough consideration to ensure the acceptance does not create a conflict of interest and is consistent with community expectations to be received by a DHHS worker in the course of their employment with the TSS or engagement with the DHHS.

The second part of the above paragraph, in particular, meets good practice standards, but unfortunately was not emphasised enough in the agency's guidelines.

Conversely, DPaC's 'non-reportable' gifts are poorly defined. DPaC defines a reportable gift as any gift valued at over \$50. However, its guidelines also state that 'personal items' are non-reportable. Personal items are defined as 'an item which is intended for the personal use or consumption of the recipient (e.g. a bottle of wine, hamper of food, etc)'. A scenario included in the guidelines states that an employee may accept a bottle of wine given as thanks for a presentation 'as it was clearly intended for her personal use'. The definition of 'personal item' is broad and could easily conflict with the agency's non-reportable gift threshold of \$50. In the Commission's view, there is no valid reason why an item intended for personal use should be excluded from reporting requirements, or why this would justify acceptance of the gift. It is noted that this part of the guidelines appears to come from the Commission's model guidelines for government ministers. The inappropriateness of these for public servants has already been addressed.

Acceptance of 'reportable' gifts

Only one of the guidelines state that accepted reportable gifts automatically become the property of the agency. In many of the guidelines, even the existence of an 'approval' process had to be inferred – it was not directly obvious that retention of gifts must be approved by a supervisor or manager. The vast majority of declared gifts appeared to have been 'rubber stamped' by the employee's manager, with little thought given to whether they should have been approved.

None of the 14 guidelines provide adequate and clear guidance on how to decide if a gift is acceptable. The guidelines of DTF and THO-N, for example, state that certain gifts must be surrendered, but give no guidance about to which gifts this applies. Most of the guidelines did, however, offer some guidance – albeit usually indirectly. As an example, this is the guidance provided by THO-S:

Gifts or benefits must not be accepted:

- *which influence, have the potential to influence, or could be perceived to influence the ability of THOS to perform its functions in a fair, transparent, ethical, professional and impartial manner*
- *which create a conflict of interest*
- *which are illegal or inconsistent with community expectations to be received by a worker.*

This is a good test in comparison to that in most of the other guidelines, but it still falls far short of the standard and clarity of the 'public interest' test. Four of the guidelines do mention some form of the public interest test – this is specifically in relation to either government buyers or sponsored travel. Few of the declared gifts on agency records appeared to meet the public interest test. Other causes for concern included (but were not necessarily limited to):

- undervaluing gifts – for instance, in a gift declaration that fell outside the audit scope (2004), two crayfish were valued at \$35; and
- regular acceptance of gifts by certain employees – usually government buyers.

A number of the guidelines stated that gifts may be accepted if refusal would offend the 'cultural norms of the donor'. Agencies should be wary of using culture as an excuse to accept gifts. All reportable gifts – regardless of the identity of the 'donor' – should be declared, recorded and assessed. In the case of formal gifts from visiting government delegations – where refusal would genuinely cause offence – these should, of course, be accepted. However, they must still be declared, recorded and managed appropriately. In any case, such gifts should not usually be retained personally by an employee, but instead be retained by the department (e.g. for display), or perhaps donated to charity. Conversely, a personal gift given to an employee, for example, by a representative of an overseas company seeking to do business in the state should clearly not automatically be accepted due to fears of offending the 'cultural norms of the donor'.

Application to the head of the agency

Most of the guidelines do apply to 'officers' which, as stated in SSA s 3, is 'a person appointed as a Head of Agency'. However, this requires knowledge of the SSA definition of the word 'officer', and is thus rather ambiguous. It would be preferable if the guidelines explicitly stated that they applied to the head of the agency. Employees should be made aware that everyone in the agency is obligated to comply with the guidelines.

Case study 7: Patterns of acceptance

A national company with a Tasmanian office was identified from agency records as offering gifts across many State Service agencies. The company has a three-year contract to provide services across the State Government. The government has an option to extend the contract for two additional three-year periods subject to satisfactory performance by the company. The government contract is managed by one government agency, Agency H. However, as a range of government departments make use of the company's services, the company has contacts in a number of government agencies. The Commission issued the company a notice to produce gift records that accorded with the audit scope of 1 July 2011 to 30 June 2014.

Agency and company records indicate that employees in at least nine of the 12 government agencies received gifts and benefits from the company over the three year period. The records produced by the company indicate that it had given approximately 380 gifts to these employees, ranging from cups of coffee, to movie nights, golf days, and meals. Roughly a third of those gifts were provided to employees of Agency H (i.e. the agency managing the government contract). Two state servants and one company representative were interviewed in relation to these gifts.

When questioned at interview, the company representative (Company Rep F) said (emphasis added):

*Now the purposes of our hospitality is really just a relationship building exercise with those, primarily with the agency ... managers, just so we can get on a more comfortable basis and **we can be more of a trusted adviser rather than just a contractor.***

Company Rep F pointed out that it was not their responsibility to ensure that State Government employees adhere to their gifts policy – it is the responsibility of the employees themselves:

... we do rely on those people to ensure that they're adhering to their own policy and it's pretty much on their heads as far as I'm concerned ...

Company Rep F did say that if state servants refuse gifts, it is a 'good expense management policy' for the company. Yet they also said it was 'fundamentally flawed to think that any of these sorts of things [gifts and benefits] will in any way influence the duration or the renewal of a contract'. Of non-government clients, Company Rep F said, 'if you have a very strong relationship with your contact at that particular company and if you do provide these sorts of things that it probably does build loyalty'. They argued that this was not true for government clients. For government employees, however, perception is as important as reality.

The coffee shop office

The greatest benefactor of the company was a contract manager (Employee E) from Agency H, who received a total of 34 gifts from the company. As stated above, Agency H manages the state-wide contract. The 'primary responsibilities' of the branch in which Employee E is a senior manager include (emphasis added):

*... administer and manage strategic government contracts; and promote value for money, open and effective competition, **compliance with ethical standards** and enhance opportunities for local business in the Government's procurement activities.*¹⁴⁸

¹⁴⁸ Tasmanian Government, *Government Directory Service: Official Directory of the Tasmanian Government* <<http://directory.tas.gov.au/cgi/access.pl>>.

Nineteen of the gifts given to Employee E were minor – they were cups of coffee provided during a monthly meeting with Company Rep F (and usually with other employees of Agency H). Some of these meetings were in an office environment, a number were in coffee shops. Although these gifts were minor, they do beg the question:

- why were Agency H employees meeting so regularly with Company Rep F; and
- why were the meetings held outside of the office – if nothing else, this would have been a drain on staff time.

The Commission also queried whether a café would provide a sufficient level of confidentiality for genuine business meetings. The explanation given by Employee E as to why these meeting were held outside of the office was not convincing:

A: Well really the purpose is to touch base outside of the work environment. [The company] – well actually as you can see, are very keen to host meetings outside of the office, sort of catch-ups, one to one type catch-ups, and yeah, obviously over the duration of the contract there's been a few, but yeah, I mean the point is that to me it's to talk about topical issues outside of the meeting room.

Q: Okay. So why would they be outside of work and not in work, I suppose would be a question I'd ask?

A: Yeah, a different environment to go and actually have a coffee rather than host the meeting at work, yep.

...

Q: If you're in a relationship or an ongoing contract with [the company] why would you feel that you need to meet so regularly with this organisation, I suppose what – I'm just trying to find what would be the purpose of such regular coffee meetings?

A: Yeah. Look, well they're often at the invite of [the company], so if – you know, the contractor would come down and say, "Let's go and have a coffee", like, "Let's talk about this off-site", we'd oblige, yeah, so it's just a change of environment. We do meet a lot with [the company] and we do spend a lot of time at each other's office as well, so yeah, it breaks up that.

The acceptance of cups of coffee by state servants may, on the face of it, appear to be a minor or irrelevant issue. In the Tasmanian State Service, it appears that many view this practice as 'just a way of doing business'. However, the records collected by the Commission as part of this investigation indicate that there is a pattern of regular acceptance of free coffees by certain employees (usually government buyers) from certain private companies (usually government suppliers in some context).

The risk of familiarity that arises from regular interactions in a non-work environment is clearly not well understood, similarly the risk of a supplier using otherwise minor gifts over a period of time to cultivate a positive relationship (as discussed at page 63). Neither has there been any convincing explanation as to why work matters are more productively discussed in a non-work environment. As well as these issues, these kinds of practices can contribute to jealousies among staff (see *Case study 4*) and potentially escalate into accepting more valuable gifts and benefits.

Employee E was asked if the company always paid for the coffee at these meetings and they replied:

A: Not now, but yeah, up until whenever. If they had asked us to come out for one generally [the company] would pay, yep.

Q: When you say not now, what do you mean by not now, [the company] don't pay for coffees now, don't pay for meetings now?

A: Oh well we don't go out for coffee now, we have our meetings in-house... Yeah, and that was ...

Q: And since when?

A: It's since the – you know, the requirement to sign forms and not to accept anything has been introduced.

Q: Okay, so the world has changed in terms of going out and accepting coffee as of that verbal instruction twelve months ago?

A: Yes.

Employee E stated that around 12 months ago, their branch had received a verbal instruction from their then director not to accept any gifts or hospitality. Their understanding was that this had been implemented across Agency H. At the time of the interview with the Commission, the ban was still in force. Company Rep F also told the Commission that nearly all gift offers to state servants in about the last twelve month had been declined. Employee E was not told why the policy had changed. As an explanation, it may be relevant to note that the Commission wrote to that head of that agency (and others) 10 months earlier about an investigation it had conducted into Christmas gifts that had been offered to its staff.

Although the Commission does approve of this apparent ban in Agency H, the purely verbal nature of the instruction creates a risk that, over time, it will be forgotten. There seems to be no reason why such an instruction could not be reduced to writing.

A night at the movies

The company has a schedule of other 'events' that it holds every year – not just in Tasmania, but around Australia. Aside from coffee, the 'gifts' received by Employee E included several golf days, movie nights, and tickets to AFL matches. The company representative, Mr F, was asked about the AFL matches:

Q: Okay. Did you find those events – would those events be successful to you in relationship building?

A: Look, I think they were, although I always resented them because it was a Saturday that I had to work technically, so – but I think for the other attendees, yeah. Yeah, because I mean everybody down [here] is mad keen AFL people and any chance to attend an AFL game they jump at ...

Employee E also accepted a lunch at Stillwater restaurant in Launceston. Employee E travelled to Launceston with Mr F and another agency colleague in a government vehicle, ostensibly to meet with an employee of Agency U. When asked whether they had declared the lunch, Employee E stated no, and said 'we would have considered that to be very much a working lunch'.

Employee E saw the golf days as a networking event, and their manager did not make them take time off work to attend. Another employee (not from Agency H) interviewed about the company's gifts stated that although they did not attend the golf days, such days were a 'keenly sought after event in some circles'.

Employee E believed it was reasonable to accept these invites from the company to attend company-funded events such as movie nights, golf days, Christmas functions or AFL

matches. The company provided free drinks, including alcohol, snacks and meals at many of these events. Employee E believed that the acceptance of the hospitality invitations from the company was 'in accordance with the policies'. Until the recent ban on gifts in their agency, they made no written declarations about their acceptance and attendance. Although verbal approval was sought to attend the events, Employee E did not previously see hospitality as a gift that had to be declared under their agency's policy. Comparison of gift records produced by Agency H and the company indicate that this attitude was part of the agency's culture.

An annual gift given by the company was tickets to the movies for the employee, their partner and their children. The company reported 68 separate instances of supplying movie tickets to 33 different employees across a number of agencies, and one employee reported an additional instance (on their agency's gift register) of which the company had no record. The employees brought up to five children each to the event. The employees invited to attend were invariably in their agency's procurement or asset management branches. Employee E did not see any problem with attending the movie nights:

Q: So did you pay for any of those [movie night tickets for yourself and your family]?

A: The movie nights, no.

Q: Those movie nights tickets, no?

A: No.

Q: Did you think it was okay to accept the free tickets?

A: Yes. Yes.

Q: Okay. Did you – did you think you should have declared them?

A: No. No, no.

The movie night is an annual event hosted by the company, which hires an entire movie theatre for the event. An area outside the theatre is cordoned off for the company's guests, and free drinks and snacks are provided. The company invites representatives from all of its clients to these events – not just state servants. The company representative said that the company used the events for networking, and to conduct informal business discussions outside of the work environment.

How much business discussion would take place in such an environment (in the presence of partners and children and in a movie) is questionable. Again, it also begs the question – why are informal business discussions outside the working environment necessary? The work environment would appear to be the most appropriate place for business discussions.

The potential negative public perceptions generated by a group of government buyers attending the movies en masse, with their families, and paid for by a government-contracted company, are obvious.

Employee G, who does not work at Agency H, explained that they thought it was acceptable to attend the movie nights because employees from Agency H were attending. As the agency responsible for leading the way in ethical contract management practice, this confirms that Agency H employees were therefore setting an example for other State Service agencies.

When is a tender phase not a tender phase?

Both of the state servants interviewed in relation to these gifts were relatively senior. Both

of them stated that they would never accept gifts or benefits from a company during a 'tender phase', yet they seemed to have few qualms about accepting gifts from this company. However, this company has a three year government contract with an option for the government to renew the contract for two more three year periods. The option to renew is subject to the company's satisfactory performance.

The two states servants gave conflicting information about how the decision to renew the company's contract is made. The Agency H employee stated that their agency takes feedback from other government agencies into account in making the decision on whether to renew the contract. The employee who worked in another government agency said that their agency had no input into the decision – that it was solely a matter for Agency H.

The three-year contract renewals are worth a substantial amount of money to the company, and in a sense the contract is therefore in a constant 'tender phase'. Although presumably there are a set of objective criterion which must be met by the company for the contract to be renewed, accepting gifts from this company at any time is, at the least, not a good look.

Table 8: Processes and procedures: accepting gifts

	Guidelines:							Register:
	Focus on relationships	Apply to all employees (including HoA)	Prohibit solicitation of gifts	Allow acceptance of non-reportable gifts	Have an approval process	Instruct on decision making	Mention 'public interest' test – in any way	Has one or more gifts declared by HoA
DoE	x	Probably	x	x	✓	✓	✓^^	x
DPaC	x	✓	✓	✓ \$50	✓	✓^	✓^^	x
DoJ	x	✓	✓	x	✓	✓	x	x
DPEM	x	x	x	x	✓	x	x	x
DHHS	x	✓	x	✓ 'Items of a token nature'	✓	✓^	x	x
DIER (DSG)	x	✓	x	✓ \$20*	✓	✓^	x	x
DEDTA (DSG)	x	✓	x	x	✓	✓^	x	x
DTF	x	✓	x	✓ 'Token mementoes'	✓	✓	x	x
DPIPWE	x	✓	x	x	✓	✓^	✓^^	✓
THO-S	x	✓	x	✓ 'Items of a token nature'	✓	✓	x	n/a***
THO-N	x	✓	x	✓ 'Token mementoes'	x**	✓	✓^^	✓
THO-NW	x	✓	x	✓ 'Items of a token nature'	✓	✓	x	x
TAO	x	x	✓	x	✓	x	x	✓
Integrity Commission	x	✓	x	✓ 'Moderate hospitality' & 'token gifts'	✓	✓	x	✓
% of guidelines/ registers	0%	85% (of 13 guidelines)	21%	57%	93%	86%	29%	31% (of 13 registers)

* Gift valued between \$20 and \$100 in this agency may be kept, but must be declared. Gifts valued over \$100 must be approved and declared.

** This agency's guidelines appear not to stipulate that gifts must be approved - just that they have to be declared, unless they are a gift of a hospitality or event.

*** This agency had no records of any gifts that fell within the three-year audit period.

^ Although the Commission judged that instructions given to decisions makers was not adequate in any of the guidelines, in these guidelines the 'instructions' were particularly inadequate (albeit not completely absent).

^^ In regard to government buyers.

^^^ In regard to sponsored travel.

Do Employment Direction No. 8 and Treasurer's Instructions No. 1101, No. 1201 comply with good practice?

Acceptance of 'non-reportable' gifts

ED8 fails to highlight, to any great extent, the importance of the relationship between the giver and the intended receiver. It does indirectly, however, reveal the importance of this relationship by the extra guidance it imposes on procurement officers, and in its focus on conflicts of interest.

Acceptance of 'reportable' gifts

ED8 does not stipulate that accepted gifts are the property of the state/agency until and unless decided otherwise.

By requiring that all gifts and offers of gifts be reported to the head of agency, ED8 appears to be mandating an independent approval (rather than just a declaration) process. However, this could be made clearer, especially as the wording of clause 6.2.3(i) appears to only require gifts to be declared once they have been accepted, thereby apparently negating the need for an approval process. The Commission does acknowledge that SSA s 9(12) does appear to only apply to received gifts.

There is no guidance in either ED8 or the two TIs about what factors should be considered in deciding whether a gift poses an unacceptable conflict, or in deciding that it might be a gift of influence (or be deemed to be so). The general position should be that no gifts are acceptable. Acceptable gifts should be the exception, and there should be broad clear guidance (which can be adapted for the use of each agency) in ED8 about what constitutes an acceptable gift. ED8 should instruct that the only acceptable gifts – apart from token gifts – are those that are of demonstrable benefit to the agency, state and/or the general public.

There are no acceptable gifts in the procurement context, and this should be made clearer in the two TIs.

Solicitation of gifts

ED8 does not mention solicitation of gifts.

4.4 Guidance on certain types of gifts

4.4.1 Explanation

Hospitality, events and functions

The general rule should be that hospitality – other than moderate hospitality given as a matter course during a meeting or training course – is unacceptable. Offers of hospitality that extend to family members and/or friends are ‘high risk’¹⁴⁹ and should be refused. Hospitality offers from ‘private or commercial sources should be viewed more strictly than offers from official sources’,¹⁵⁰ and State Service employees should be aware that hospitality is frequently offered because something is expected in return.¹⁵¹ Exclusive access and corporate hospitality arrangements offered by sporting event sponsors are used:

*in a variety of ways to gain additional business leverage ... [the] resources are typically used to foster or maintain business relationships for the purpose of promoting or rewarding loyalty or to assist in winning new business.*¹⁵²

A distinction should be made between acceptable light refreshments (such as tea, coffee and sandwiches) and more formal, and expensive, hospitality.¹⁵³

For certain public service employees, attendance at events such as sports matches or the theatre has been said to provide them 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’.¹⁵⁴ Some employees may also need to attend events in order to adequately advise their department or the government, or to administer a program.¹⁵⁵

However, it is essential that the event has a connection to the agency’s role in the public sector, or the duties or role of the public sector employee.¹⁵⁶ In regard to memberships of sporting or other clubs, acceptance must be contingent upon their being a clearly identified ‘operational advantage or benefit’.¹⁵⁷ Agencies must be able to demonstrate sufficient linkage to an official purpose before accepting hospitality; this includes attendance at sporting events.¹⁵⁸ Additionally, where possible, the agency should be paying for the employee to attend any such events. If the agency cannot justify paying for the employee to attend the event, it is possible that the attendance does not meet the ‘public interest’ test.

¹⁴⁹ New South Wales Public Service Commission, above n 36, 41.

¹⁵⁰ Australian Government Department of Foreign Affairs and Trade, above n 90.

¹⁵¹ Victorian Ombudsman, above n 129, 42 [203]; Independent Commission Against Corruption New South Wales, above n 20, 55; also, see comments made by IT suppliers about hospitality offered to Victoria Police in Ombudsman Victoria, *Own motion investigation into the tendering and contracting of information and technology services within Victoria Police* (2009) 69 [320].

¹⁵² Government of Western Australia Public Sector Commission, *Acquisition and use of hospitality resources by Healthway: Investigation report* (2015) 24.

¹⁵³ Independent Commission Against Corruption New South Wales, above n 20, 56.

¹⁵⁴ Commissioner for Public Sector Employment, above n 34, 5; see also The Integrity Coordinating Group, above n 120, 1; Australian National Audit Office, above n 104, 4.

¹⁵⁵ New South Wales Public Service Commission, above n 36, 41.

¹⁵⁶ Commissioner for Public Sector Employment, above n 34, 5.

¹⁵⁷ Victorian Ombudsman, above n 129, 34 [155].

¹⁵⁸ Queensland Audit Office, above n 10, 143.

Speaking at a conference/event

In regard to employees accepting thank you gifts for speaking at an event or conference, the following should be borne in mind:

*When employees attend a conference either as a participant or speaker or apply for an award in recognition of their public sector work, they are representing their organisation. The employer has paid for the employee's costs; their time, labour or accommodation. Any benefits accruing from the employee's activities belong to the organisation.*¹⁵⁹

Prizes

There are no 'circumstances in which door prizes can be accepted by public officers who are paid to attend conferences out of the public purse'.¹⁶⁰ Prizes may be seen as seemingly innocuous gifts due to their apparently random nature; however, employees need to remember that:

- the public pay for them to attend events such as conferences – so the public should be the recipients of any ensuing benefits; and
- prizes are often donated by companies whose business may somehow – if they were to be shown favour – benefit from the work of public service employees; this means that the acceptance of prizes usually creates an unacceptable conflict of interest.

Personal gift vouchers offered by event organisers as an incentive for registering early for conferences and workshops should never be accepted.¹⁶¹

¹⁵⁹ State Government of Victoria Public Sector Commission, above n 4, 11.

¹⁶⁰ Government of Western Australia Public Sector Commission, above n 60, 22.

¹⁶¹ Corruption and Crime Commission, 'Shopping vouchers not such a gift', *On the Level* (Perth), September 2014

<<http://woocomcampaigner.woocom.com.au/em/message/email/view?a=30515&id=1136501>>.

Sponsored travel

Generally, sponsored travel offered by private organisations or groups should not be accepted.¹⁶² Where it is of value for an employee to attend a particular event, it should be worthwhile enough for the agency to pay for the employee to attend.¹⁶³ This will avoid any real or perceived conflicts of interest, and prevent organisations or businesses that cannot afford to offer sponsored travel from being placed at a disadvantage.¹⁶⁴ If it is not worthwhile for the agency to pay the employee's way, then it is likely that the offer will not satisfy the public interest test.¹⁶⁵

Offers of free conference registration – particularly where the employee is a speaker at the conference – may be acceptable. If the event is one that would be of value to the agency/community/public – that is, if the event satisfies the public interest test – acceptance of sponsored travel may be considered. On the rare¹⁶⁶ occasion that sponsored travel may be acceptable, 'the important criterion to be borne in mind is that the agency, or the [State Service] as a whole, should gain and be seen to gain the benefit of the opportunity, rather than the individual undertaking the travel'.¹⁶⁷ The decision to accept the offer, and the benefits it will provide to the public service and the community, should be clearly documented by the decision maker.¹⁶⁸ Criteria that must be met in accepted sponsored travel includes:

- the proposed activity is consistent with the government's or the agency's objectives;
- there is a specific contribution the individual travelling can make to meeting the government's or the agency's objectives for the trip;
- any real or perceived personal benefit to the individual travelling is minimised;
- the possibility that other relevant entities (particularly Tasmanian companies) may be competitively disadvantaged by accepting the offer is minimised; and
- there remains sufficient capacity in the relevant work unit to meet the interests of other relevant entities (particularly Tasmanian companies) in the absence of the individual travelling.¹⁶⁹

There is a difference between accepting sponsored travel from a private organisation or company, and accepting it from another Australian government agency. The former is generally not acceptable, the latter may be acceptable. Invitations to attend an event that may be seen 'as an endorsement of a company or a product' should certainly be declined.¹⁷⁰ There is a difference between a commercial conference and a professional conference, and it will be up to the judgement of each agency to decide what is acceptable. Public perceptions and public benefit (not personal benefit) should be writ large in that decision.

¹⁶² Australian Public Sector Commission, above n 17; Commissioner for Public Sector Employment, above n 34, 5; Australian Government Department of Foreign Affairs and Trade, above n 90.

¹⁶³ State Government of Victoria Public Sector Commission, above n 4, 12; The Integrity Coordinating Group, above n 120, 2.

¹⁶⁴ Australian Government Department of Foreign Affairs and Trade, above n 90.

¹⁶⁵ Office of Police Integrity Victoria, above n 103, 15.

¹⁶⁶ Victorian Ombudsman, *Investigation into allegations of improper conduct by CenITex officers* (2012) 24 [95].

¹⁶⁷ Australian Public Sector Commission, above n 17; see also The Integrity Coordinating Group, above n 120, 2.

¹⁶⁸ Victorian Ombudsman, above n 166, 24; The Integrity Coordinating Group, above n 120, 2.

¹⁶⁹ Australian Government Department of Foreign Affairs and Trade, above n 90.

¹⁷⁰ State Government of Victoria Public Sector Commission, above n 4, 13.

Undertaking sponsored travel in the employee's own time does not make it more acceptable.¹⁷¹

Where there is no conflict of interest, unsolicited upgrades offered by an airline on check-in may be accepted – although they must be declared.¹⁷²

For guidance about sponsored travel as it applies in the health industry, see page 92.

Cumulative gifts

Agency guidelines should take into account cumulative gifts, as a series of small or token gifts over time 'may indicate a trend and emerging misconduct risk'.¹⁷³ If the guidelines allow acceptance of token gifts (or gifts under a certain value), they should also specify that a number of token gifts from the same person/organisation over a specified period of time (usually one year) should be reported. Agencies do need to keep in mind that this kind of policy has been shown to confuse employees and agencies, and thus result in less accountable practices.¹⁷⁴ It is therefore vital that any rules about cumulative gifts be clear and easy to apply.

Cultural, historical and ceremonial gifts

According to the business of the agency, the guidelines may specify that gifts of cultural, historical or ceremonial value are to be retained by the agency regardless of value.¹⁷⁵ In Queensland, any gift of historical or cultural significance must be reported, regardless of the value.¹⁷⁶ The Ombudsman NSW considers ceremonial gifts to be for the agency, not the individual.¹⁷⁷ Likewise, the Ombudsman Victoria recommends that such gifts be regarded as the property of the agency.¹⁷⁸

Internal gifts

State service employees should exercise prudence in – or avoid – accepting gifts from other State Service employees.¹⁷⁹ The dangers evident in this practice were revealed in a recent case in Queensland, where an employee was found to have defrauded the health department of \$16.69 million.¹⁸⁰ The employee had lived an extravagant lifestyle and had a habit of showering colleagues – both supervisors and subordinates – with gifts, including of

¹⁷¹ Australian Public Sector Commission, above n 17; Commissioner for Public Sector Employment, above n 34, 5.

¹⁷² New South Wales Public Service Commission, above n 36, 42.

¹⁷³ Corruption and Crime Commission, above n 15, 47 [239]; Police Integrity Commission, above n 89, 8.

¹⁷⁴ Queensland Audit Office, above n 10, 140.

¹⁷⁵ For an example of this, see Northern Territory Government Department of Infrastructure, above n 56, 2 'Advice of Offer of Gifts and Benefits'. But also see the Commonwealth Government Department of Foreign Affairs and Trade guidelines, which allow staff to keep *some* gifts which may have 'local cultural significance', see Australian Government Department of Foreign Affairs and Trade, above n 90.

¹⁷⁶ Queensland Government Public Service Commission, above n 30, cl 7.4. This is also recommended in Western Australia, see The Integrity Coordinating Group, above n 18, 2.

¹⁷⁷ Ombudsman New South Wales, above n 93, 2.

¹⁷⁸ Victorian Ombudsman, above n 17, 47.

¹⁷⁹ Commissioner for Public Sector Employment, above n 34, 4.

¹⁸⁰ See Crime and Misconduct Commission Queensland, *Fraud, financial management and accountability in the Queensland public sector: An examination of how a \$16.69 million fraud was committed on Queensland Health* (2013).

money and holidays.¹⁸¹ Some of the gifts were solicited by employees, who were under the impression that the employee was a member of the royal family of a Pacific island nation.¹⁸² The employee also funded expensive staff functions.¹⁸³ Where gifts are offered by other employees, '[c]onsideration should be given, particularly by managers, to the potential implications of such offers, particularly in relation to the value of the item, the frequency of the gift-giving, and the power and/or hierarchical relationship between the giver and the recipient'.¹⁸⁴

¹⁸¹ Ibid 19.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid 33.

4.4.2 Findings

On the whole, Tasmanian State Service agencies appear to take a rather lax approach to hospitality, events and functions. Declared and approved instances of hospitality/functions/events on agency records included:

- golf days;
- movie nights (with partners and children);
- tennis tickets;
- cricket tickets;
- AFL tickets;
- music festival tickets;
- motor racing tickets;
- tickets to industry lunches;
- theatre tickets; and
- horse races.

For most – if not all – of these gifts, there was clearly no connection to the official duties of the employee (for further information about some of these gifts, see *Case study 7*). The records produced by some companies indicate that these declared benefits are but a small sample of the true extent of inappropriate hospitality, function and event invitations accepted by Tasmanian state servants.

One of the state servants interviewed by the Commission has accepted for himself/herself, or distributed to their staff, tickets from a number of different suppliers to events, including both local and interstate AFL matches, music festivals, super car race meetings, horse race meetings, and movie nights. The employee explained to the Commission their rationale for attending the local races at the invitation of suppliers:

So it's a good place for five, six, seven distributors to catch up with me on ... Cup Day – not so much to talk business but to more or less to say 'how's things' and 'you know, is there anything we need to know?' because it is meant to be not a bash the supplier or bash the customer day but a – you know and I've known these guys for twenty five years, so it's like 'Oh how's family?' ... but it's deemed that it's ... not the right thing to do ... So I think I – the last three years I haven't been to the cup ... I turned five tickets down this year ... and so then what happens after the cup, because they're [suppliers] still in [town], they all want to try and get in to see you the next day. So you lose a day and a day and a half by trying to catch up with – them trying to catch up with you, but if you'd been to the cup you could have saved a day and a half of your work but no one wants to hear that.

Another employee (who also works in the procurement area) told the Commission that they often have to knock back invites from suppliers:

I quite often get phone calls of do you want to go to the cricket, do you want to go to a box and watch football, do you want to do this.

A number of the past and present agency guidelines exclude such things from their scope, deeming them not to be gifts. For instance, the current guidelines of DPaC state 'the occasional provision of tickets to entertainment events are not normally regarded as gifts [unless there is a potential conflict of interest]' (see *Case study 2*). The previous guidelines of DoJ (which applied up until about October 2014) listed functions, entertainment and hospitality as 'indirect benefits', which are (emphasis added):

[N]ot gifts or benefits of themselves but could give rise to a perception of a conflict of interest existing or appearing to exist, between official duties and private interests of employees and officers of the Department.

This not only flies in the face of good practice, it also directly contradicts ED8, which clearly includes hospitality and entertainment at less than full value in the definition of gift. Moreover, it is not clear how a free ticket to the tennis, for example, could be classified as an 'indirect' benefit. DoJ was the only agency – of those with gift records – that did not have one or more hospitality events on its gift register. However, this was possibly because, at the time, such things were not considered gifts by the agency, and thus they did not have to be declared. DoJ was unable to confirm whether this was the case. Notably, companies issued with notices by the Commission indicated that they had provided DoJ employees with several (inappropriate) hospitality gifts between 2011 and 2014. None of these were listed on DoJ's gift register.

A number of the other agency guidelines have no guidance on hospitality at all; others include the 'test' from ED8; and still others state something along the lines of 'working lunches and dinners associated with a particular project or task are not usually considered gifts'. Four of the 14 guidelines include some form of instruction on prizes – however, only two of them actually prohibit acceptance of prizes. Of the other two guidelines the:

- DPaC guidelines state that prizes are non-reportable; and
- DIER guidelines state that '[p]rizes, such as lucky door prizes, which are awarded randomly by an act of chance, are not considered a gift. The acceptance and retention of prizes are consequently outside the scope of this policy.'

Cumulative gifts; cultural, historical and ceremonial gifts

Suitable instructions on cumulative and frequent gifts are given in DPaC's guidelines:

Gifts must also be reported where more than one gift is received from one source in any calendar year and the aggregated amount of those two or more gifts exceeds \$300. This applies even if each individual gift is worth less than \$50. This is why it is advisable to declare gifts even if they fall under the \$50 threshold for a 'reportable gift'.

The value of \$300 is, however, somewhat too high. 'Regular or frequent gifts from a single source' are also on DPaC's list of gifts that must be declined. It also has good guidance about gifts of cultural and historical value:

The State of Tasmania will have first call to retain any gifts deemed to be of historical or cultural significance regardless of value.

However, the guidelines of the agency with the largest number of (what could be termed) 'ceremonial' gifts on its records had no guidance about such gifts.

Case study 8: The importance of public perceptions

DTF sent the Commission its records not only of gifts received during the audit period, but also of gifts declared in the latter half of 2014. Of these eight gifts, only one had been accepted. The accepted gift was a lucky door prize won at an awards dinner attended by private and public sector organisations. The prize, valued at about \$800, was two nights' accommodation, dinner and breakfast at a luxury estate. The head of the agency approved acceptance of the prize, noting in an email that:

I am agreeable for [the employee] to retain the gift ... on the basis that: there is no relationship to [the employee's] employment (in terms of the prize impacting on [their] behaviour or impartiality); it was not provided on the basis of influencing decision making; it is transparent and open; there are unlikely to be any negative public perceptions.

It is true that this prize did not cause any immediately obvious conflicts of interest with the employee's role. However, the Commission disagrees that the public would view a state servant accepting an \$800 luxury weekend away, won while attending a work function, positively. In this case, the decision maker should have considered more closely what an impartial observer would think, and also whether the gift met the 'public interest' test (that is, whether the prize was of any value to the government/agency/public). Being of substantial value and clearly not meeting the public interest test, the prize should have been declined.

Case study 9: Government buyer accepts a prize

The records of DTF include a \$100 Myer gift card declared by a corporate services officer; it was approved in late 2012. The gift had been won as part of a raffle, after a presentation, and had been donated by a software company. The employee clearly had some influence over whether DTF did business with the software company, as they wrote on their gift declaration form:

The prize will not influence me to make a recommendation to change our backup vendor. I should be able to retain it.

This gift should not have been approved for many reasons, including:

- the employee is a government buyer;
- the employee had a discretionary decision-making relationship with the gift giver;
- it was a cash-like gift;
- the employee appears to have won the prize during work hours i.e. while being paid in their role as state servant; and
- the employee's conviction about their own irreproachability in decision making is irrelevant – 'perception is reality'.

Table 9: Guidance on certain types of gifts

	Guidelines instruct:					Register indicates:			% of elements met by agency guidelines and registers
	That events/hospitality must have official purpose	On prizes	On cumulative gifts	On internal gifts	On historical/cultural/ceremonial gifts	No inappropriate hospitality/events	No inappropriate event-related gifts (e.g. thank you gifts, prizes)	No sponsored travel	
DoE	x	x	x	x	x	x	✓	✓	25%
DPaC	x	✓*	✓	x	✓	x	✓	✓	63%
DoJ	✓	x	x	x	x	✓***	x	x	25%
DPEM	x	x	x	x	x	x	✓	✓	25%
DHHS	x	x	x	x	x	x	x	✓	13%
DIER (DSG)	x	✓*	✓**	x	x	x	x	✓	38%
DEDTA (DSG)	x	x	x	x	x	x	x	x	0%
DTF	x	x	x	x	x	x	x	✓	13%
DPIPWE	x	x	x	x	x	x	x	✓	13%
THO-S	x	x	x	x	x	n/a^	n/a^	n/a^	0% (of 5 elements)
THO-N	x	x	x	x	x	x	✓	x	13%
THO-NW	x	x	x	x	x	x	✓	x	13%
TAO	x	✓	x	x	x	x	x	x	13%
Integrity Commission	x	✓	✓	x	✓	✓	x	✓	63%
% of guidelines/registers	7%	29%	21%	0%	14%	15% (of 13 registers)	38% (of 13 registers)	62% (of 13 registers)	

* These guidelines state that prizes are either non-reportable or outside the scope of the guideline – i.e. they are not considered gifts.

** Although these guidelines do mention the 'frequency of gifts' as being relevant, they provide no real guidance on the matter.

*** This is possibly because, under the agency's then policy, hospitality and event invitations were not considered gifts, and thus did not have to be declared – the agency was unable to confirm this.

^ This agency had no records of any gifts that fell within the three-year audit period.

Case study 10: Thank you for doing your job

Half of the accepted gifts on Agency Q's register were given to an employee whose position is listed as 'director'. This director gives regular information sessions, training and presentations for various organisations around Tasmania as part of their State Service role. Evidently, these organisations sometimes feel it is appropriate to give the director thank you gifts; the gifts are nearly all bottles of alcohol. The agency's records indicate that the director usually shares these gifts with others in their agency. Be that as it may, no state servants should expect, or accept, additional benefits for doing what they are paid to do.

Case study 11: Company gifts \$1,500 of sponsored travel

DoJ has one gift of sponsored travel on its register. The value of this sponsored travel – \$1,500 – is more than ten times the next most valuable gift on the agency's register. The gift of 'travel expenses' was given to an employee by a company which was undertaking a major project with the employee's work unit. The aim of the travel was listed as being to 'present keynote address in Gold Coast'. Research undertaken by the Commission indicates that this keynote address was likely to have been at the company's 'user forum'.

The acceptance of both this gift and the invitation to be the keynote speaker creates, at the very least, the perception of a conflict of interest. It could easily have been perceived to be an endorsement of the company and/or its product. If there was any merit in the employee attending the conference, their way should have been paid by the agency.

Does Employment Direction No. 8 comply with good practice?

Hospitality, events and functions

In cl 6.2.5, ED8 provides that the test for deciding whether offered hospitality and event invitations are acceptable is whether they are:

[A]imed 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.

This test is convoluted, confusing and open to misinterpretation. Nor is it stringent enough, as it only prohibits hospitality and invitations that are aimed at influencing – but even gifts given innocently may influence or be seen to influence. Moreover, it is not helpful for this test to be based on the actual intent of the giver. It would be preferable if it were based on the likely opinion of an independent observer, and other factors mentioned above (for events, one of the main tests will be connection to official purpose/the employee's role). The actual intent of the giver should only be one consideration, not the sole consideration.

Sponsored travel

ED8 appears to apply more stringent standards to sponsored travel, which is the only form of gift for which ED8 stipulates a clear approval process. ED8 does exclude offers of sponsored travel from the Commonwealth from the definition of 'gift'; the reason for this is not clear – none of the state or territory governments are similarly excluded. In accordance with good practice, ED8 does state that sponsored travel 'is not made more acceptable when undertaken in the officer's or employee's own time or in an unofficial capacity'.

4.5 Guidance for certain types of employees

4.5.1 Explanation

Certain types of public service employees are more likely to be offered gifts than other public service employees. This places an obligation on agencies to ensure that these employees are fully cognisant of the gift policy and procedure, and of the risks involved in accepting gifts (both personally and organisationally).

If agencies allow these employees to accept gifts, they not only create vulnerabilities to conflict of interest and corruption, they also risk creating low morale among agency staff that are not regularly offered gifts.

Procurement and other discretionary decision making employees

Certain employees – those involved in procurement and other discretionary decision making (for example, licensing)¹⁸⁵ – will be subject to higher risk from gifts. Despite this, in NSW at least, it appears that some agencies:

*regard procurement as just another cog in the machinery of government, guided by policies and procedures. They appear oblivious to the commercial practices and pressures pulling at their staff, including false friendships and inducements that may be offered by suppliers.*¹⁸⁶

It is important that Tasmanian agencies avoid the potential pitfalls of this passive approach. It is therefore recommended that agencies provide specific guidance to employees in procurement and those making discretionary decisions, and that guidance also be given to suppliers, customers and clients. If an agency has a procurement policy, it should outline the agency's gifts and benefits policy and tell procurement staff where to find it.¹⁸⁷

In making this recommendation, the Commission acknowledges that it is important to maintain a balance in the policy, as this finding from NSW demonstrates:

*[C]ontact with suppliers creates uncertainty in the minds of public officials, primarily because they worry about conflicts of interests, unsolicited gifts and/or benefits, and whether they are being groomed to participate in future improper activities. These fears have caused some public officials to minimise contact and communication with suppliers. On the other hand, some suppliers – receiving no clear directions about engagement with the public sector and only small windows of opportunity to have contact with public officials – respond by using every precious opportunity to offer gifts or hospitality and to pump officials for information.*¹⁸⁸

Nevertheless, the 'inherent risks' in discretionary decision making¹⁸⁹ need to be taken into account.¹⁹⁰ Regardless of the 'shades of grey' that may exist in some other areas, in the discretionary decision making context things are simpler – the rule is: nothing other than

¹⁸⁵ Other examples include staff providing advice or making decisions about inspecting and regulating businesses or giving approvals, internal audit, and tendering, see Queensland Government Public Service Commission, above n 91, cl 6.4.

¹⁸⁶ Independent Commission Against Corruption New South Wales, above n 21, 108.

¹⁸⁷ Independent Broad-based Anti-corruption Commission, above n 51, 9.

¹⁸⁸ Independent Commission Against Corruption New South Wales, above n 65, 27.

¹⁸⁹ Corruption and Crime Commission, above n 15, xvii [14]; Commissioner for Public Sector Employment, above n 34, 4.

¹⁹⁰ The Integrity Coordinating Group, above n 18, 1.

token gifts are acceptable, and even these should be avoided where possible.¹⁹¹ Even the 'provision of basic refreshments during the course of tender discussions would be viewed as inappropriate and should cease'.¹⁹² Offers made after a process (e.g. a contract or tender negotiation) is completed could 'look like a reward for services given or indeed buying-off future contracts', and must also be refused.¹⁹³

The guidelines should be clear that all gifts offered in procurement and discretionary decision making contexts should be declined.¹⁹⁴ It is also strongly recommended that all offers made to such employees be declared.¹⁹⁵

In one Victorian department, government buyers are required to sign a commitment agreeing to abide by a separate code of conduct; such a scheme could be considered by Tasmanian Government agencies.¹⁹⁶

Educating suppliers, contractors, customers and clients

It is now considered good practice to, where appropriate, inform relevant suppliers and customers of the agency's guidelines on gifts.¹⁹⁷ This can, for example, be in the form of a specific pamphlet, included in the wording of tender documents, or listed on the agency's website. Examples of methods used in agencies across Australia, which may be adopted by Tasmanian agencies, include:

- in one NSW state agency, companies must acknowledge the requirements of the agency's statement of business ethics when they respond to requests for quotations or requests for tenders;¹⁹⁸
- in South Australia, it has been recommended that all purchase orders and standard contract documents used by government agencies include a statement seeking a commitment to ethical practices by the supplier and allowing for the possible termination of the contract, without notice, for any breaches;¹⁹⁹
- the Australian Commission for Law Enforcement Integrity (ACLEI) has a short webpage of information for suppliers which addresses gifts and benefits;²⁰⁰
- the NSW Government's Department of Premier and Cabinet has an statement of business ethics which warns against offering gifts;²⁰¹ and

¹⁹¹ Government of Western Australia Public Sector Commission, above n 60, 27; Independent Commission Against Corruption New South Wales, above n 53, 17; Crooke QC, above n 8, 6; Corruption and Crime Commission, *Report on the Investigation of Alleged Public Sector Misconduct by a Local Government Employee in Relation to the Purchase of Management Systems Software* (2013) xiii.

¹⁹² Queensland Audit Office, above n 10, 135.

¹⁹³ Government of Western Australia Public Sector Commission, above n 60, 26; Ombudsman Victoria, above n 151, 75 [350].

¹⁹⁴ Australian National Audit Office, *Developing and Managing Contracts: Getting the right outcome, achieving value for money* (Better Practice Guide, 2012) 37, 60; Corruption and Crime Commission, above n 15, xix 'Recommendation Four'.

¹⁹⁵ Queensland Government Public Service Commission, above n 91, cl 6.4; Australian National Audit Office, above n 194, 104.

¹⁹⁶ Ombudsman Victoria, *Probity controls in public hospitals for the procurement of non-clinical goods and services* (2008) 46.

¹⁹⁷ Government of Western Australia Public Sector Commission, above n 60, 31; Australian Public Sector Commission, above n 17; Commissioner for Public Sector Employment, above n 34, 4.

¹⁹⁸ Audit Office of New South Wales, above n 3, 30.

¹⁹⁹ South Australia House of Assembly, *Procurement Working Group – Purchase of Printer Cartridges at Inflated Prices – Final Report* (Tabled Tuesday 13 March 2012) 3.

²⁰⁰ ACLEI, *ACLEI statement of integrity in business practice and procurement – Information for suppliers and business partners* <<http://www.aclei.gov.au/Pages/Accountability/Informationforsuppliersandbusinesspartners.aspx>>.

- the Victorian Ombudsman recommend that the following paragraph be inserted into all Victoria Police tender documentation: 'Any attempt by any tenderer to exert influence on the outcome of the assessment process by lobbying, directly or indirectly, Victoria Police employees or members of Parliament, will be grounds for disqualification of the tender from further consideration.'²⁰²

Suppliers and customers may be relieved to hear that there is a blanket ban on gifts, as it helps to reassure them that their business will be accepted on its merits,²⁰³ and that they will not have to compete with other suppliers in this regard. Proactive 'communication [also] reduces uncertainty for both the supplier and the public official'.²⁰⁴

A statement that offers of gifts may result in withdrawn business may work as a disincentive for suppliers to make such offers.²⁰⁵ The NSW Department of Premier and Cabinet's statement of business ethics, for example, includes a clear warning that if businesses don't comply, they will lose business and potentially be charged with corruption.²⁰⁶

Publishing and widely advertising the guidelines also makes it easier for employees to decline gifts on the basis of the guidelines²⁰⁷ and, where employees and/or suppliers have inappropriately engaged in the supply and receipt of gifts, it makes it more difficult for them to claim ignorance. Communication does need to be clear and straightforward to increase the probability that it will actually be read and understood by customers and clients.²⁰⁸

Medical professionals

Gifts – especially 'freebie' medical products, high-value sponsored travel and 'educational' meals – are particularly common in the health industry. Guidelines issued by professional associations for healthcare practitioners, such as the Australian Medical Association,²⁰⁹ should be closely considered in regard to acceptance of such gifts.

It is the opinion of the Commission that, unless there is a strong public interest in their acceptance, healthcare professionals should not accept product samples and free trials.²¹⁰ Free meals offered by medical companies – which are used as an opportunity to present and

²⁰¹ NSW Government Department of Premier and Cabinet, *Statement of Business Ethics* (2011) cl 6.2 <http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0010/127477/DPC_Statement_of_Business_Ethics.pdf>.

²⁰² Ombudsman Victoria, above n 151, 76 [357].

²⁰³ Government of Western Australia Public Sector Commission, above n 60, 27.

²⁰⁴ Independent Commission Against Corruption New South Wales, above n 65, 27.

²⁰⁵ Ibid 32.

²⁰⁶ NSW Government Department of Premier and Cabinet, above n 201, cl 5.

²⁰⁷ Australian Public Sector Commission, above n 17.

²⁰⁸ In NSW, an ICAC project reported that some 'suppliers told the Commission that when information about procurement is provided, it is lengthy, complex and difficult to understand. Public officials, on the other hand, complained that suppliers do not read the information provided.' See Independent Commission Against Corruption New South Wales, above n 65, 27.

²⁰⁹ For instance, see Australian Medical Association, *Medical Practitioners' Relationships with Industry 2010. Revised 2012* <<https://ama.com.au/position-statement/medical-practitioners-relationships-industry-2010-revised-2012>>.

²¹⁰ For a discussion of some of the complexities and dangers in accepting free product samples, see *Hypothetical case 1: Tammy* in Judith A Erlen, 'Conflict of Interest: Nurses at Risk!' (2008) 27(2) *Orthopaedic Nursing* 135, 136–7.

sell products – should also be declined.²¹¹ For a discussion on the dangers of accepting these kinds of gifts, see the Integrity Commission scenario ‘Free trial with benefits’.²¹²

Practitioners who work in both the private and public sectors may experience additional difficulties in distinguishing their ethical obligations in their separate roles. These practitioners must remember that, when working in their public sector role, they are under a duty to work in the public interest, and any accepted reportable gifts must be of demonstrable benefit to the public.

Sponsored travel in the health industry

Medical practitioners – including both nurses and doctors – are required to undergo a certain number of hours of professional development every year. For an individual practitioner, this can be an expensive undertaking. Pharmaceutical and other medical companies routinely assist practitioners with meeting these professional development requirements by footing conference registration, travel and accommodation fees.

It is true that some of these gifts may be of significant benefit to the medical knowledge of healthcare professionals, and therefore also to the community as a whole. Thus offers of sponsored travel, even from private companies, may more often be acceptable in the health industry than other industries. As implied by this statement from the Australian Medical Association, this only applies to genuine educational opportunities – it does **not** apply to quasi-educational meetings designed to teach doctors and nurses about a medical company’s latest products (emphasis added):

*There is a risk that participants attending an industry-supported meeting may be unduly influenced by (or perceived by others to be unduly influenced by) industry, thus compromising their professional independence. Industry support of professional meetings and activities should be open to public scrutiny and managed very carefully so as not to compromise the participating doctors’ objectivity and capacity to recommend treatments based on their patients’ best interests (and not the best interests of the industry sponsor). Where industry provides financial or other material support for a meeting or activity, it is important to clarify whether the meeting is organised independent of industry or organised by industry. ... **Meetings and activities organised independent of industry should be developed for the purposes of professional education and training, not for the benefit of industry.** ... It is ethically acceptable for industry to support meetings that contribute to doctors’ education and continuing professional development (CPD); however, such support should be untied, fully disclosed, at arms length to the organisation of the meeting ... Meeting organisers and participants must not be in a position of conflict of interest by virtue of any affiliation with the supporters(s) of those activities. Speakers should declare any relevant interests, including direct or indirect support to attend a particular meeting. Doctors supported by industry to speak at a meeting should ensure their presentation is scientifically accurate and balanced ... Support for medical students, doctors-in-training and post-graduate fellows to attend educational events may be appropriate; however, **the relevant organisation must be responsible for selecting the attendees as well as controlling the sponsorship funds. ... Doctors should exercise caution if accepting support to attend a meeting in which they are not making a formal contribution.** ... Doctors*

²¹¹ The Commission notes that the AMA appears to condone hospitality – but not entertainment – offered by medical companies ‘in relation to a professional meeting or activity ... so long as the hospitality is secondary to the purpose of the meeting and not disproportionate in nature’, see Australian Medical Association, above n 209, [7.1] – [7.2]. In the opinion of the Commission, any hospitality of over \$20 in value would be disproportionate.

²¹² Integrity Commission, *Scenario: Gifts and benefits – Free trial with benefits* <http://www.integrity.tas.gov.au/_data/assets/pdf_file/0016/280510/Free_Trial_With_Benefits_-_Gifts_and_Benefits_scenario.pdf>.

*attending meetings organised by industry should critically scrutinise the presentations for the possibility of misleading information.*²¹³

If sponsored travel is to be approved for acceptance by medical practitioners, it is vital that:

- the list of criteria (see page 80) to use in considering offers of sponsored travel is stringently applied;
- only a certain type of sponsored travel (that providing a genuine value to the community) is accepted;
- potential and perceived conflicts of interest are thoroughly considered and documented with each accepted offer; and
- employees who have received sponsored travel are precluded from participating in or influencing decisions about donor companies.²¹⁴

In Western Australia, the health department has introduced a policy requiring 'a signed agreement from the sponsoring company stating that the sponsorship does not create any obligation on the Department in relation to the company or its products, and noting that the sponsored officer may be excluded from future formulary, procurement or other activities concerning the company'.²¹⁵ It would be worthwhile for a similar approach to be adopted in Tasmanian public health agencies.

²¹³ Australian Medical Association, above n 209, [5.1] – [6.3].

²¹⁴ Office of the Auditor General Western Australia, *Second Public Sector Performance Report 2011* (Report No. 7, 2011) 25.

²¹⁵ *Ibid* 29.

4.5.2 Findings

Procurement and other discretionary decision making employees

Agency records indicate that many discretionary decision making staff in the Tasmanian State Service have no qualms about accepting gifts. However, there were also a few examples of inappropriate gifts being returned. It is telling that there were so few examples of declined gifts on the records.

DPEM

The gift records of DPEM include one example of a rejected gift. The gift was a chocolate hamper – valued at \$50–\$70 by the employee – offered to a project manager in asset management. The hamper was offered by a building company, and the reason given for the gift was an ongoing DPEM housing project. The gift declaration form states that the gift is ‘not approved’, with the note ‘not appropriate given current tender situation’. The Commission was pleased to see that this gift was both recorded and refused.

DEDTA

The gift records of DEDTA, despite including several inappropriately accepted gifts, do include gifts that were – appropriately – returned. One was a set of gifts offered to employees who work with the local tourism industry. The gift was a membership card, initially valued at \$37, which would have given the employees access to ‘a wide range of exclusive special offers and discounts with 100% Tasmanian owned and operated businesses’. Thus the value of the card extended beyond \$37. The gifts were provided at a product presentation (presumably by the company that sells the cards). It appears that a total of seven cards were given. There is no note as to why, but all of the gift declaration forms state that the cards are ‘to be returned’. Presumably, these employees all exercised a discretionary decision making power in relation to whether to promote this product, and the gifts therefore represented an unacceptable conflict of interest. The Commission was pleased to see that these gifts were returned (although it does note that, had these employees been properly trained in conflicts of interest, they would never have been accepted in the first place).

Government buyers/employees who work in procurement

The gift records produced by the agencies included numerous instances of government buyers inappropriately accepting gifts. For more information about the Commission’s general findings in relation to government buyers accepting gifts, see page 42.

Case study 12: Government buyers rewarded for government purchases

Each of the three THOs provides a wide range of services to patients, employees and the public across a number of sites and locations within their region. As part of the provision of THO services, each THO separately deals with one particular private company to obtain a range of products. The company offers promotional rewards and vouchers across their entire product range to all customers. There is a ‘common use contract’ with this company in place for the supply of these products to the THOs.²¹⁶ The value of these contracts is substantial and the reward benefits are made directly available to the relevant government

²¹⁶ ‘Common Use Contracts are standing offers from suppliers for goods and services supplied for a period of time based on specified terms and conditions, and which may include agreed prices. Common Use Contracts aggregate buying power to gain efficiencies in the procurement process and achieve the best available value for money.’ See Tasmanian Government, *Common Use Contracts of the Tasmanian Government* <<http://db.purchasing.tas.gov.au/domino/contracts.nsf>>.

buyer in each THO.

The gift registers produced by some of the THOs indicated that relatively high value gifts and benefits from the company had been accepted by THO government buyers. The Commission issued a notice to the company to produce its records of gifts supplied to all of the 12 government agencies subject to the investigation over the three year period of 1 July 2011 to 30 June 2014. The company supplied a comprehensive list of items. Its records indicated that it had supplied gifts and benefits to all three THOs, as well as two other government agencies subject to the investigation.

Gift vouchers

The company divides its annual reward program into two parts. In one part of the program (which runs for approximately six months a year), reward points are accumulated from purchases. At the end of the program, the points can be cashed in for gift vouchers that can be redeemed at a number of companies, including Coles, Bunnings, BP, and JB Hi-Fi. Alternatively, the agency may convert the reward points to credit on its account.

The Commission was advised by the company that, over the three year period, the company had supplied to the three THOs a total of:

- \$5,700 worth of Bunnings vouchers to one agency – and reward points had also been cashed in to obtain \$250 worth of credit for the agency;
- \$8,780 worth of Bunnings, Coles and BP gift vouchers to one agency – and reward points had also been cashed in to obtain \$730 worth of credit for the agency; and
- \$6,390 worth of Bunnings, Coles and BP gift vouchers to one agency.

In contrast, the gift register of one of the above three agencies only recorded \$2,020 worth of vouchers as accepted from the company over the same period. One agency had no gift register that covered the relevant three year period at all, and the register of the third agency only had \$3,240 worth of vouchers.

Government buyers in two of the THOs were interviewed by the Commission. One interviewee stated that they distributed the vouchers to their employees as staff rewards or to mark significant family events (such as a birth or death). He regularly kept \$200 worth of vouchers for himself/herself and each of their managers and supervisors at Christmas. Vouchers were also used to purchase items for the workplace.

Another employee said that they had given some of the vouchers to their head of agency to be used within the agency. They said that, one year, they used half the value of their declared \$3,240 worth of vouchers to purchase items for the workplace. They were not able to satisfactorily explain where the remaining value was spent.

Gifts

The second part of the company's reward program involves tangible gifts. Reward points are accumulated over approximately six months, at the end of which the purchaser may cash them in by choosing from a range of items offered in a gift catalogue. Unlike the gift voucher reward program, until 2015 the agency could not convert these reward points to account credit. Records produced by the company indicate that government buyers across the three THOs cashed in points for the following gifts over the three year period:

- Anchor Hocking Set of 4 canisters
- Apple 16GB iPad with 3G & WiFi x 2
- Apple 32GB iPhone with 4G
- Apple iPad Air Wi-Fi + Cellular 32GB
- Apple iPad Mini Wi Fi + cellular 32GB
- Apple iPad Wi-Fi + Cellular 64GB
- Apple iPod Touch 32GB Black
- Apple Macbook Pro Notebook
- Apple TV
- Avanti Twin Wall glasses, set of 8
- Birko 10lt Commercial urn
- Birko large 15AMP Contact grill
- Black Panasonic 60" Full HD 3D Plasma TV
- Bodum Set of 6 250ml Double Wall Glasses
- Bollinger Special Cuvee 750ml
- Bosch Cordless Drill Driver
- Bosch Cordless hedge trimmer
- Breville Sous Vide Supreme
- Brown Brothers Discovery Pack
- Brown Brothers Shiraz & Devils Corner Pinot Noir Pack
- Brown Brothers Shiraz & Prosecco Pack
- Brown Brothers Twin Wine Pack
- Cake Dome Set
- Ceramic Cannister Set
- Coleman 66lt cooler
- Coleman Twin Pack chairs
- DeLonghi Icona Kitchen Pack
- DeLonghi Red Nespresso Coffee Machine
- Devil's Corner Pinot Noir & Sauvignon Blanc Pack x 2
- Devil's Corner Pinot Noir & Sparkling NV Pack x 2
- Dewalt Corded Mitre saw
- Dyson ball vacuum cleaner
- Dyson Hot and Cold fan heater
- Dyson Portable Vacuum Cleaner
- Everdure Ashburton BBQ
- Forje 32cm Low casserole dish
- Forje 98lt Stock Pot
- Glass mixing bowels 10 Piece set
- Glass Oven bakeware 15 piece set
- Gorilla Mighty 15 aluminium ladder
- Grosvenor Boston cutlery 40 piece set
- Guess bracelet charm set
- Joseph Joseph cutting board
- Joseph Joseph stainless steel nesting set x 2
- Karcher High Pressure Cleaner
- Karcher Window Cleaner
- Kenwood kMix Raspberry Red Boutique hand mixer
- Keter Modular Outdoor setting x 2
- Kitchen Storage containers 17 piece set
- Kitchenaid Domestic mixer
- KitchenAid Platinum Candy Apple Mixer Apple
- KitchenAid Platinum Medallion Silver blender
- KitchenAid Platinum Medallion Silver mixer
- Laguiole carving set
- LeCreuset Coastal Blue Oval casserole
- LeCreuset stainless steel 3 piece saucepan set
- L'Occitane Home Perfume Diffuser & refill
- Mag-Lite Mag-Tac flashlight
- Makita Petrol Line Trimmer
- Maverick 9 Piece BBQ tool set
- Maxwell & Williams cutlery set
- Panasonic 31lt stainless steel microwave
- Panasonic 32" LED LCD Smart TV
- Panasonic Digital still camera x 2
- Panasonic Steam Combi Microwave Oven
- Penfolds Twin Pack Shiraz & Chardonnay x 2
- Powermat Wireless Power pad
- Premium Chardonnay glasses, set of 4
- Premium Shiraz glasses, set of 4
- Profiline 24cm crepe pan
- Rover Easy Trim lawn mower
- Royal Doulton tapas bowls set of 8
- Scanpan ProIQ Cookware set of 6
- Scanpan ProIQ Fry Pan Set
- Schott Zwiesel Invento Red wine glasses
- Stainless Steel Mixing Bowels set of 5
- Stanley 10 Piece Screwdriver Set x 2
- Sunbeam 4 slice toaster
- Sunbeam Classic Banquet Frypan
- Tefal Inox 4 Slice toaster
- Tefal Optigrill
- Thermochef Natura
- Various cook books
- Various small items of kitchenware
- Victorinox kitchen knives, set of 5
- Victorinox magnetic knife bar
- Victorinox Small Chefs case set
- VS Professional Hair dryer.
- Wusthof Diamond Sharpener
- Wusthof Whet Stone
- Zyliss mandolin Slicer.

The agencies have, according to one interviewee, 'been getting stuff like this for years'. Although some of the above gifts were recorded on the register of the relevant agency, the majority were not. Some of these gifts are of substantial value. And, needless to say, many of these gifts would be of no use in the workplace, raising the question of whether these were personal gifts retained by employees of the agencies.

The agency registers indicate that the government buyers passed some of these gifts on to other staff. This was explored during interview with an employee. When asked what happened to the gifts, they stated:

They rock up in a pallet load normally... of stuff and it sits in the store and then we divvy it out to where it's got to go, like the staffroom, we've got, I think the microwave from rewards points, there's knives, there's glasses, there's blenders, they're milkshake makers, in the cafeteria up here there's crockpots – I think they had a microwave as well – cameras is another we get, we use for like auditing when I do ... auditing.

A laptop obtained using the reward program was said to have been used for staff training presentations. One interviewee stated that they and their manager would decide which gift items from the promotional catalogue were required in the work area and select items accordingly. Bottles of wine and Bollinger champagne were reportedly used for staff drinks or given away.

Failure of agencies to provide adequate guidance and support to staff in high risk positions

The above may indicate some personal failings on the part of certain employees to fully comprehend the nature and responsibilities of their public service role. More importantly, however, the Commission feels that these examples are indicative of a failing on the part of the agencies to provide appropriate guidance and support to their staff. Although not all of the gifts and gift vouchers had been declared in writing, enough had been declared to raise alarm bells.

It was evident that the employees' agencies had given them the impression that the process was simply one of declaration, not of approval. One interviewee was of the view that if gifts and vouchers were to be used within the workplace, there was no requirement to declare them. When asked about the process of completing and submitting a gift declaration form, one employee offered the following explanation:

Q: So there's no process to complete the circle to say whether it's approved or not approved or declined?

A: Not that I'm aware of no.

Q: Not that you're aware of?

A: I don't get told any – just say we have to register it.

Another employee said that they had been approved to redeem the reward points for items to be used in the workplace – but whoever gave them that approval appears to have failed to make sure it ended up on the agency's gift register.

All employees interviewed have a direct purchasing role, yet it appeared that no specific training or guidance had been provided to them in respect of their gift and benefit obligations. Some were aware of the existence of their agency's policy, but not its contents. Moreover, it was evident that high-level managers were aware that these employees were accepting these gifts and benefits (even ones that had not been declared). One interviewee stated that they verbally advised their manager of the gifts and vouchers received, but that no formal record was made; they said:

I mean everybody is aware that these gifts come in from [the company] and places, no one's ever asked [me to declare it on the gift register].

Another interviewee said that the gifts and gift vouchers were put towards a raffle for their unit's social club. The social club raffled off tickets among agency staff. The cash proceeds

were distributed evenly among the social club members. When asked how much was raised, the employee thought that each of the 50 or so members receive about \$120 or \$150 each from the proceeds of the raffle. This is a total of approximately \$6,000 in addition to receipt of the actual gifts staff won in the raffle. Management at the time would have been well aware of this practice. It is understood that a decision by the head of the agency, made in November 2014, (again after the Commission commenced this investigation) has now stopped the practice.

The interviewee stated that they had argued with their agency about the decision to stop the raffle, claiming that they had received verbal advice from an Integrity Commission education session alleging it was alright to accept gifts if they were used for the benefit of a social club. No notes were kept of that session nor can it be verified what was actually said to the interviewee. The interviewee indicated that they were aware that personally benefitting from gifts was not acceptable. When pressed further about how raffling off the gifts and pocketing the cash profits was not a personal benefit, the employee was unable to answer:

It was never ratified at that time that was the case, it was – all we were saying was for the benefits of the members of the social club and people above me knew that we were running raffles and members of my staff who are members of the social club knew that they were getting cash, if you like, if that's what you want to call it, at Christmas time through stuff that come my way.

Can the accumulation of reward points be prevented?

All interviewees were very clear in stating that they did not purchase items solely for their promotional points value. All purchased items, they argued, are set out and agreed to in the government contract, and the reward points are incidental. Indeed, the company in question offers reward points to all purchasers of its products – not just government agencies. The company does now allow all reward points to be converted to credit on the purchaser's account. In the opinion of the Commission, although not without some risk, this would be an acceptable use of reward points. Indeed, a non-THO government agency (a sub-agency of one of the agencies subject to this investigation) had, according to the company's records, claimed an account credit of \$4,380 over a two-year period. This went to the benefit of the agency, and therefore the benefit of the state purse.

The government buyer in this sub-agency who chose account credit over gift vouchers was also interviewed by the Commission. It appeared from the interview that the relatively ethical practices of this employee were not derived from their agency having better practices and procedures than the others. The employee had claimed account credit over gift vouchers purely on the basis of their own ethics and previous work experience. However, one thing the sub-agency can be applauded for is the decision of its current director to completely cease the practice of accepting any form of gift or benefit. The sub-agency no longer even accepts account credit. The interviewee stated that this was because the director 'wants a very systematic process which is simple with no interpretation on any way it can be manipulated'. Another of the employees interviewed by the Commission – Employee C – has now also been banned by their head of agency from receiving any gifts, even token ones.

This raises the question of whether government agencies as a whole could refuse to accept accumulated reward points. Two of the interviewees from the THOs discussed what they described as a 'new' clause which had been inserted into the government contract; the clause, they said, banned the accumulation of reward points. Advice from the DHHS Procurement Advisory Services indicates that the relevant common use contracts were actually amended some time ago – in August 2010 – to include the following clause, titled 'Buyer Reward and Rebate Schemes':

To maintain the high standards of probity that is required with Government procurement, the Goods supplied under the Contract must not form part of or contribute towards any buyer reward or rebate scheme, operating outside the terms and conditions of the Contract, that provides the Department or its employees with gifts, gratuities, or any other benefits which may influence, or might be deemed to influence, equity or impartiality.

The Commission was advised that the purchasing managers that were interviewed would have been aware of the clause, as they participate in annual tri-partite agency contract evaluation panels. While this section has been in existence for some time, it does not appear to be adhered to by suppliers or purchasers. It is the Commission's view that this section needs to be more strict and concise. Like the Treasurer's Instructions, the words 'which may influence, or might be deemed to influence, equity or impartiality' leave the clause open to misinterpretation and misuse.

Further advice was received from the DHHS Procurement Advisory Services that a draft code of conduct for suppliers was drawn up by DHHS between 2007 and 2010 for discussion with DTF. However, the draft was never progressed.

The Commission also made some inquiries with the company. It was found that the company would continue to offer gifts and vouchers as a proven commercial and marketing tool. Yet the company did also state that it would be possible to implement a system that prevented State Service agencies from accumulating reward points. In the experience of the company contact, no Tasmanian agency had ever requested such a system. However, the company representative did state that this model would be most workable as a state-wide option, as opposed to on an agency-by-agency basis.

Other discretionary decision making employees

The Commission examined the gift records of each agency to determine if it appeared that discretionary decision making employees other than those in procurement had accepted inappropriate gifts. Six of the sets of records indicated that discretionary decision makers had accepted inappropriate gifts from clients/customers. A further seven sets of records indicated that discretionary decision makers had possibly accepted inappropriate gifts.

The examples below are taken from the six sets of gift records that indicated that one or more discretionary decision making employees had accepted gifts. Some of these gifts may appear to be minor, but it is important to remember that it is the relationship between the two parties that is the critical factor – not the monetary value of the gift.

DIER

The then DIER (now DSG) had a unit responsible for safety in a certain sector. Within that unit, it had an enforcement and compliance section. The gift records of DIER include an email from the manager of that section. The email states:

[Employee 5] and I received one bottle of wine each as a Christmas gift from [Company 3 - which operates in that sector]. We have received this Christmas gift twice before. I estimate the value to less than \$20.00 and therefore does not require to be formally declared [sic], as set out in the guidelines ... Forwarded for your information only.

Although the value of this gift *may* have been under the reportable threshold (although note the tendency of employees to underestimate the value of gifts), it should have been refused. As a Christmas gift, it is entirely gratuitous, is given regularly, and appears to be from an offeror over which the employee has a discretionary decision making power. Rather than being refused, however, the email appears to have been passed on to the gift register manager – without comment – by this employee's manager.

DEDTA

The then DEDTA (now DSG) had a division which focused on investment in Tasmania. Part of its mission is to help 'link potential investors to local opportunities'. The division could therefore have a significant impact on networking opportunities for Tasmanian companies. The gift records of DEDTA indicate that, in October 2012, an employee in an area of the agency dealing with trade opportunities was approved to accept a \$210 ticket to a fundraising charity event, which was offered by an organisation representing a local industry. In 2014, the same event was described as 'Hobart's #1 party ball' – an 'elegant' black tie/cocktail 'evening of amazing Tasmanian food and wine'. Tickets to the event can be purchased by the table, and it is possible that the employee was seated at a table with representatives from the local industry association.

This gift should not have been approved because this employee appears to have had a discretionary decision making role in relation to Tasmanian companies and industries. Accepting gratuitous gifts from these companies, and associations representing them, gives rise to perceptions of a conflict of interest, and casts doubts on whether companies promoted by this government agency are earning that right on the basis of their product/experience's merit. At the very least, it creates a perception of disadvantaging local companies and industry organisations which cannot afford to provide gifts of equivalent value, or to pay to spend time with government employees.

DPIPWE

DPIPWE has a number of licensing and industry management employees. Its gift records include numerous instances of these employees accepting gifts from members of the industries they are supposed to be regulating. For example, in July 2012, a licensing officer accepted a box of chocolates from a client which was given as a thank you for transferring licensing rights in a timely manner. Although this gift is small, it should not have been accepted because government employees should not be rewarded for doing their job. It may create a perception of bias among other clients, which the employee also has to regulate.

The gift declaration form for another gift given in the context of a regulatory environment notes '[c]lient left them at the counter as his cold storage is overstocked ... no conflict of interest as they are only potatoes. They are for personal use at home.' This statement indicates lack of understanding of the meaning of 'conflict of interest'.

Agency U – a THO

The gift records of Agency U include numerous examples of medical staff accepting gifts from medical companies. Medical staff are discretionary decision makers, as they decide which drugs to prescribe and which medical products to use.

The gift records of Agency U also included gifts accepted by non-medical discretionary decision making staff. For example, in December 2013, an employee in the Building and Engineering unit accepted an invitation to a 'Christmas Cocktail Function', valued at \$80, from a construction equipment dealership. The invitation should not have been accepted, as this employee most likely had a discretionary decision making role – and possibly a procurement role – in relation to this company. It seems likely that the event was an opportunity for employees of the company to network with, and possibly market their products to, a government employee in an informal environment.

Agency N – a THO

Like Agency U, Agency N has numerous examples of medical staff accepting gifts from medical companies – many of them sponsored travel. There is also at least one gift accepted by an apparently non-medical discretionary decision making employee. This is a

gift, given in December 2013, of 'garden gloves and seeds'. The gift is from a recruitment agency, and was given to a business support officer. Although the value of the gift was apparently minor – the employee values it at 'less than \$10' – it appears to be a targeted and tailored gift given to an employee who most likely had discretionary decision making power in relation to Agency N's use of the recruitment agency's services.

TAO

The majority of staff at the TAO are discretionary decision makers who perform audits of agencies and organisations. TAO's gift register includes 14 instances of these employees accepting lunches, accommodation, beverages and tour discounts from entities which are audit clients. Some of the meals appear to have been taken with senior employees from the organisations undergoing audit. In the Commission's view, it is inappropriate for these employees to be accepting gifts from the agencies they audit; auditors need to maintain absolute independence, and should strive to preserve that at all costs. The fact that, in some of these cases, the employees would have claimed the meal costs from the TAO, which would have billed the cost back to the other organisation, is irrelevant. There is a difference between one organisation charging another organisation for a service performed, and one organisation providing hospitality directly to an employee of another organisation. The latter situation creates a 'familiarity risk' which threatens independence, especially when the hospitality is enjoyed in the company of senior representatives of the organisation undergoing audit.

Medical professionals

There were numerous instances of sponsored travel on the records produced by Tasmanian health agencies. The number of sponsored travel events on the records of such agencies far outnumbered the sponsored travel listed on the records of other agencies. Other medical-specific gifts on the registers of health organisations included:

- medical board membership;
- educational material;
- medical equipment/products;
- registration/conference fees;
- honoraria;
- research support; and
- meals associated with attendance at 'educational' seminars/lectures.

As part of its investigation, the Commission wrote to a number of medical companies requesting information on gifts and benefits that they had supplied to Tasmanian public health practitioners. One of these companies indicated that all of the five benefits (flights and 'grants' to attend conferences/product information sessions) it had supplied had been 'self-initiated' by the recipients. That is, the Tasmanian doctors and nurses had solicited these benefits from the company. The issue of medical practitioners soliciting gifts and benefits (and apparently seeing no ethical barriers to doing so) has also emerged in complaints and referrals dealt with by the Commission.

THO-N

There are many instances of sponsored travel on the register of THO-N. Due to the paucity of information on the register, it was difficult for the Commission to determine if most of these gifts were appropriate or otherwise. However, the agency's own guidelines ban sponsored travel, unless it has been supplied by the Commonwealth or it is 'required to undertake training on the use of specialised medical equipment and that travel is required to be provided or subsidised by the supplier in accordance with the terms of a formal contract'.

Most of the accepted travel gifts on its register do not appear to comply with this, and thus were in breach of the agency's own guidelines.

THO-NW

THO-NW also had numerous instances of sponsored travel on its register, and the lack of information likewise makes the propriety of these gifts difficult to determine. THO-NW has recently updated its gifts guidelines, but under the guidelines that applied at the time of the audit period, most sponsored travel was banned (with the same exceptions as those listed in THO-N's current guidelines). Thus, most of the travel gifts on THO-NW's register appear to have been in breach of the agency's own guidelines at the time they were accepted.

THO-S

THO-S was unable to produce any gift records for the audit period. The most recent records it was able to locate were from 2004–05. These records do indicate that it is no different to the other THOs, in that the majority of gifts appear to have been (likely inappropriate) gifts of sponsored travel.

Case study 13: Examples of gifts in the Tasmanian health industry

The records of one THO indicate that, in 2004, a multinational pharmaceutical and biologics company provided \$12,300 of sponsorship for a doctor to attend a conference in Stockholm, Sweden.

The records of another THO indicate that, in 2013, a contract research organisation provided airfares and accommodation of 'unknown' value for a nurse to attend a 'new research study' in Singapore.

The records of the remaining THO indicate that, in 2012, a medical device company purchased a \$750 dinner for 15 members of the nursing staff. The dinner was provided prior to an 'educational seminar' on the functions and specifics of the company's products. The gift declaration form notes '[d]inner provided as incentive for staff to attend'. The form does not state whether the 'educational seminar' was about products already purchased by the THO, or if it was instead an attempt to sell products to it. However, if the training was about equipment purchased by the THO, it appears likely it would have been mandatory and undertaken during work hours, and thus there would have been no need for the company to provide an 'incentive' to attendees.

Do Employment Direction No. 8 and Treasurer's Instructions No. 1101, No. 1201 comply with good practice?

Procurement and other discretionary decision making employees

ED8 clearly recognises, in clause 6.2.1(i)–(ii), that procurement officers should treat gifts and benefits with even more caution than other State Service employees. However, in reality it does not apply any more stringent guidance to procurement officers than it does to other State Service employees. The same criticism can be applied to the two TIs.

Although ED8 does discuss procurement, it does not refer to the two TIs, the Procurement Principles, or the booklet 'A Guide for Government Buyers'. Instead, it contains a reference to what appears to be an out-dated government document, the 'Handbook for Government Procurement'.

The two TIs and ED8 should stipulate that no gifts are acceptable in the procurement context. ED8 should state that this rule also extends to all employees who play a discretionary decision making role.

Educating suppliers, contractors, customers and clients

The Tasmanian Government website 'Winning Government Business' is for the information of suppliers and potential tender applicants. It includes one line about gifts, half way down the page 'Purchasing Principles': 'Government buyers cannot accept gifts or any other benefits from suppliers.' As noted previously, this conflicts with the actual wording of the two TIs. Moreover, it is difficult to find on the webpage and does not outline possible consequences. The Commission strongly recommends that advice and information given to contractors, customers and clients be improved across the Tasmanian State Service.

This is not the first time that the Commission has made this kind of suggestion about educating government suppliers. Following an investigation into a particular issue of the provision of gifts, the CEO of the Commission wrote to the Secretary of the Department of Treasury and Finance, on 1 July 2014, with the following comment:

The [Integrity Commission] Board also resolved that I should raise with you how the conduct of suppliers to government, in offering gifts and benefits to public officers, might be better dealt with across the state service. It is noted that the code of conduct and the Treasurer's Instructions deal only with the obligations of public officers in such circumstances. An additional approach could be to oblige those supplying goods and services not to offer gifts or benefits, possibly through the terms of the common use contracts made available by your Department. I would be very pleased to discuss this with you further, if you believe that such an approach warrants consideration.

The Secretary did not reply.

4.6 Record keeping

4.6.1 Explanation

Each agency should have a process in place for public servants to declare gifts that are 'reportable' under the agency's guidelines. Ideally, this would include a comprehensive form for employees to complete (a 'gift declaration form'), a contact officer/area for the form to be sent to, and a gift 'register'.

Recording the offer: the gift declaration form

The gift declaration form should be used for reporting:

- all offers of reportable gifts – if the gift has already been refused, the form is simply a declaration;
- offers of token gifts that are suspect e.g. they were offered in secret, are cumulative, or were offered by a government supplier;
- reportable gifts that have already been accepted (due to inability to refuse) – in this case, a decision will need to be made on how the gift is to be disposed of; and
- offers of reportable gifts that the employee wishes to accept – in this case, an appropriate supervisor will need to decide whether the gift is to be accepted or declined.

The form should include a section requiring the employee to specify what kind of relationship exists between themselves and the person offering the gift; to simplify matters, three choices should be offered on the form:

- a) a discretionary decision making authority, such as purchasing discretion or licensing decision, exists between the offeree and the offeror;
- b) no direct discretionary authority exists between the offeree and offeror, however the receipt or offer of a gift to the recipient may indirectly influence the outcome of a discretionary decision made by another, or may be perceived as influencing; or
- c) no discretionary authority exists between the offeree and offeror.²¹⁷

The form should also:

- ask the employee to explain the reason for the offer;
- include space to record the decision regarding the gift, and the reasoning behind that decision; and
- instruct decision makers on where to find further guidance (i.e. any relevant policies – including the gift guidelines – and the contact officer/area).²¹⁸

Despite the above requirements, the form should not be overly-complicated; otherwise, employees may not use it, or may not fill it out in full. The form should be well-designed, written in plain language, and as short as possible. For ease of use, consideration should also be given to allowing for the form to be completed and submitted electronically. For further guidance on the gift declaration form, see *Appendix 2: Model gifts and benefits offer declaration form*.

²¹⁷ Corruption and Crime Commission, above n 15, 45 [230].

²¹⁸ See, for example, Northern Territory Government Department of Infrastructure, above n 56, 7.

Timeframe for reporting of gifts

The policy should specify a time period within which offers of gifts must be reported. In Queensland, gifts must be reported within one month.²¹⁹ In the Commonwealth Department of Foreign Affairs and Trade, relevant gifts must be reported within 14 days.²²⁰ In the opinion of the Commission, 14 days is an appropriate timeframe for reporting gift offers.

The gift register

A gift register is a document – which should be centrally maintained²²¹ – listing all the declarations made by employees within a given time period. It is not essential for a gift register to be kept,²²² although it is preferable.²²³ Where there is no register, there should still be accurate and complete records kept (for instance, all the gift declaration forms completed by employees may instead be kept):

*A clear process for registering and approving gifts and benefits is a key element of an effective gifts and benefits policy. Registration and authorisation assists organisations to monitor compliance with the policy and helps ensure that offers of gifts and benefits are handled appropriately and consistently.*²²⁴

One of the many benefits of having a gift declaration process and centrally maintained register is that, especially in larger agencies, a gift may unknowingly give rise to an apparent conflict of interest due to a relationship in other parts of the agency.²²⁵

The register should include sufficient information for a person independent of the agency to judge whether the treatment of each gift was appropriate.²²⁶ It should also include sufficient information to identify trends and conflicts of interest,²²⁷ and it should disclose the relationship between the giver and receiver.²²⁸ Lack of sufficient information in the gift register poses a risk to the agency in the event that an allegation is made.²²⁹

Information that should be included on the register includes:

- a description of the gift;
- full details of the person/entity offering the gift;
- the reason for the offer;
- the intended recipient's relationship to the gift giver;
- the identification of any actual, perceived and potential conflicts of interest;
- the identity of the decision maker;²³⁰
- how the offer was dealt with/how the gift was disposed of (if accepted);²³¹

²¹⁹ Queensland Government Public Service Commission, above n 30, cl 7.4.

²²⁰ Australian Government Department of Foreign Affairs and Trade, above n 90.

²²¹ Queensland Audit Office, above n 10, 142.

²²² Victorian Public Sector Commission, *Gifts, Benefits and Hospitality Q&A* (2012) 4 <<http://vpssc.vic.gov.au/products/a-z/view-products/gifts-benefits-and-hospitality-policy-framework.html>>.

²²³ The Integrity Coordinating Group, above n 127, 2; Victorian Ombudsman, above n 17, 47.

²²⁴ Victorian Ombudsman, above n 129, 39 [181].

²²⁵ Australian National Audit Office, above n 104, 4.

²²⁶ Audit Office of New South Wales, above n 3, 2; The Integrity Coordinating Group, *Gifts, benefits and hospitality – A guide to good practice – 4. Record 2* <<http://icg.wa.gov.au/gifts-benefits-and-hospitality-guide-good-practice>>; Victorian Ombudsman, above n 129, 41 [200].

²²⁷ Office of the Auditor General Western Australia, above n 67, 45.

²²⁸ Ibid 44.

²²⁹ Queensland Audit Office, above n 10, 143.

²³⁰ Audit Office of New South Wales, above n 3, 4.

²³¹ Corruption and Crime Commission, above n 15, xix 'Recommendation Four'.

- the rationale for accepting/declining the gift; and
- the estimated value of the gift.²³²

Consideration should be given to making the gift register publicly available.²³³ In Queensland, one of the requirements of the state-wide policy is that each agency upload on its website its quarterly gifts register within 10 calendar days of the end of the quarter.²³⁴ If an employee is not willing to have their gifts disclosed publicly, then they should not be accepting them in the first place. For many, mandatory publication of gift registers would remove any 'grey areas' in their consideration of which gifts it is appropriate to accept.

For further guidance on the gift register, see *Appendix 3: Model gifts and benefits register*.

Monitoring, audit and review

It is not enough to just have good guidelines. Nor is it enough to have good guidelines and a gift register that is actually used by employees.²³⁵ Certain gifts should not be accepted and this principle needs to be applied; the register needs to be subject to audit; and the guidelines need to be subject to regular review.²³⁶ A lack of management, auditing and review can allow misconduct to go undetected.²³⁷

In Victoria, heads of public sector bodies are required to do an annual 'attestation', which is a signed and dated form 'attesting to the operation, review, promulgation and scrutiny of appropriate gifts, benefits and hospitality policies and processes in their organisation'.²³⁸ The attestation includes a statement that the body's audit committee has reviewed 'the operation of the policies and procedures at least once a year to ensure transparent reporting of accepted gifts, benefits and hospitality'.²³⁹ This process could be considered for adoption in Tasmania.

Auditing the register

Records (on a register or otherwise) of gifts offered, and the decisions made in response to those offers, should be audited on a regular basis:²⁴⁰

*Failure to review the register and monitor compliance with the policy can leave management unaware of any practices that could be inappropriate, create conflicts of interest or could cause reputational damage.*²⁴¹

In high risk areas, this may need to be relatively often (e.g. monthly or quarterly), otherwise annually will be sufficient.²⁴² Audits should ensure that recording requirements are being

²³² Ombudsman Victoria, above n 196, 49.

²³³ NSW Ombudsman, *Good Conduct and Administrative Practice: Guidelines for state and local government (2nd edition)* (2006) A-18.

²³⁴ Queensland Government Public Service Commission, above n 30, cl 7.4.2.

²³⁵ Government of Western Australia Public Sector Commission, above n 60, 6.

²³⁶ Ibid; Victorian Ombudsman, above n 17, 47.

²³⁷ Victorian Ombudsman, above n 102, 4 [15].

²³⁸ Victorian Public Sector Commission, above n 222, 5; to view the attestation, see Victorian Public Sector Commission, *Model Gifts, Benefits and Hospitality Attestation* (2012) <<http://vpssc.vic.gov.au/products/a-z/view-products/gifts-benefits-and-hospitality-policy-framework.html>>.

²³⁹ Victorian Public Sector Commission, *Model Gifts, Benefits and Hospitality Attestation*, above n 238, 1.

²⁴⁰ Corruption and Crime Commission, above n 15, xix 'Recommendation Four'; State Government of Victoria Public Sector Commission, above n 4, 19.

²⁴¹ Office of the Auditor General Western Australia, above n 67, 44.

²⁴² State Government of Victoria Public Sector Commission, above n 4, 9.

adhered to, and should identify emerging trends before they become a problem.²⁴³ The audits should review both quantitative and qualitative (such as reasons that gifts are accepted) data.²⁴⁴

Reviewing the guidelines

The guidelines should be subject to regular review, to 'ensure the policy is responsive to emerging issues and changes to relevant requirements, including other policies and legislation'.²⁴⁵

²⁴³ The Integrity Coordinating Group, above n 127, 1.

²⁴⁴ Ibid.

²⁴⁵ The Integrity Coordinating Group, above n 18, 3.

4.6.2 Findings

Recording the offer: the gift declaration form

The Commission examined the gift declaration form templates of the State Service agencies to determine if they met certain basic criteria, including:

- requiring the relationship between the giver and the intended receiver to be explained;
- requiring the employee to identify the reason for the offer;
- space to record the decision regarding the gift, and the reasoning behind that decision; and
- instructing decision makers on where to find further guidance.

It is telling that 12 of the 14 audited forms included none of the above four criteria (including the Commission's form). The other two forms included only one of the four criteria – both of these forms asked the employee to identify the reason for the offer.

THO-N has a separate form for declaring offers of 'sponsored invitation/occasion of hospitality'. This form met one of the four elements – explaining the relationship between giver and receiver – as it requested employees to state the '[i]dentity of donor of gift and any relationship that the donor has with the Agency'.

Some of the forms failed to require even more basic information, such as the employee's position title, to be identified. DPIPWE's form does not ask for any dates. It appeared from THO-S' (rather complicated) guidelines that the gift declaration form is only to be completed after the gift has been approved.

In agencies that do ask the employee to identify things such as the reason for the offer or whether there is a conflict of interest, the answers that were given on completed forms were usually erroneous or inappropriate (i.e. they should have meant automatic rejection of the gift, yet the gift was accepted). For example, common responses about the reason for the offer included 'Christmas', and the employee's working relationship with the gift giver. If requested to do so on their agency's form, most employees failed to accurately identify a conflict of interest or, if they did identify it, dismissed it as irrelevant. There was no evidence of these kinds of inaccuracies being identified and dealt with by supervisors, managers or heads of agencies.

Several of the forms have space for someone (presumably the employee) to state the 'recommended future use of gift', with some giving as an example a loan of the gift to the department. This is a breach of the principle that all gifts given to employees in the course of their work remain the property of the government until and unless decided otherwise.

These findings further confirm that, in Tasmanian State Service agencies, the process is viewed as one of declaration, not approval, and that the concept of conflicts of interest is little understood.

For information about the Commission's findings on timeframes for reporting gifts, see *Table 4*.

Table 10: Recording the offer: the gift declaration form

	Gift declaration form has space to/instructs:				% of elements met by agency forms
	Explain the relationship between giver and receiver	ID reason for the offer	Record decision, and reasoning behind decision	Decision makers on where to find further guidance	
DoE	x	x	x	x	0%
DPaC	x	x**	x***	x	0%
DoJ	x	x	x	x	0%
DPEM	x	✓	x	x	25%
DHHS	x^	x	x	x	0%
DIER (DSG)	x	x	x	x	0%
DEDTA (DSG)	x	x	x	x	0%
DTF	x	x	x	x	0%
DPIPWE	x	x**	x	x	0%
THO-S	x^	x	x	x	0%
THO-N	x	✓	x	x	25%*
THO-NW	x^	x	x	x	0%
TAO	x	x	x	x	0%
Integrity Commission	x	x	x	x	0%
% of forms	0%	14%	0%	0%	

*This agency has a separate form for declaring 'offer of sponsored invitation/occasion of hospitality'. The form met only one of the four elements – explaining the relationship between giver and receiver.

**This form does, however, ask for an explanation of the 'circumstances of receipt/offer'.

*** This form does have space to record the decision, but not the reason behind that decision.

^ This form does, however, ask 'is there a conflict of interest associated with the gift or benefit?'

The gift register

The Commission asked each of the agencies to supply their gift register or records to the Commission.

Agencies which currently do not maintain a gift 'register'

Four of the agencies have no gift register as such, and instead centrally hold copies of all completed gift declaration forms. Although, as stated above, it is not absolutely necessary to maintain a gift 'register', the Commission judged that in the case of each of these four agencies the method in which gift records were maintained was not adequate.

DPEM

This agency keeps all of its gift declaration forms individually on a centralised database in PDF form. There does not appear to be any naming convention. To search the records, every single PDF would have to be opened separately. It would be difficult to identify patterns and trends from this record keeping system.

DSG – DEIR/DEDTA

This agency maintains records centrally in hard copy form. Hard copy is inadequate, as – given the number of records – it is hard to find specific information. It is clear that no-one examines the records to assess if there are any patterns or trend, and indeed it would be hard to do so, given the format in which they are kept.

DTF

This agency keeps all of its gift declaration forms individually on a centralised database in PDF form. There were only six gifts declared over the three year audit period in this agency. If there had genuinely been only six gift offers made in three years, this record keeping system would be sufficient. However, notices issued to companies by the Commission indicate that employees of DTF have received far more than six gifts during the three year audit period. Additionally, in the four months following the Commission's request for information, employees declared a total of eight gift offers – more than in the previous three years combined. The record keeping method used by DTF is therefore not fit for purpose, for the same reasons as given above for DPEM.

DPIPWE

This agency keeps all of its gift declaration forms individually on a centralised database in PDF form. DPIPWE had a fair number of declared gifts over the three year audit period, and this method of record keeping is not fit for purpose, for the same reason as given above for DPEM.

Agencies which currently do maintain a gift 'register'

The Commission examined the gift registers of the remaining nine agencies to determine if they had space to record basic information, including:

- a description of the gift;
- details of the person or entity offering the gift;
- the reason for the offer;
- the intended recipient's relationship to the gift giver;
- the identification of any actual, perceived and potential conflicts of interest;
- the identity of the decision maker;
- how the offer was dealt with/how the gift was disposed of;

- the rationale for accepting/declining the gift; and
- the estimated value of the gift.

The results can be seen in the table below.

DoE

Despite DoE's gift declaration form stating that, when complete, it must be forwarded to the centralised Human Resources unit, this agency was initially unable to provide any gift records. After being issued with a notice to produce, DoE did manage to find four records of received gifts over the three year period requested. These records are obviously incomplete, as it is one of the state's largest agencies with a great number of employees. The table below was completed using the limited 'register' sent through by the DoE, after being issued with a notice.

DPaC

DPaC maintains two gift registers – one for most employees, and one for 'protocol' staff. Protocol staff deal with visiting delegations, and thus are regular receivers of gifts. It was unclear to the Commission, however, why there is a need to maintain two separate registers – although it does note that at least DPaC is now recording gifts to protocol staff (previous to July 2013, gifts to protocol staff were not recorded). When queried about the separate register, DPaC responded:

The gifts received by Protocol staff are only tokens/souvenirs/countries' promotional items/material and were not recorded prior to the commencement of the new Register.

The Commission disagrees with this assessment. While it is true that it may not be possible for employees to refuse gifts from visiting delegations without causing offence, these gifts should still be declared, recorded and managed appropriately. Generally, such gifts should be retained by the agency, or perhaps donated to charity. The Commission does not accept that gifts to protocol staff should be recorded any differently to gifts given to other employees.

DoJ

DoJ was able to produce to the Commission a gift register that spanned the entire audit period (1 July 2011 to 30 June 2014).

Integrity Commission

The Commission had a gift register that spanned the entire audit period (1 July 2011 to 30 June 2014).

DHHS

DHHS did not centrally maintain a gift register for the audit period. On being issued a notice to produce records, however, it was able to produce some records of gifts received over the audit period. This agency now does have a centrally maintained gift register, and this new register has been used to complete the table below.

THO-S

This agency was unable to produce a gift register or any gift records for the audit period; the most recent gift record it was able to locate was a register dated 2004–2005. The agency does now have a centrally maintained gift register, and it was this that was used to complete the table below.

THO-N

THO-N was able to produce to the Commission a gift register that spanned the entire audit period (1 July 2011 to 30 June 2014).

THO-NW

This agency produced a mixture of gift registers and gift declaration forms. The agency does now have a centrally maintained gift register, and it was this that was used to complete the table below.

TAO

The TAO was the only agency that required, in accordance by good practice and possibly ED8, all gift offers to be declared. However, its gift register was flawed in that it was impossible to identify which of the gifts had been accepted and which rejected. The Commission requested the TAO identify the accepted gifts on its register. In response, it revised its register to include the requested information.

Table 11: The gift register

	Gift register has space to record:									% of elements met by agency registers
	Description of the gift	Details of gift giver	Reason for offer	Recipient's relationship to the gift giver	Any identified COI	ID of decision maker	How offer dealt with/gift disposed of	Rationale for accepting/declining gift	Estimated value of gift	
DoE	✓	✓	x	x	x	x	x	x	x	22%
DPaC	✓	✓	✓	x	x	✓	✓	x	✓	67%
DoJ	✓	✓	x	x	x	✓	✓	✓**	✓	67%
DPEM	n/a – no gift register; all gift declaration forms held in PDF format on centralised database									n/a
DHHS	✓	✓	x	x	✓	✓	x	x	✓	56%
DIER (DSG)	n/a – no gift register; all gift declaration forms held in hardcopy form in centralised folder									n/a
DEDTA (DSG)	n/a – no gift register; all gift declaration forms held in hardcopy form in centralised folder									n/a
DTF	n/a – no gift register; all gift declaration forms held in PDF format on centralised database									n/a
DPIPWE	n/a – no gift register; all gift declaration forms held in PDF format on centralised database									n/a
THO-S	✓	✓	x	x	✓	✓	x	x	✓	56%^
THO-N	✓	✓	✓	x	x	✓	x	x	✓	56%
THO-NW	✓	✓	x	x	✓	✓	x	x	✓	56%
TAO	✓	✓	x	x	x	x	✓*	x	✓*	44%
Integrity Commission	✓	✓	✓	x	x	✓	✓	x	✓	67%
% of registers (9 only)	100%	100%	33%	0%	33%	78%	44%	11%	89%	

^This agency has recently introduced a gift register. For the full term of the audit period, however, the agency had no gift register and no gift records were able to be located.

* These elements were only added to the register after a query from the Commission about which gifts had been accepted by TAO employees, and which declined. The register initially received by the Commission gave no indication of which gifts had been accepted and which declined.

** This agency's form has a 'reason for acceptance' section, but not a reason for declining section. Most of the 'reasons' given for acceptance do not seem to be real justifications for acceptance – e.g. 'shared', 'thanks for presentations'.

Monitoring, audit and review

The Commission's audit of the gift register/records of the agencies identified that none, bar the Commission itself, were fully compliant with their own guidelines, ED8, the TIs, the SSA and the SSR – much less good practice. Gift records (if they existed) were rarely, if ever, subject to audit, monitoring or review, even in the five agencies which had guidelines providing for this to happen.

The Commission's request for information from each of the agencies resulted in a 'flurry' of activity – guidelines were rewritten, register templates drafted, and record keeping commenced. In one agency, about a quarter of the gifts on its register were declared and/or stamped approved in the fortnight following the Commission's request for information. This is despite some of those gifts actually being declared up to two years beforehand. In another agency, six gifts were on the agency's records for the three year audit period, but eight gifts were declared in the four months following the Commission's initial request.

It took several of the agencies an inordinate amount of time to get information to the Commission. In theory, this should have been as simple as attaching the guidelines and the register to an email and sending it. One agency seemed surprised by the gifts on its register, telling the Commission:

The two registers ... have raised some questions and concerns about what has been accepted in the past. We are currently reviewing our Gifts and Benefits Guidelines and would greatly appreciate your input and feedback so that we can build in any recommendations you may have.

Several of the gift records contained gifts that clearly breached the agency's own guidelines; this would have been detected had the registers been subject to audit. For instance:

- accepted gifts of alcohol in agencies in which alcoholic gifts were banned;
- accepted gifts of sponsored travel in agencies in which this kind of sponsored travel was banned; and
- accepted gifts in an agency that banned nearly all gifts.

Not only have agencies been deficient in reviewing and maintaining their registers, they have also been deficient in completing their registers/records. Although – as shown above – none of the registers meet good practice requirements, agencies are failing to fully complete the registers they do have. Examples of gaps in information on agency registers included:

- what happened to the gift column left blank;
- reason for acceptance column left blank;
- name of approving employee column left blank;
- position of recipient not entered in full e.g. 'director' given as the position title, rather than 'director division X';
- recommendation section left blank;
- approved/not approved left blank;
- decision column left blank;
- signature box left blank;
- date left blank;
- information about whether there is a conflict of interest left blank; and
- individual giving the gift listed as the donor, rather than their company.

When asked for further details about gifts on their registers, agencies were often unable to supply any more information.

Completing the gift declaration form – employees' responsibilities

The Commission's investigation uncovered deficient practices among employees completing gift declaration forms. Had agencies been monitoring their gift records, this could have been identified and resolved. As noted above, even when prompted to identify if there was a conflict of interest, this was rarely done accurately, and even where a conflict of interest was identified, the employee generally dismissed it as irrelevant. Managers then failed to identify and correct this error. Some of the gift forms displayed a defensive tone – 'I should be allowed to keep this gift' – implying that the employee had earned it and had a right to it. This is potentially a symptom of a culture of entitlement.

Comparing the gift records provided by agencies to the records produced by companies also indicates that some state servants declare gifts selectively. That is, several of the public servants that appeared on company records as having received gifts also appeared on the gift records produced by their agency as having declared some gifts – but few of these employees had actually declared every gift that was reportedly provided. These employees clearly were not unaware of the need to declare gifts.

Table 12: Auditing the register

	Does it appear that gifts are being managed in accordance with the agency's guidelines, ED8, the TIs, the SSA and the SSR?	Do the guidelines provide for the regular auditing/monitoring of the records/register?	Is the gift register/records being completed in full, or are there gaps in the information?	% of elements met by agency
DoE	x	x	✓	33%
DPaC	x	✓	✓	67%
DoJ	x	x	x	0%
DPEM	x	x	x	0%
DHHS	x	x	Unclear*	0% (of 2 elements)
DIER (DSG)	x	x	x	0%
DEDTA (DSG)	x	x	✓	33%
DTF	x	x	✓	33%
DPIPWE	x	x	x	0%
THO-S	n/a^	x	n/a^	0% (of 1 element)
THO-N	x	✓	x	33%
THO-NW	x	✓	x	33%
TAO	x	✓	x	33%
Integrity Commission	✓	✓	x	67%
% of agencies	8% (of 13)	36%	33% (of 12)	

^ This agency had no records of any gifts that fell within the three-year audit period.

* DHHS did not centrally maintain a gift register for the audit period.

Does Employment Direction No. 8 comply with good practice?

Recording the offer: the gift declaration form

Other than reiterating that, under the SSA and SSR, gifts must be declared to the head of agency, ED8 provides no specific guidance – or direction – on the necessity for a gift declaration process or form.

Timeframe for reporting of gifts

In cl 6.2.1(iii), ED8 does direct that the guidelines must provide clarity on 'the period of time in which a gift is to be reported'.

The gift register

ED8 provides no specific guidance – or direction – on the maintenance of any form of records about gifts.

Monitoring, audit and review

In cl 6.4(i), ED8 does direct that the head of agency must review the guidelines at least once every four years.

4.7 Communicating policies and procedures to employees

4.7.1 Explanation

Training

It is essential that policies and procedures are communicated to employees,²⁴⁶ that employees understand them, and that both employees and the agency adhere to them. There is no point having guidelines if employees do not know about them²⁴⁷ or do not use them. As noted above, each agency should also have a contact officer/area for employees to approach if they are unsure about a particular decision; this person/area will be a vital source of support for employees who are placed in difficult ethical situations.

Training reinforces guidelines and gives them 'more weight and creditability',²⁴⁸ and it (along with monitoring and enforcement) ensures that any employees who do breach the rules are unable to claim ignorance.²⁴⁹ Training should include the following elements:

- the nature of the discretionary decision making authority of state servants, particularly in regard to procurement;
- the requirements and obligations in regard to legally enforceable contracts;
- the nature of implied obligations contained in gifts;
- the importance of the relationship between gift offeror and offeree;
- the system used within the agency to deal with gifts and gift offers;
- where the state servant can go for assistance and advice;²⁵⁰ and
- the potential consequences of failing to declare reportable matters, accepting inappropriate gifts, and soliciting gifts.²⁵¹

The declaration and good management of gifts is also, in part, a cultural issue, which takes 'time and constant reminders to embed through acquired knowledge rather than [just through] formal training processes'.²⁵² The training should therefore be ongoing i.e. not just provided at induction;²⁵³ the agency should, where possible, routinely promote the guidelines through emails and/or newsletters.²⁵⁴ The agency's executive must also endorse, encourage and follow good gift management practices. Agencies should build key matters and related training resources into workflows, and undertake active management of policies and procedures.²⁵⁵

Agencies must ... implement strategies that maintain a high level of awareness for staff on an ongoing basis. It is recommended that employees are reminded of their obligations in managing gifts and benefits on at least an annual basis. ... Employees' obligations can

²⁴⁶ The Integrity Coordinating Group, above n 139, 1.

²⁴⁷ Government of Western Australia Public Sector Commission, above n 60, 31.

²⁴⁸ Corruption and Crime Commission, above n 15, 49 [249].

²⁴⁹ Audit Office of New South Wales, above n 3, 'Foreword'; Independent Commission Against Corruption New South Wales, above n 21, 116. For a recent example of this, see Whitbourn, above n 21.

²⁵⁰ Corruption and Crime Commission, above n 15, 49–50 [250].

²⁵¹ Independent Commission Against Corruption New South Wales, above n 21, 117.

²⁵² Independent Broad-based Anti-corruption Commission, above n 51, 17.

²⁵³ Corruption and Crime Commission, above n 15, 49 [250]; Audit Office of New South Wales, above n 68, 4.

²⁵⁴ Audit Office of New South Wales, above n 3, 3.

²⁵⁵ New South Wales Public Service Commission, above n 36, 37.

*also be reinforced by supervisors during performance review discussions and team meetings.*²⁵⁶

Employees – especially discretionary decision-making employees – must be made to ‘go past’ certain information and turn their mind to it during their daily work. For instance, check-boxes or linking information can be included in procedures, forms, intranet pages, performance reviews and so on. Agencies also need to consider:

*the specific training needs of employees involved in procurement and contract management, where suppliers may employ sophisticated sales and relationship building techniques. Where possible, training should help employees to recognise these techniques and respond appropriately.*²⁵⁷

On the basis of investigations conducted in other jurisdictions, it is also clear that it is particularly important for employees recruited from the private sector to undergo induction training which focuses on conflicts of interest, including its relationship to gifts.²⁵⁸

Reminders – ‘festive season’ offers

Agencies should remind employees (and, if appropriate, suppliers, customers etc.) of their responsibilities at certain times of the year when offering gifts may be more common.²⁵⁹ The fact that a gift was made in the ‘spirit’ of the season does not make it more acceptable – indeed, it may have the opposite effect as it might appear to be ‘entirely gratuitous’.²⁶⁰ A good example of such a reminder was posted on the City of Ryde (NSW) website in December 2014. Titled ‘Thanks is Enough’, the website states:

*The no-gifts policy demonstrates clearly that Council officials, both Councillors and staff, do not need or expect reward for the job they do. A simple ‘thank you’ from satisfied a customer [sic] or supplier is all that is required.*²⁶¹

This policy is simple and easy to remember, easy to apply and enforce, and served as a timely reminder for staff, councilors, customers and suppliers.

Consequences of inappropriate acceptance/solicitation

A major CCC operation in Western Australia uncovered that many public officers investigated were ‘unaware that by breaching the [gifts] policy they were potentially committing misconduct’.²⁶² Similar findings have been made in NSW (emphasis added):

The ... investigation has shown that simply training public officials to be aware of policies concerning gift acceptance is largely ineffective. Whether or not the public officials knew the exact rules, most of them knew they were not supposed to take the gifts, but did so anyway. What they did not seem to understand was the consequences of such

²⁵⁶ Ibid 40.

²⁵⁷ Ibid.

²⁵⁸ According to the Victorian Ombudsman, agencies should identify work areas with the most frequent interchange of employees between the public and private sectors, as well as the occupational categories where public sector ethics are least understood (examples given include engineering, procurement, information technology and property management), see Victorian Ombudsman, above n 17, 49. See also, New South Wales Public Service Commission, above n 36, 40.

²⁵⁹ Audit Office of New South Wales, above n 3, 21; The Integrity Coordinating Group, above n 139, 2; for an example of such a letter, see Ombudsman Victoria, above n 196, 65.

²⁶⁰ Government of Western Australia Public Sector Commission, above n 60, 9.

²⁶¹ City of Ryde, *Thanks is Enough* (4 December 2014)

<<http://www.ryde.nsw.gov.au/Council/News+and+Public+Notices/Thanks+is+Enough>>.

²⁶² Corruption and Crime Commission, above n 15, 44 [227].

*behaviour. ... **Clear communication of the connection between rule violation and the possibility of resulting investigations, discipline or even loss of job and entitlements will have much greater impact than training on the set of rules alone.***²⁶³

The guidelines (and training courses) therefore must clearly state the potential consequences for breaching them;²⁶⁴ this may include:

- disciplinary action;
- dismissal; and
- criminal charges such as bribery.²⁶⁵

Additionally, even if none of the above eventuates, an employee may still suffer significant reputational damage, and may even feel the need to resign.

For the agency, consequences of employees breaching the guidelines (or of not having or enforcing adequate guidelines) may include:

- loss of public trust;
- media scrutiny and public embarrassment;
- loss of employee confidence;
- legal action; and
- financial loss.²⁶⁶

Bribes

Guidelines should highlight that, in certain circumstance, the solicitation, offering and/or acceptance of gifts may constitute bribery, which is a criminal offence. This is particularly so if it involves an offer of money. Guidelines should also inform employees of what to do in the event they believe that they have been offered a bribe.²⁶⁷

²⁶³ Independent Commission Against Corruption New South Wales, above n 21, 116.

²⁶⁴ Corruption and Crime Commission, above n 15, 44 [227]; The Integrity Coordinating Group, above n 18, 1.

²⁶⁵ The Integrity Coordinating Group, above n 120, 1.

²⁶⁶ Ibid; New South Wales Public Service Commission, above n 36, 37.

²⁶⁷ Audit Office of New South Wales, above n 3, 2; Ombudsman SA, above n 90, 3; Independent Commission Against Corruption New South Wales, *The Do-It-Yourself Corruption Resistance Guide* (2002) 34.

4.7.2 Findings

Training

Due to time and resource limitations, the Commission was unable to thoroughly audit the extent and adequacy of training on gifts and benefits across State Service agencies. However, the Commission did interview a number of individuals during its investigation and certain training-related themes emerged. It appears that across the State Service, in regard to gifts and benefits, there is:

- a lack of formal training or guidance available to staff (other than, in some agencies, at induction);
- little or insufficient, readily available, agency guidance or policy;
- an expectation by management that the posting of a new policy on its intranet site is sufficient to advise staff of a new policy;
- too little identification/acknowledgement of employees exposed to greater risk from gifts and benefits (e.g. procurement, asset management);
- insufficient targeted training for these 'at risk' employees; and
- rarely a point of contact or expert advisor who employees can go to for advice.

One of the only two interviewees who seemed at all familiar with their agency's policy still lacked an understanding. For instance, their agency's policy clearly defined hospitality as a gift, yet the employee did not seem to view hospitality as a gift. He also stated that, within their agency, there was an informal understanding that acceptable 'token mementoes' (defined as non-reportable under the agency's policy) were gifts valued at under \$50. The employee stated:

... I was always of the understanding that it was acceptable if you had a contactor that invited you out to a working dinner or a lunch and you weren't in a tendering phase that it was okay to attend, and it was really up to whether you wanted to or not, like you were never forced to attend anything or forced to decline, if it was considered to be within an appropriate period.

When asked if they had ever received any training or guidance on the agency's conflict of interest policy, this senior manager – responsible for hundreds of thousands of dollars of government contracts – replied, 'No, not specifically.'

Although familiar with both their current agency's gift policy and the gift policy of their former agency, Employee G also said that they weren't given any specific training or referred to the policy by anyone. Employee G, a high level manager, said that they were 'not aware of anything being in the Treasurer's Instructions around gifts and benefits'.

Another procurement manager told the Commission:

If you look at the Gifts & Benefits Policy, the Conflict of Interest Policy, and the ... Contract Committee Policy, I don't understand it. ... It's too ... long and drawn out ... It's too much ... to try and do your job and manage a hundred and twenty nine staff ... Why don't they [the agency] just write a letter to [the supplier] and say ... [give all the reward points to charity].

That employee said that the only training about this topic they had ever had was a general awareness session run by the Integrity Commission in 2012 – they had never had any agency specific training on gifts and benefits. The employee said they would like to have a contact person in their organisation that they could call for advice.

Employee B, a manager who had worked at their agency for under ten years, said that they were not even aware that their agency had a gift policy until they were interviewed by the

Commission. Although they were aware of the gifts register, the employee (who had been involved in selecting gifts and benefits received through rewards points accrued with a supplier) felt they did not need to worry about the register as they had never received anything 'personally'. The potential for their gift acceptance practices to generate at least a perceived conflict of interest had never occurred to Employee B.

Employee B's manager said that they were aware of their agency's gifts policy, 'But I've never read it or done anything with it'. They said that they had never received any training or guidance about the gifts policy, and had never actually seen it. They had received no training on conflicts of interest.

Meanwhile, Employee D had ethical gifts and benefits practices, but this had not derived from training they had received from their agency. Instead, it had derived from their own personal ethos and previous work experiences. Employee D said that they had received no training on the matter from their agency.

Reminders – 'festive season' offers

The Commission examined the records produced by each agency to determine if employees appeared to be accepting 'festive season' gifts. Of the 13 sets of records produced, 11 included one or more Christmas gifts.

All bar one of the gifts on DPAC's register were received in November or December and almost all gifts to its employees appear to be Christmas gifts. Overall among agencies, the most common Christmas gift was a bottle of wine. Examples of gifts that appear to have been given on the basis of 'Christmas' as declared on agency registers included:

- bottles of wine;
- bottles of sparkling wine;
- iPhone compatible battery chargers;
- tickets to the Property Council Christmas luncheon;
- portable speaker;
- remote controlled helicopter;
- gift hampers;
- chocolates – including \$1,500 worth of chocolates from a local religious organisation;
- lunch at Rockwall;
- \$198 gift voucher for two adults with a local joy flight company;
- carton of beer;
- calendars;
- stubby holders;
- Christmas cakes and puddings;
- \$99+ worth of limited edition stamps;
- mug;
- cricket tickets;
- gift box;
- silver vase and shawl;
- invite to a Christmas cocktail function;
- pot plant;
- cook book;
- decorations;
- Powerball ticket; and
- garden gloves and seeds.

The above list does not include gifts reported by companies.

Case study 14: Christmas greetings – 'tis the season to be jolly

DEDTA appeared to have the most Christmas gifts on its register of any agency. In December 2011, this included gifts for:

- three employees from a particular area of the Department– a Christmas pudding each from a company providing services applicable to that area of the Department;
- a government buyer – two bottles of wine from a construction company;
- a government buyer – two bottles of wine from a local valuation company;
- a corporate support employee – two bottles of wine from a local valuation company; and
- for three government buyers – a gift hamper each from a fitout company.

In December 2013, there were three declared gifts for employees in the same Departmental area above, comprising of a bottle of wine each from a company providing applicable services as noted above.

It is not clear why there were no declared gifts in DEDTA for Christmas 2012. The records produced by the companies issued with notices by the Commission indicated that DEDTA employees also received the following (undeclared) Christmas gifts in:

- 2011, 2012 and 2013: calendar and chocolates from a fit out company;
- 2012 and 2013: attendance at a suppliers 'open office party';
- 2012: Christmas hampers from a fit out company; and
- 2011, 2012 and 2013: an annual Christmas lunch.

The Commission did not issue all companies dealing with government agencies in Tasmania with notices to produce records, so it is unable to say if there were more Christmas or other gifts received by DEDTA employees (or indeed any other agency) that were not declared.

Consequences of inappropriate acceptance/solicitation

The Commission found that only five of the 14 guidelines give any warning about the potential consequences of non-compliance.²⁶⁸ This includes:

- four guidelines that warn that non-compliance may result in disciplinary action;
- three guidelines that warn that non-compliance could result in legal action;
- two guidelines that warn that non-compliance could constitute a breach of the Code of Conduct; and
- one guideline that warns about specific potential disciplinary sanctions.

For the specific wording of these five warnings, see the table below.

The Commission found that not one of the guidelines – apart from the Commission’s own guidelines – warned that the acceptance of gifts may, in some circumstances, constitute the criminal offence of bribery. Indeed, the word ‘bribe’ was only found in one other guideline (under DPaC’s guidelines, gifts which must be declined include those ‘which constitute or may be construed to constitute a bribe’).

Three of the guidelines do mention that non-compliance may result in ‘legal action’. DPIPWE’s guidelines include Chapter IX of the *Criminal Code Act 1924* (Tas) in the ‘related information’ section, but without any explanation as to why. Although not stated in DPIPWE’s guidelines, Chapter IX of the *Criminal Code Act 1924* (Tas) is titled ‘Corruption and Abuse of Office’. DIER’s is the only other guideline to mention the ‘Criminal Code Act Chapter IX’ – it is listed in its ‘relevant legislation’ section (also without any explanation); DIER’s guidelines also state:

If the receiving or possession of any gift would contravene any law operable in Tasmania, the offer of the gift must be refused. If the receiving or possession of the gift is legal in the place of receipt but contravenes any law operable in Australia or Tasmania the gift must be surrendered to the appropriate authority at the first opportunity.

²⁶⁸ The Commission did not assess a reference to ED5 as sufficient to constitute a warning about the potential consequences of accepting gifts.

Table 13: Consequences of inappropriate acceptance/solicitation

	Do the guidelines outline potential consequences for inappropriately accepting gifts?	Do the guidelines state that the acceptance of gifts may, in certain circumstances, constitute the criminal offence of bribery?
DoE	x	x
DPaC	✓ 'A breach of these Guidelines could constitute a breach of the State Service Code of Conduct and result in disciplinary action.'	x
DoJ	x	x
DPEM	x*	x
DHHS	✓ 'Non-compliance with this procedure may result in legal action, disciplinary action or other action as deemed appropriate. ... For officers and employees, a breach or potential breach of this procedure may be investigated and managed in accordance with Employment Direction No. 5 – Procedures for the Investigation and Determination of Whether an Employee has Breached the Code of Conduct.'	x
DIER (DSG)	x	x
DEDTA (DSG)	✓ 'Breach of this policy is regarded as a breach of the State Service Code of Conduct for which the following sanctions may be imposed ... Any alleged breaches of the code will be dealt with in accordance with Commissioner's Direction 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct.'	x
DTF	x	x
DPIPWE	x	x
THO-S	✓ Same as DHHS.	x
THO-N	x	x
THO-NW	✓ 'Non-compliance with this protocol may result in legal action, disciplinary action or other action as deemed appropriate.'	x
TAO	x	x
Integrity Commission	x	✓
% of agencies	36%	7%

* This guideline is contained in an agency manual, which may set out the potential consequences of breaches in another section.

Does Employment Direction No. 8 comply with good practice?

Training

ED8 is largely silent on the matter of training employees on the guidelines. In cl 6.2.1(iii), it does require that the head of agency provide 'clarity' on a number of matters in relation to gifts and benefits; and, in cl 6.1(ii), it states that the head of agency must ensure that 'all staff are made aware of the guidelines ... and the need to inform the Head of Agency should they be offered or receive a gift in the course of their employment'.

Reminders – 'festive season' offers

Contrary to good practice, ED8 condones the acceptance of certain gifts during the festive season by stating that the agency is to provide clarity in relation to 'gifts deemed to be acceptable, for example ... marks of courtesy or **of a seasonal nature** of a minor value'.²⁶⁹ There is no definition of 'minor value' within ED8.

Consequences of inappropriate acceptance/solicitation

Aside from, in cl 6.3, mentioning that alleged breaches of ED8 are to be dealt with in accordance with 'Employment Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct', ED8 makes no mention of the potential consequences of inappropriately accepting gifts.

Bribes

ED8 does not mention that the acceptance of gifts may, in certain circumstances, constitute bribery.

²⁶⁹ Employment Direction No. 8 Gifts and benefits cl 6.2.1(iii).

4.8 Providing gifts and hospitality

4.8.1 Explanation

As with the acceptance of gifts, State Service employees *providing* gifts and hospitality must be able to show a sufficient linkage to official purpose, and be able to demonstrate that the amount of funds expended was proportionate and necessary.

In Victoria, when providing gifts and hospitality in an official context, employees are urged to apply the 'HOST' test:

- hospitality – to whom is the gift or hospitality being provided?
- objective – for what purpose will hospitality be provided?
- spend – will public funds be spent?
- trust – will public trust be enhanced or diminished?²⁷⁰

To view the full version of the HOST test, see *Appendix 6: Victoria's 'take the HOST test'*.

4.8.2 Findings

Like ED8, many gifts and benefits guidelines include a section setting out guidance for State Service employees on providing gifts and hospitality. This has not, however, been the focus of this particular Integrity Commission investigation and audit, and so is dealt with only briefly in this report. This does not signify that guidelines (such as ED8 and internal departmental guidelines) should necessarily deal with this topic with a comparative level of brevity.

Does Employment Direction No. 8 comply with good practice?

ED8 includes a brief statement about the giving of gifts, stating that it is to be 'refrained from in any circumstances that would give rise to or create the appearance of a conflict of interest'. As noted previously, this kind of test is open to misinterpretation.

ED8 makes no mention of the provision of hospitality, nor does it provide that the offering of hospitality and gifts is to have a sufficient linkage to official purpose and that it must be necessary and proportionate.

²⁷⁰ State Government of Victoria Public Sector Commission, *take the HOST test* (2012) <<http://vpssc.vic.gov.au/products/a-z/view-products/gifts-benefits-and-hospitality-policy-framework.html>>. To view the postcard, see *Appendix 6: Victoria's 'take the HOST test'*.

Conclusion

In July 2014, the Integrity Commission commenced 'Operation Kilo', an own motion investigation undertaken pursuant to s 45(1)(d) of the *Integrity Commission Act 2009*. The investigation was to examine the policies, practices and procedures of Tasmanian State Service agencies in regard to gifts and benefits.

The Commission's investigation involved the collection and collation of resources from across the country, an audit of agency policies and records, collection of records and information from a number of private companies, and interviews with state servants and one company representative. The Commission has given detailed and specific feedback to each of the government agencies that were subject to investigation. The Commission has also developed good practice tools for the use of Tasmanian State Government agencies.

In the opinion of the Commission, Operation Kilo has revealed the following State Service wide issues:

- inadequate and confusing policies;
- non-existent or insufficient guidance and training;
- ineffectual and inadequate practices;
- lack of understanding of conflicts of interest;
- lack of knowledge about the special duties and responsibilities of public servants;
- and
- inadequate record keeping practices.

Issues such as these put the State Service at risk of developing a culture of entitlement in relation to receiving gifts and benefits.

From the investigation it appears that, in some cases, individual state servants may have lacked understanding of the duties and responsibilities that their position entailed. However, in the opinion of the Commission, the current situation is an organisational, not an individual, problem. It is the duty of State Government agencies to improve their culture, policies, practices and procedures. The Integrity Commission has made one finding and five recommendations in respect of Operation Kilo.

The responses from the secretaries of DPaC and DTF to the Board's recommendations show that this report has highlighted to them the need to improve the policy framework. State Service agencies are working towards that improvement, although clearly differences of opinion remain about how the content of the policy should be framed.

Although this report focuses on the State Service and agencies covered by ED8, many of the principles discussed are applicable to all of the bodies within the Commission's jurisdiction. The Commission therefore urges all Tasmanian public authorities to carefully consider this report and make any necessary changes to policies and procedures. The Commission is available to provide resources and assistance, and agencies are encouraged to contact the Commission to discuss the matter.

Finding 1

There is a systemic failure across the Tasmanian State Service to adhere, in practice, theory or spirit, to gifts and benefits policies, practices and procedures which should be applied under:

- the *State Service Act 2000* (Tas);
- the *State Service Regulations 2011* (Tas);
- Employment Direction No. 8 – Gifts and Benefits;
- Treasurers Instructions No. 1101 and 1201; and
- good practice.

Recommendations

Recommendation 1 – to the Secretary of the Department of Premier and Cabinet

On the basis that at least some form of amendment to or replacement of 'Employment Direction No. 8 – Gifts and benefits' (ED8) needs to be undertaken, then, if it is to be retained, **it is recommended** that it be revised in full. The revised version of ED8 or any replacement policy should meet good practice standards and community expectations in regard to the management of gifts and benefits in the Tasmanian State Service. Specific recommendations about any revised ED8 or replacement policy are as follows:

- a) The definitions should be revised. The definition of 'gift' should be simplified; 'benefit' and any other relevant terms should be defined.
- b) It should direct that all gift offers are to be declared.
- c) The guidance in relation to declining and accepting gifts should be made clearer. It should commence with a prohibition on all gifts, and go on to give a limited, clear and concise list of exceptions. As part of that list, it should provide that any accepted (non-token) gifts must clearly be of benefit to the agency, state and/or the community (i.e. they must meet the public interest test). It should also highlight the importance of the relationship between the giver and the intended receiver when considering all gift offers (including token gifts). This test is to be applied to all gifts, including sponsored travel, hospitality, functions, and event invitations.
- d) It should direct that accepted gifts are the property of the state/agency until and unless decided otherwise. It should direct that if an employee wishes to accept a reportable non-token gift, they must apply for approval.
- e) It should direct heads of agencies to institute a recording process for gifts. The process should include a declaration form (for all offers of non-token and/or suspect gifts) and a gift register. All offered non-token and suspect gifts are to be recorded on the register. The register is to be subject to regular review.
- f) It should explain why gifts give rise to potential, perceived and actual conflicts of interest, and the risk that gifts pose to the integrity of state servants and State Service agencies.
- g) Its scope should include:
 - i. gifts given by way of a will in the course of an employee's duties, or in relation to an employee's duties; and
 - ii. all sponsored travel – including Commonwealth sponsored travel.
- h) It should prohibit:
 - i. gifts to family members;
 - ii. gifts offered during leave periods;
 - iii. the solicitation of gifts;
 - iv. the acceptance of money and cash-like gifts – ED8 should state that there is a potential for the acceptance of such gifts to constitute the criminal offence of bribery;

- v. the acceptance of non-token gifts by government buyers; and
 - vi. the acceptance of non-token gifts by employees from companies/individuals over whom they have a discretionary decision making power – agencies with discretionary decision making employees should make this prohibition known to suppliers/tenderers/customers/clients etc.
- i) It should not refer to the out-dated government document ‘Handbook for Government Procurement’.
 - j) It should not expressly or impliedly condone the acceptance of gifts of a ‘seasonal nature’.
 - k) It should direct that it is the responsibility of the head of agency to ensure that employees receive appropriate training and support.
 - l) It should clearly outline potential consequences – for both the agency and the employee – of soliciting or inappropriately accepting gifts.
 - m) It should clarify that the ‘public interest’ test also applies to the provision of hospitality and gifts. That is, the offering of hospitality and gifts is to have a sufficient linkage to official purpose; it should be both necessary and proportionate.
 - n) It should explain that, although it only applies to ‘employees’ and ‘officers’ as defined in the *State Service Act 2000* (Tas), it would be good practice for the agency to apply the policy across all personnel, including all workers, contractors, volunteers, and board members.

Recommendation 2 – to the Secretary of the Department of Treasury and Finance

It is recommended that the reference to gifts and benefits in ‘Treasurer’s Instruction No. 1101 – Procurement Principles: goods and services’ and ‘Treasurer’s Instruction No. 1201 – Procurement Principles: building and construction/roads and bridges’ be revised. Instead of only prohibiting gifts which may influence or be deemed to influence the receiver, it should direct that ‘government buyers cannot accept any gifts or benefits from suppliers’.

Recommendation 3 – to each of the agency heads (principal officers) to whom the report is referred

It is recommended that each agency should communicate to its suppliers that they should not offer any gifts or benefits to staff, other than token gifts (as defined in the model policy, these are to be restricted to items of trivial or inconsequential value, or modest hospitality associated with normal working interactions). In particular, the agency should tell suppliers not to offer Christmas gifts, Christmas drinks, hospitality at sporting, entertainment or cultural events, or hospitality beyond the modest variety (offers of tickets to sporting or cultural events that are associated directly with an agency’s functions should be provided to the head of agency for consideration). Suppliers should be informed that business meetings with agency employees should, as far as possible, take place in business venues (either those of the supplier or the agency) and not in coffee shops, restaurants, hotels or the like.

Other options for agencies include pamphlets, amending the wording of tender documents, and including information in emails and letters. Contractors should be made, as part of their contract, to pledge that they will not offer gifts and benefits to government employees. The information should include a warning about the consequences of offering gifts, such as the withdrawal of an agency’s business.

More generally, information should be provided to Tasmanian Government suppliers that the offering of gifts to State Service employees – particularly government buyers – is not allowed. For example, it should be made clearer on government websites for buyers and suppliers – including ‘Winning Government Business’ – that such employees are prohibited from accepting all gifts and benefits offered by suppliers.

Recommendation 4 – to each of the Agency Heads (principal officers) to whom the report is referred

It is recommended that agency gift registers be made publicly available, and be updated at least annually, on each agency’s website. Names of employees who had accepted or been offered gifts need not be included on any publicly available register

Recommendation 5 – to the Secretary of the Department of Premier and Cabinet

It is noted that there is currently a process (by arrangement) for agency heads to declare gifts to the Secretary of the Department of Premier and Cabinet, and for him or her in turn to declare gifts to the Secretary of the Department of Treasury and Finance. In the Commission’s view, it is not sufficient for such a declaration to be made to or permission sought from a person who is essentially a colleague

It is recommended that amendments be made to either the *State Service Regulations 2011* (Tas) or to head of agency contracts such that agency heads who are secretaries of departments make a declaration to, or request permission to accept, a gift from the Minister administering the *State Service Act 2000* (Tas). Heads of agency who were not secretaries should make like arrangements (for example with the chairs of relevant boards).

Appendices

Appendix 1: Model gifts and benefits policy template

The policy below is designed to assist public sector agencies in meeting good practice gifts and benefits policy requirements. There may be other sections or details that agencies wish to include that are specific to their agency. This includes focusing on particular areas of risk in an agency, such as procurement, IT and medical practitioners.

This model policy is not exhaustive or exclusive. Note that, due to the deficiencies identified in the report, this policy makes minimal reference to ED8 and TI 1101. In the event that these documents are redrafted, agency policies must be changed accordingly, and references to those documents may be enhanced.

To obtain editable versions of these documents, contact the Integrity Commission.

[agency logo/name]

Policy: Offers of gifts and benefits

1: Purpose and policy statement

This policy sets out how [agency] manages offers of gifts and benefits, and supports the principles of the *State Service Act* (section 9) Code of Conduct. This policy will assist staff who are offered gifts and benefits while carrying out their official duties.

The offer and acceptance of gifts and benefits creates a conflict of interest between a staff member's private interests and their public duty. It therefore poses a risk to our perceived (and actual) integrity and public reputation. We should never expect to receive extra for carrying out our salaried duties, nor should we personally benefit (beyond our salary) from our role in the public service.

[Agency] staff must not accept gifts or benefits in the course of their employment. There are very limited exceptions to this policy. Any accepted reportable gifts and benefits are the property of [agency], unless and until decided otherwise.

Under no circumstances are staff to solicit gifts or benefits.

This policy applies to all staff, including during periods of extended leave. This policy does not apply to genuinely personal gifts and benefits from friends and family which have no connection to a staff member's employment.

2: Roles, responsibilities and consequences

All staff have a duty to strictly adhere to this policy. If you are unsure, you must escalate the issue to an appropriate person.

If you become aware of a breach of this policy, you have a duty to report it to an appropriate person.

Non-compliance with this policy may constitute misconduct and will be dealt with in accordance with *Employment Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct* (ED5).

The inappropriate acceptance or solicitation of gifts and benefits may result in disciplinary action under the *State Service Act*, or prosecution (including for the offence of bribery under the *Criminal Code*). This applies equally regardless of your position on the corporate hierarchy.

Further advice and guidance can be obtained from [name; phone number; email].

Approved date:
Revision No.:
Approved by:

Next review date:
Last review date:
Managed by:

3: Procedure for employees

All offers of gifts and benefits must be politely declined and reported, unless they are on the exceptions list below. You may suggest other means to demonstrate appreciation, such as an email of thanks. A list of key concepts and definitions is at page 3.

Ask yourself: is the gift/benefit token?

- **YES>** Is the token gift/benefit suspect?
 - **YES>** Decline and report within [x] days using the attached form.
 - **NO>** You may accept it without reporting it. However, you must consider:
 - What is the intent of the offer, and what would an impartial observer think? Be alert to the risks involved. See page 5 for more guidance.
 - Your relationship to the offeror. If you are a discretionary decision maker in relation to the offeror, it is recommended that you decline even token gifts/benefits. See page 4 for more guidance.
- **NO>** Report the offer within [x] days using the attached form. The form may be used to apply for approval to accept the gift/benefit, but approval will only be given on rare occasions.

4: Exceptions

A. Non-suspect token gifts and benefits may be accepted by staff. They do not have to be reported. If a token gift or benefit is suspect, it must be declined and reported.

B. Gifts/benefits from colleagues generally do not have to be reported. However, you should exercise prudence in (or avoid) accepting such gifts/benefits.

C. Reportable gifts and benefits approved by the delegate. This will only be allowed on rare occasions, using the procedure set out at page 4.

5: What must never be accepted, regardless of the circumstances

- Cash or money
- Cash-like gifts/benefits
- Gifts/benefits offered to the family of staff members

Accepting gifts/benefits such as these may constitute the criminal offence of bribery.

If a gift/benefit offered to your family may only be perceived to be connected to your official duties, the gift/benefit is to be reported. Such gifts/benefits are to be managed by delegates on a case-by-case basis.

Reward points and gifts/benefits earned through government purchases, travel etc. are not to be used for the personal benefit of staff.

Government buyers should not accept any gifts or benefits, especially from suppliers (past, actual and potential). Token items and modest hospitality such as tea, coffee or sandwiches offered during meetings is generally acceptable. It will, however, be up to each staff member to consider and decide upon the acceptability of such offers, in light of their relationship with the offeror.

6: Key concepts and definitions

Benefit	Non-tangible item of value offered over and above your normal salary or employment entitlements. It may include things such as sponsored travel, hospitality, loyalty bonus points, discounts, preferential treatment, invitations to events, money, gift cards, and items that may be readily converted to cash.
Bribe	A gift or benefit offered to or solicited by a staff member to influence a person or organisation to act in a particular way.
Cash-like gift/benefit	A gift or benefit that may be used in a manner similar to cash, for example gift vouchers, gift cards, lottery tickets, 'scratchies', shares, credit cards, debit cards with credit on them, memberships, and prepayments such as phone or internet credit.
Conflict of interest	<p>A conflict between the performance of a public duty and a private or personal interest. A 'personal interest' includes the private, professional or business interests of a person, or of the individuals or groups with whom they have a close association, such as relatives, friends or even enemies. Personal interests may be pecuniary or non-pecuniary. A conflict of interest may be:</p> <ul style="list-style-type: none"> • actual: a conflict between a person's official duties and responsibilities in serving the public interest, and their personal interest; • perceived: occurs when a reasonable person, knowing the facts, would consider that a conflict of interest may exist, whether or not this is the case; or • potential: occurs where a person has a personal interest that could conflict with their official duties in the future.
Cumulative gift/benefit	A series of gifts and/or benefits from a single individual and/or company given over a period of time. Cumulative gifts/benefits (even token ones) may be suspect. If you are unsure, you should report it.
Delegate	A staff member who has been delegated authority by the head of the agency under [ED8 or equivalent] to make decisions about reportable gifts/benefits. [insert guidance about who delegates are]. For the head of agency, the 'delegate' is the minister/board [delete as appropriate].
Discretionary decision maker	A staff member who has a discretionary decision making role in relation to an individual or company. Examples included staff providing or regulating licenses, providing advice, making decisions about and inspecting and regulating businesses or giving approvals, selection and tender panel members, government buyers, and auditors. [add and delete roles as appropriate to your agency]
Gift	Tangible item of value offered over and above your normal salary or employment entitlements. It may include things such as alcohol, food, flowers, electronic devices, kitchen equipment, books, and hampers.
Gift register	A register capturing all reported offers of gifts and benefits.
Government buyer	Any staff member who makes or is involved in purchases on behalf of the agency. This may range from relatively small items such as office stationery, up to participation on tender panels for multi-million dollar projects. A government buyer does not necessarily have a financial delegation; a government buyer does have some influence over procurement and purchases made by the agency.

Hospitality	The provision of meals, refreshments, and entertainment. Hospitality is a gift/benefit. It includes modest meals such as sandwiches, restaurant meals, coffee, and tickets to events and functions, such as the movies, sporting events, award nights, and the theatre.
Offeree	Person to whom a gift/benefit is offered.
Offeror	Person or entity offering a gift/benefit.
Procurement	A process by which the agency secures goods or services.
Reportable gift/benefit	Any offered gift or benefit which is not token.
Sponsored travel	Any transport (including buses, flights, taxis), accommodation, attendance or living expenses paid for, or provided, through means other than the agency's funds or the staff member's own resources. Sponsored travel is a gift/benefit.
Staff	All employees, workers, volunteers, contractors, board members, and management personnel (including the head of the agency). [add and delete as appropriate to your agency]
Suspect gift/benefit	Any (including token) gift or benefit that may give rise to a suspicion, regardless of value. It includes gifts and benefits: <ul style="list-style-type: none"> • given cumulatively (see definition above) • offered to the family of a staff member • offered during a procurement process and/or in secret • offered by a person or organisation about which decisions are, or will be, made • that have no link to the business of the agency or government • that are cash or something easily converted to cash.
Token gift/benefit	A gift/benefit of an inconsequential/trivial value to both the offeror and the offeree. It may include mass produced promotional items such as pens and pads, and modest hospitality such as sandwiches and coffee offered during normal work interactions. A token gift/benefit is usually supplied as part of an event. If a token gift/benefit is received often, it may be cumulative and therefore suspect. ¹ If you are unsure, you should report it.

7: Approval process for delegates to follow

Delegates approving gifts and benefits must ensure that they do not have a conflict of interest. For instance, they must not approve an offer from a company that has also offered the delegate a gift/benefit.

After completing the **[form]**, delegates are to send it to the **[gift register manager]**.

Step 1: What is the relationship between the offeror, the offeree, and the agency?

The overriding, critical factor is the relationship between the offeror and the offeree. This includes an examination of the offeror's relationship with other staff, and the agency in general.

¹[Agencies that include employees such as nurses and teachers may wish to include gifts such as flowers and chocolates – for these particular staff – in the list of token gifts.]

Discretionary decision makers must not be approved to accept reportable or suspect gifts/benefits from those over whom they have a discretionary decision making power.² Government buyers must not be approved to accept any reportable or suspect gifts/benefits.

Step 2: Is the gift/benefit in the public interest?

The delegate must ensure that pursuit of the public interest is the dominant and manifest purpose of acceptance. The gift/benefit must therefore satisfy the public interest test – it must be established that:

- there is a direct link to an official purpose; and
- the gift/benefit is of demonstrable benefit to the agency/state/government/public.

Step 3: What is the intent of the offer, and what would an impartial observer think?

The intent of the offer should always be considered, as well as how it may be perceived by the public. Consider how you would feel if your name was on the front page of the newspaper and you had to justify allowing receipt of the gift/benefit.

Few gifts/benefits are given for purely altruistic reasons, especially by commercial organisations. Gifts/benefits given with a clear intent to influence must be declined.

Step 4: Managing conflicts of interest

Under the Code of Conduct, staff must disclose, and take reasonable steps to avoid, any conflict of interest in connection with their employment. Where a conflict is unavoidable in relation to gifts/benefits, it must be managed using a formal plan.

Step 5: Disposal of gifts

In the event that acceptance of a reportable gift is unavoidable, the agency's preferred method of disposal is [e.g. donation to X charity/display in the foyer].

8: Guidance for particular types of gifts/benefits

Hospitality, functions and events – Other than token hospitality given as a matter of course (usually during a meeting or training course), offers of hospitality are generally not to be approved for acceptance. Invitations to events such as sports matches and the theatre, and restaurant lunches paid for by companies, must be declined. Few staff will be able to demonstrate a connection to official purpose which warrants attendance at these kinds of events.

Where it is of value for a staff member to attend a particular event, it should be worthwhile for the agency to pay for the staff member to attend. If it is not worthwhile for the agency to pay, it is likely that the offer will not satisfy the public interest test.

Thank you gifts – Unless it will cause significant offence, or embarrassment, thank you gifts for speaking at an event are to be refused – ideally in advance of the event. If refusal is not ideal on the day of the event, the gift/benefit should be reported and disposed of in accordance with this policy.

² [There may be some limited exceptions to this in some agencies. For instance, at times, gifts of further training for medical professionals may be of great benefit to the community. In any such instances, the agency must ensure that the discretionary relationship with the gift giver is as limited as possible and does not extend, for example, to a government buyer relationship.]

Prizes – Prizes won at work events must be declined.

Historical/cultural/ceremonial gifts – These gifts are to remain the property of the agency [add guidance as appropriate to the agency].

Sponsored travel – Sponsored travel offered by private organisations should not be accepted. There may be limited exceptions to this where there is significant public benefit in accepting the offer.

Offers of free conference registration (particularly where the staff member is a speaker) may be acceptable, but the agency should generally pay for all travel and accommodation requirements.

If sponsored travel is approved, the delegate must bear in mind that the agency/state/government/public should gain, and be seen to gain, from the benefit of the opportunity, rather than the individual undertaking the travel.

9: The gift register

[Area responsible for managing gift register] is to store each [gift declaration form] in [database/drive], and enter the information on the gift register. The [gift register manager] must ensure that the decision regarding the gift/benefit has been carried out as directed by the delegate. The [gift register manager] is to send copies of the completed form to the staff member that made the report and the delegate.

The register is to be subject to annual review by [enter area name – audit committee usually]. The results of this review are to be reported to the [head of the agency], and any themes should be carefully considered.

10: Relevant documents

Code of Conduct/State Service Act 2000 (Tas) and State Service Regulations 2011 (Tas) reg 12

Tasmanian Government employees in [agency] must adhere to the Code of Conduct, found in *State Service Act* section 9. In particular:

- under section 9(11)(a), you must not make improper use of information gained in the course of your employment in order to gain, or seek to gain, a gift, benefit or advantage for yourself or for any other person;
- under section 9(11)(b), you must not make improper use of your duties, status, power or authority in order to gain, or seek to gain, a gift, benefit or advantage for yourself or for any other person; and
- under s 9(12) and *State Service Regulations* reg 12, you must declare gifts received in the course of your employment or in relation to your employment.

Other relevant documents

- [Employment Direction No. 8 or equivalent]
- Treasurer's Instructions No. 1101 [and No. 1201 where relevant] – clause 2(c)(v)
- [agency's conflict of interest policy and procedure]

[agency name]

Policy: Offers of gifts and benefits

- *Employment Direction No. 5 – Procedures for the investigation and determination of whether an employee has breached the Code of Conduct (ED5)*
- *Criminal Code Act 1924 (Tas) – Chapter IX 'Corruption and Abuse of Office'*

SAMPLE

pg. 7

Appendix 2: Model gifts and benefits offer declaration form

[agency name/logo]

Form: Offer of a reportable or suspect gift/benefit

Staff should refer to *Policy: Offers of gifts and benefits* for further information. If delegates or staff members offered a gift have further queries, they should contact [contact area], on email [xxx], or phone [xxx].

On this form, the word 'gift' refers to a gift, benefit or hospitality invitation. Reportable and suspect gifts must be declared within [X] days of the offer.

Section 1 (staff member to complete)	
Date of declaration:	
Name and position (job title & unit/division/branch/section):	
I am a:	<ul style="list-style-type: none"> - Government buyer: Y/N - Other discretionary decision maker in relation to the offeror: Y/N - Neither of the above: Y/N
Gift details	
Describe the gift	
Select applicable: 1) Gift declined. Y/N 2) Gift accepted. Y/N Where is the gift now? Why was it accepted without approval? 3) I would like to accept the gift, but have not done so yet. Y/N Explain how the gift will be of benefit to the agency/state/government/public: 4) Gift is token, but is reportable due to its suspect nature. Y/N Explain:	
Name of offeror (individual, position & company):	
What is their primary business?	
Date of offer	
Date gift to be provided	
Estimated/actual value	
Describe your relationship with the offeror	
Describe the agency's relationship with the offeror	
Reason for the offer?	
Would there be a conflict of interest if the gift were accepted? (select one)	No/Yes/Maybe Explain:
Section 2 (delegate to complete)	
Date:	
Name and position (job title & unit/division/branch/section):	
Your relationship to the staff member:	
A. Complete if staff member has declined gift	
I have reviewed this gift declaration form. Signed:	
Approved date:	Next review date:
Revision No.:	Last review date:
Approved by:	Managed by:

B. Complete if staff member has accepted gift, would like to accept gift, or gift is suspect
Please answer the below questions:
1) A discretionary decision making authority exists between offeree and offeror: Y/N
2) No direct discretionary making authority exists between offeree and offeror, however the gift could cause a conflict of interest (or the appearance of one) with other discretionary decisions within [agency]: Y/N
3) No discretionary decision making authority exists between the offeree or anyone in the agency, and the offeror: Y/N
Decision – the gift is to be:
Y/N – Declined/returned.
Y/N – Disposed of e.g. donated to charity, thrown away. Details:
Y/N – Accepted for retention by the agency. State how gift will be used:
Y/N – Accepted for retention by the offeree. State conditions:
Reasons for decision & comment:
I declare that I have no perceived, actual or potential conflict of interest in making a decision about this gift. Signed:

After completion, the delegate is to send this form to [gift register manager].

Section 3 (gift register manager to complete)
Name and position:
Gift entered into register on: (date)
Decision regarding this gift has been actioned. Signed:

The [gift register manager] must ensure that the decision regarding the gift/benefit has been carried out as directed by the delegate. The [gift register manager] is to send copies of the completed form to the staff member that made the report and the delegate.

Warning: the inappropriate acceptance or solicitation of, or failure to report, gifts and benefits may result in disciplinary action and potentially prosecution. Any staff member who has witnessed solicitation or potentially inappropriate acceptance of gifts by a colleague must report it immediately.

Appendix 3: Model gifts and benefits register

[Agency name] register of gift offers: [date]

Date of declaration	Staff member name & position (or the & branch/section)	Name of company where individual offering gift	Date of Declaration of gift receipt	Description of gift	ECU / Annual value	Reason for offer	Regardless of decision is conflict of interest in accepting this gift? a) personal b) actual c) potential	Decision in the name & position (or the & branch/section)	Relationship - does discretionary decision making authority exist between the staff member and the offeror? a) no direct discretionary authority exists between the staff member and offeror, however gift could cause a conflict of interest with other discretionary decisions in the agency? b) no discretionary authority exists between the staff member or anyone in the agency, and the offeror?	Decision - give date decision completed and state reasons for decision a) accepted by the staff member b) accepted by agency (state how) c) accepted by the staff member (state conditions)	Reasons for decision
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1 of 1

Appendix 4: Decision making flowchart

FLOWCHART

DEALING WITH GIFTS AND BENEFITS: FOR EMPLOYEES IN THE PUBLIC SECTOR

The easiest and safest option for public sector employees is to **decline any gifts or benefits.**



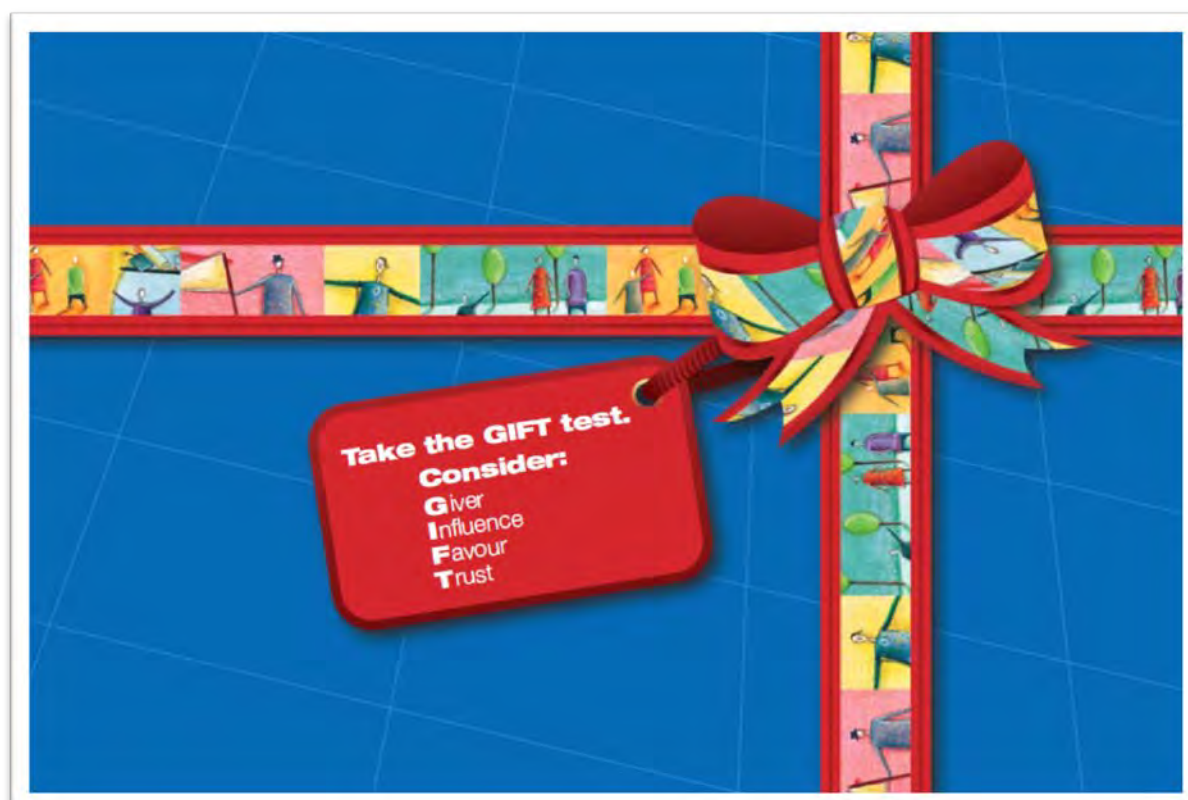
* Refer to your agency's policy and procedure on gifts and benefits.



Ethics and Integrity Resources | Flowchart: Gifts and benefits
www.integrity.tas.gov.au

Adapted from CMC Qld and NSW ICAC resource: "Managing Conflicts of Interest in the Public Sector."

Appendix 5: Victoria's 'take the GIFT test'



take the GIFT test

The GIFT test is a good reminder of what to think about when deciding whether to accept or decline a gift, benefit or hospitality. Take the GIFT test and when in doubt ask your manager.

G	Giver	<p>Who is providing the gift, benefit or hospitality and what is their relationship to me?</p> <p>Does my role require me to select contractors, award grants, regulate industries or determine government policies? Could the person or organisation benefit from a decision I make?</p>
I	Influence	<p>Are they seeking to influence my decisions or actions?</p> <p>Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy, a token of appreciation or highly valuable? Does its timing coincide with a decision I am about to make?</p>
F	Favour	<p>Are they seeking a favour in return for the gift, benefit or hospitality?</p> <p>Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 12 months? Would accepting it create an obligation to return a favour?</p>
T	Trust	<p>Would accepting the gift, benefit or hospitality diminish public trust?</p> <p>How would I feel if the gift, benefit or hospitality became public knowledge? What would my colleagues, family, friends or associates think?</p>

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Appendix 6: Victoria's 'take the HOST test'



take the HOST test

The HOST test is a good reminder of what to think about when deciding whether to provide hospitality or gifts to staff or stakeholders. Take the HOST test and when in doubt ask your manager.

H	Hospitality	To whom is the gift or hospitality being provided? Will recipients be external business partners, or employees of the host organisation?
O	Objectives	For what purpose will hospitality be provided? Is the hospitality being provided to further the conduct of official business? Will it promote and support government policy objectives and priorities? Will it contribute to staff wellbeing and workplace satisfaction?
S	Spend	Will public funds be spent? What type of hospitality will be provided? Will it be modest or expensive, and will alcohol be provided? Will the costs incurred be proportionate to and less than the benefits obtained?
T	Trust	Will public trust be enhanced or diminished? Could you publicly explain the rationale for providing the gift or hospitality? Will the event be conducted in a manner which upholds the reputation of the public sector? Have records in relation to the gift or hospitality been kept in accordance with reporting and recording procedures?

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Appendix 7: Submissions and responses from Tasmanian State Service agencies

Submission from the Tasmanian Audit Office



Level B, 144 Macquarie Street, Hobart, Tasmania, 7000
Postal Address: GPO Box 851, Hobart, Tasmania, 7001
Phone: 03 6173 0900 | Fax: 03 6173 0990
Email: admin@audit.tas.gov.au
Web: www.audit.tas.gov.au

16 July 2015

Ms Dianne Merryfull
Chief Executive Officer
Integrity Commission
Surrey House
199 Macquarie Street
HOBART TAS 7000

Dear Ms Merryfull

Gifts and benefits – Operation Kilo Investigation report

Thank you for your letter dated 19 June 2015 and for a copy of the above report. The Auditor-General has asked me to respond to your letter in view of the fact that, as a member of the board of the Integrity Commission, he is conflicted.

Our Office implemented a gifts and benefits policy on 4 October 2013. At that time we regarded the policy as good practice. Clear from the 13 tables in your report is that there are a number of areas we need to revisit. This will be done having regard to the business environment in which the Office operates with changes made where appropriate to the policy. In doing so, regard will be given to the model gifts and benefits policy included as an appendix to your report. Our initial assessment of the proposed policy is that it is generally appropriate for a public sector environment.

Thank you for the opportunity to comment and for the professional manner in which you and your investigator conducted your work.

Yours sincerely

E R De Santi
Deputy Auditor-General

...1 of 1

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Response from the Tasmanian Audit Office



Tasmanian
Audit Office



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31 August 2015

Ms Diane Merryfull
Chief Executive Officer
Integrity Commission
199 Macquarie Street
HOBART TAS 7001

Your ref: MM14/0100

Dear Ms Merryfull

RECOMMENDATIONS – OPERATION KILO

The Auditor-General has asked me to reply to your letter on behalf of the Office, dated 13 August 2015 which outlined the recommendations in the Operation Kilo report.

I inform you that the Office will implement the following recommendations as soon as practicable:

- The Tasmanian Audit Office (Office) will write to all current suppliers and inform them not to offer gifts or benefits to any of our staff or contractors and if they do so that they should expect them to be returned except if they are 'token' in nature.
- The Office will publish its gifts and benefits register on its website without the names of staff.
- The Office's policy for gifts and benefits, the register and declaration form will be reviewed in line with the recommendations and the model policy provided.
- When the Office has finalised the policy, register and forms, staff and contractors will be trained in the revised requirements.

...1 of 2

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Should you have any queries or concerns please contact [REDACTED]
[REDACTED]

Yours sincerely



E R De Santi
CHIEF OPERATING OFFICER

...2 of 2

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**Contact details identifying a specific employee have been redacted from this page.*

Submission from the Department of Premier and Cabinet

Department of Premier and Cabinet

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17 JUL 2015

Ms Diane Merryfull
Chief Executive Officer
Integrity Commission
GPO Box 822
HOBART TAS 7001
Via email: diane.merryfull@integrity.tas.gov.au

Dear Ms Merryfull

Gifts and Benefits – Operation Kilo

I refer to your letter of 19 June 2015, as well as the attached Investigator's Report to you and the 'Agency Feedback', delivered to the then Acting Secretary, Ms Rebekah Burton. I note your advice that all Heads of Agencies have been provided with the Investigator's Report and 'Agency Feedback' specific to their agencies, and that the material provided is not subject to a confidentiality notice under Section 48 of the *Integrity Commission Act 2009*.

As you know, the Tasmanian State Service (TSS) employs over 28 000 people across the State in the widest possible range of roles and operating environments. Collectively our workforce is responsible for administering billions of dollars of expenditure and providing many hundreds of thousands of incidents of service every year. Generally we operate under a decentralised management model in which we invest in the capacity of our employees to exercise good judgement while supporting them with appropriate training and education, and a clear accountability and reporting framework.

Given the complexity of our business and the expenditure involved, I am pleased but, at the same time, not surprised that the Integrity Commission's work has uncovered no evidence of corruption, fraud or serious misconduct by our people. And, in most instances, where the Commission has drawn attention to individual behaviour, that conduct has been within the relevant agency's guidelines.

I understand that, consistent with Section 56(4) of the *Integrity Commission Act*, your Report to the Board must include submissions (or a fair summary of them) from persons asked to comment on the Investigator's Report. I note further that it is the present intention of the Commission to table a report on this matter in the Parliament in August 2015.

In my capacity as Head of the State Service, I make the following submissions about the Investigator's Report and the Agency Feedback on behalf of all Heads of Agencies. These comments also address concerns I have about feedback provided on my own Department.

15/43961

I am aware that the Secretary of the Department of Treasury and Finance has also written to you in relation to comments made in the Report about the relevant Treasurer's Instructions and procurement more broadly. He has taken the opportunity in his response to comment on the individual cases identified in his Agency Feedback and to defend the conduct of those individuals where clearly it was consistent with his Department's policy and guidelines. This has been the case with many of the individuals identified in other Agency Feedback, that is they have been operating within their agency's policies and guidelines. While other agencies have chosen not to write to you at this time about their individual cases in the interest of giving you a collective response, we reserve the right to do so depending on how the Commission chooses to address our feedback.

Heads of Agencies are committed to continuing to build a State Service that upholds the principles of the *State Service Act 2000* and the Code of Conduct, enjoys the public's confidence and demonstrates the highest standards of ethical behaviour. I therefore welcome the opportunity to improve and strengthen our approach to managing the provision and receipts of gifts, hospitality and other benefits. Our agencies are not, as asserted in the Report, complacent about this issue and the Integrity Commission's work provides an opportunity to test, refine and improve our approaches.

By way of example and as you know, my Department has recently updated its own guidelines to reflect guidance provided by the Commission. I note though that the Report is critical of the fact that we have drawn on the Commission's work on guidelines for parliamentarians, ministers and their staff, arguing that it is inappropriate that guidelines for elected officials (and presumably their staff) be applied to public servants and vice versa. Despite the assertion in the Report, it is not self-evident to me that this is the case, given the community expects both its politicians and its public servants to meet the highest standards of probity and integrity in administration and decision-making. In any case, I am disappointed that my Department has been criticised in the Report for adopting the Integrity Commission's own guidelines in this area, particularly when no alternative has been provided to date.

The Report contains relevant and useful advice and information that will provide a basis against which agencies can review and improve their approaches to managing gifts, benefits and hospitality. However, if material in the Report was presented in a different way I believe this would encourage a cooperative working relationship between the Integrity Commission and agencies when it comes to implementation.

For example, in a number of places the Report asserts that there is a culture of entitlement in the TSS. No evidence is given to support this assertion. Indeed, while evidence is given that gifts and hospitality have been received there is no evidence that this has either influenced the decisions of the relevant officers, been perceived to have influenced their decisions, or created a culture of entitlement.

In order to be effective, the educative function of the Commission must be characterised by co-operation. Your letter to me of 30 July 2014 (and presumably those sent to other Heads of Agencies) addressed the issue of gifts and hospitality in the context of gaining a better understanding of "the common challenges faced by agencies", and ensuring that the Commission's work was "focussed on the areas of greatest need and potential impact for improvement". Your letter requested "the **co-operation** [my emphasis] of all agency heads in providing to us their internal agency information...". Your correspondence made no reference to an intention to undertake an 'own motion' investigation, nor of the intention to exercise coercive powers as part of the process. The first Heads of Agencies knew about this was when you informed us of the results last month.

Agencies provided their policies to the Commission in good faith and in the spirit of co-operation, expecting that they would receive timely feedback in the same vein.

Opportunities for improvement

I acknowledge that there are matters contained in the Report which indicate that practices across the TSS regarding gifts, benefits and hospitality require improvement. In particular, there is a need for targeted training and guidance to staff, and enhancements to policies and systems to minimise the integrity risks associated with gifts, benefits and hospitality.

The aim of policies and procedures should be to ensure consistency and transparency, and protect the public interest, rather than simply enforce compliance.

A prescriptive, zero tolerance approach (as evidenced by the Model Policy attached to the Investigator's Report) to managing the risks associated with gifts, benefits and hospitality is neither practical nor contemporary public sector practice, and is inconsistent with effective management practice. The latter is characterised by empowering and trusting employees to make appropriate decisions, supporting them through training, education and systems to exercise good judgement, and invoking the various tools available in the event of possible or actual misconduct. The former approach sends the wrong message to employees, that is that they cannot be trusted to behave ethically. This is particularly so in the context of the Report's finding that there is an absence of corruption, fraud or serious misconduct in the TSS.

I am concerned about the potential effect of such a policy on the morale of TSS employees, and consequent implications for recruitment and retention.

Tabling in Parliament

While I acknowledge that the Report results from an 'own motion' investigation, I consider that tabling it in Parliament – even taking into account that it will reflect the essence of any submissions made – could be counter-productive to the Commission's core educative function and as a result of inevitable subsequent media reporting, result in a misleading view of the state of the TSS.

The Report can – and most likely will – be seen by the public primarily as an attack on the integrity of TSS employees. It is self-evident that that is not conducive to changing or influencing individual or organisational behaviour, but will more likely result in employee defensiveness.

In light of this, I request that you recommend to the Board that it does not table the Report in Parliament, but instead, that the Commission agrees to work cooperatively with Heads of Agencies on agreed approaches to improve practices. I would welcome the opportunity to meet with you and discuss how such a cooperative approach might be taken forward.

Identification of employees

I note your observation that the Operation made no findings about individual conduct, but rather about systemic practices across the TSS. Despite this, it is clearly the case that a variety of individuals can be identified from a cursory reading of the Report to be tabled in Parliament, and the Agency Feedback.

Both the Agency Feedback and the Investigator's Report contain material which either (i) identifies employees (in the case of the Agency Feedback) or (ii) allows their identities to be ascertained.

As noted above, it is conceivable that the identity of various employees could be ascertained from the information in the Report. This could be by a process of elimination, for example by narrowing down the number of employees working in a specific area in a specific agency; by the gender of the employees whose verbatim comments are included; or by another means.

Similarly, it is difficult to understand what purpose is served by identifying agencies in the Report (I note that agencies have been de-identified in some instances so as to protect the identity of the employees concerned). It is nevertheless the case that the identity of many employees can be relatively easily deduced, particularly by reference to the identification of agencies.

You advise in your covering letter that those individuals were "...identified and interviewed because they perform roles that are 'high risk' in terms of exposure to gifts and benefits and because it was considered that they could provide valuable insight into the practical operation of the policies, practices and procedures of agencies". While this may have been the intention of the Investigator, a member of the public could conclude that they were interviewed because of concerns about their conduct.

Accordingly, I request that:

- identifying references to agencies are removed and replaced with generic indicators, for example ██████████ in the case of the Department of Premier and Cabinet;
- verbatim comments from employees in the Report are not linked in any way to a description of the employee's role, length of service, or work area; and
- there are no references to the gender of the employees who are quoted.

Employment Direction No 8 – Gifts and Benefits

In relation to the numerous recommendations regarding Employment Direction No.8 (ED8), I understand from Mr Frank Ogle that you were initially advised that it was the intention to revoke and replace this ED with a Workplace Practice Guideline (WPG). Mr Ogle proposes – and I agree – that any replacement for ED8 should take a principles-based approach, rather than being highly prescriptive. However, I can confirm that any decision in relation to the future of ED8 is one for the Government to make. At this stage I have not provided any advice to the Government on this issue, and no decision has been taken.

It is properly the role of the Head of Agency to determine policy settings appropriate to his or her agency and to assess business and integrity risk within those agencies.

A 'one size fits all' approach is not appropriate or fit for purpose. Guidance for employees needs to be tailored to the kinds of situations faced by employees working in different agencies. An employee working in a hospital, for example, deals with very different situations from an employee working in the Parks and Wildlife Service, within a prison, with foreign dignitaries or within an administrative unit. At the very least, policies should contain scenarios to which employees can relate and which attempt to translate theory into practice.

General observations

I consider that the references throughout the Report to investigations in other jurisdictions are not appropriate. In many cases, the nature of the conduct was more egregious than what is identified in this Report, and is therefore, not an appropriate point of comparison. Even the extent of what the Report describes as a 'systemic problem' across the TSS is not of a comparable magnitude to what has often been identified in other jurisdictions.

In relation to recommendation 4, I disagree that gift registers should be made publicly available via agency websites. Individual TSS employees are accountable to the Head of Agency for their performance. The Head of Agency, in turn, is accountable to Minister/s for the administration of his or her agency. There is no public interest justification for the publication of the names of employees who have received gifts, benefits or hospitality.

In relation to recommendation 5, I can confirm that a new procedure was put in place in January this year which requires all Heads of Agencies to declare gifts to me - in accordance with their agency's gifts policy - and me to the Secretary of the Department of Treasury and Finance. I do not consider it appropriate that such declarations be made to Ministers, particularly when most Heads of Agencies are accountable to more than one Minister.

I disagree with a variety of contentions in the Report, particularly about community expectations. I am unclear what the evidence base is for these various assertions.

As I said at the outset, Heads of Agencies are committed to improving their approach to the management of gifts and hospitality. On receipt of your draft Report we agreed to commence work immediately on a new, whole of service approach to the receipt of gifts and hospitality. As far as possible, the aim will be to ensure a consistent approach across all agencies and give our employees absolute clarity about what is, and is not acceptable including expectations about reporting and declaration. As part of this process we will look actively to take account of the Commission's findings as we progress this work.

I hope that you will agree to amend the Report to address the concerns I have raised above. I believe that doing so will maintain the integrity of the Report while also promoting a stronger cooperative relationship between agencies and the Integrity Commission in addressing its findings.

Yours sincerely



Greg Johannes
Secretary, Department of Premier and Cabinet
Head of the State Service

Response from the Department of Premier and Cabinet

Department of Premier and Cabinet

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11 SEP 2015

Mr Greg Melick AO SC
Chief Commissioner
Integrity Commission
GPO Box 822
HOBART TAS 7001

Dear Mr Melick

I am writing in response to the Board's determination of 6 August 2015, which I received on 17 August 2015. I spoke with your Chief Executive Officer (CEO) and she agreed that, as I had received the determination some time after it was made, she was willing to extend the due date for my response to 11 September 2015.

Consistent with my letter to the CEO of 17 June 2015, I am responding on behalf of all Heads of Agencies. I am responding to the recommendations addressed specifically to me as well as those addressed generally to all Heads of Agencies. I note that Recommendation 2 in the Board's determination relates directly to the Department of Treasury and Finance, and that the Secretary of that Department will respond directly to the Board regarding that matter.

While I continue to have significant concerns about the tone and presentation of information in the report, I note the CEO's advice that she has removed references to gender and length of service from the case studies in the public report, and I would like to thank her for this. This will go some way towards ensuring that the identities of any officers involved are not disclosed. I also note that the Board's recommendations reflect – at least to some extent – the feedback I provided in my letter to the CEO of 17 June 2015.

I would also like to thank the CEO for her comments on my submission, which have assisted us in getting a better understanding of some of the rationale behind matters identified in the report. I also appreciated the opportunity to meet with her about these issues on 20 August 2015.

As I said in my letter of 17 June 2015, Heads of Agencies welcome the opportunity to improve and strengthen our approach to managing the provision and receipt of gifts, benefits and hospitality.

The CEO notes – and I agree – that the fundamental difference between the Commission's position and the Government's position is the Commission considers that there should be a 'no gifts policy'. Despite this, I am confident that there is genuine scope to implement a more transparent and contemporary approach which increases the Tasmanian community's confidence that its public officials are acting in the best interests of the public with regard to the receipt of gifts and benefits. I also believe that there are opportunities for agencies to work with the Integrity Commission in this area.

15/09/2015

Section 58(4) of the *Integrity Commission Act 2009* requires that Principal Officers to whom a report is referred must notify the Board of any actions taken in relation to the report. The following sets out the actions we will take in relation to the report.

As I have advised the CEO, the Department of Treasury and Finance is leading work across the State Service to develop a new Whole of Government (WOG) policy regarding the receipt of gifts, benefits and hospitality. This work will draw upon the Board's numerous recommendations. Once a draft has been completed, it will be provided to the CEO so that she may provide feedback. Whether or not Employment Direction No 8 (ED8) is retained in its current form is a matter for the Premier. I will provide my views to the Premier about ED8 when the WOG policy has been drafted. The WOG policy will then be disseminated to major suppliers so that they clearly understand our new policy settings.

I agree to the publication of gift registers, but only for gifts above a certain value (for example \$150), and only for publication on a de-identified basis.

I consider that it is appropriate for other Heads of Agencies to continue to make declarations to me, particularly in my capacity as Head of the State Service. As I discussed with the CEO, I do not consider it appropriate for Ministers to be making determinations as to whether or not Heads of Agencies should receive particular gifts and benefits. In this regard, I note the reference in the report to it not being appropriate for the Department of Premier and Cabinet to apply the Commission's draft guidelines for Ministers, Parliamentarians and their staff to State Servants, because we work in different contexts. It is difficult to reconcile this criticism of the Department of Premier and Cabinet Guidelines with the approach proposed by the Commission that Heads of Agencies should declare gifts and hospitality to these same elected officials.

I understand that Heads of Agencies in some other jurisdictions are bound by the same policies as all employees, and that they declare the receipt of gifts to their corporate services divisions, or equivalents. In this context, I consider that the Tasmanian practice is arguably more transparent than elsewhere. I am willing to consider alternatives to me declaring to the Secretary, Department of Treasury and Finance, but I do not think that this should include the Premier.

I do note, however, the observation in the report that the State Service Regulations in effect create a 'loophole' by which Heads of Agencies are to declare gifts to themselves. I will ask the group chaired by the Secretary, Department of Treasury and Finance to consider this issue in particular.

In closing, I want to reiterate that Heads of Agencies are committed to working to improve the treatment of gifts, benefits and hospitality in the State Service. However, I remain of the view that, following the tabling of the public report in Parliament, members of the public are likely to surmise that interviewed employees were identified because of concerns about their conduct. There is a considerable difference between, on the one hand, having a detailed understanding of an issue based on a lengthy investigation, and on the other, jumping to conclusions based on selective and sensational reporting by members of the media.

Please do not hesitate to contact me if you have any questions in relation to this letter.

Yours sincerely



Greg Johannes
Head of the State Service

Response from the Department of Treasury and Finance

Department of Treasury and Finance

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Doc. reference 15/126393
Your reference MM14/0100

Mr Greg Mellick AO SC
Chief Commissioner
Integrity Commission
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Gifts and benefits – Department of Treasury and Finance

I refer to correspondence from Ms Diane Merryfull, Chief Executive Officer of the Integrity Commission dated 19 June 2015, attaching a copy of an investigator's report titled "Operation Kilo" (Report), my previous written submission in response to the Report of 17 July 2015, and subsequent correspondence from Ms Merryfull of 13 August 2015, which included the Determination of the Board of the Integrity Commission in relation to the Report. I also refer to a recent meeting with Ms Merryfull and the Auditor-General, Mr Mike Blake, to discuss the Report and the Board's Determination, on 27 August 2015.

Pursuant to section 58(4) of the *Integrity Commission Act 2009* (the Act), as the principal officer of the Department of Treasury and Finance, I provide the following response to the Report (as provided to me and dated 19 June 2015) and the Board's Determination, including actions proposed to be taken in relation to Recommendations 2, 3 and 4, as they apply to me. I have also included comments regarding the action I propose to take in relation to Recommendation 1 (referred to the Secretary of the Department of Premier and Cabinet). I note that I have not been provided with a final copy of the Report, nor have I been informed of any substantive amendments that may have been made to the Report to address the concerns raised in my written submission of 17 July 2015.

1. Response to the Report

The Reports do not present any evidence of misconduct or a systemic failure in the Department of Treasury and Finance

As you are aware, the currently enacted law and Government policy as it applies to the receipt of gifts by Tasmanian Public Sector employees is contained in section 9(11)-(12) *State Service Act 2000* (the Act), regulation 12 of the *State Service Regulations 2011* (Regulations), and Employment Direction 8 (ED8) "Gifts and Benefits" (effective 4 February 2013).

Relevantly, section 9(11)-(12) of the Act provides:

- (11) An employee must not make improper use of –
 - (a) information gained in the course of his or her employment; or
 - (b) the employee's duties, status, power or authority –in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.

- (12) An employee who receives a gift in the course of his or her employment or in relation to his or her employment must declare that gift as prescribed by the regulations.

Regulation 12 provides:

For the purposes of section 9(12) of the Act, a gift must be declared to the relevant Head of Agency.

ED8 currently operates to provide further guidance to ensure officers and employees are aware of their statutory obligations in relation to the giving and receiving of gifts and benefits, and in particular that Government or Agency procurement decisions are not influenced by the receipt of gifts. ED8 also provides for Heads of Agencies to develop guidelines "relating to the giving and receiving of gifts and benefits".

The Department of Treasury and Finance's "Receiving and Giving Gifts Policy" and separate "Conflict of Interests – Declaration and Management Policy" apply to the conduct of Treasury employees, as part of the broader legislative and policy framework applicable to employees of the State Service, as noted above. Departmental policies are intended to be simpler, plain English guidelines which aim to inform and guide the conduct of Treasury employees and are not intended as a repetition of the statute, code of conduct or employment direction.

As the Secretary of the Department of Treasury and Finance I am committed to ensuring that the Department and its employees uphold the principles of the *State Service Act* and *Code of Conduct*, and all published Government and Departmental policy and guidelines, and in particular, as it applies to the receipt of gifts and benefits and an employee's management and declaration of potential conflicts of interest. I support the continuous improvement of State Service and Departmental policies, and believe that there are areas of the current gifts and benefits policy which could be more clearly explained and consistently applied across the State Service, with training and support for employees to become aware and apply any changes.

I do not however support the testing of historical conduct of a Treasury employee against an unpublished, unconsulted and untested 'good practice' standard, of which they have had no knowledge of or been provided an opportunity to comply with, especially in circumstances where they were in compliance with existing law, employment directions and policy. I make this statement, particularly as the Report fails to identify any misconduct, improper influence or inappropriate exercise of an authority, power or discretion by any employee of the Department that would require immediate and urgent action to amend the law as it currently applies or published Government policy.

It is my view that the testing of Department policy against an unpublished and untested 'good practice' framework and providing ranking scores for compliance by agencies with subjective criteria which fails to reflect existing law and policy in Tasmania, deliberately creates a false or misleading perception that the Department's policy is non-compliant or deficient, which I reject. To be scored 0% for compliance in Table 1 of the Report for the failure to refer to precise sections of the Act, Regulations or the Code of Conduct, when the Department policy itself sets out what is expected from Treasury employees in relation to the giving and receiving of gifts, and which is entirely consistent with the law and published government policy, is an unreasonable outcome and entirely rejected. Similarly, to be scored 29% for compliance in Table 3, for failing to replicate our existing but separate "Conflict of Interests – Declaration and Management Policy" in our "Receiving and Giving Gifts Policy" is illogical.

The law and Government policy explicitly allow the acceptance of appropriate gifts and benefits by State Service employees, subject to the management of conflicts of interest

It is my strong view that the development of a new whole-of-government policy (see my response to Recommendation 1 below) should continue to recognise current law and Department policy that the acceptance of a refreshment, such as a cup of coffee, or a working lunch, is not a gift and will occur as part of general stakeholder liaison and management, yet be guided by the application of conflicts of interest policy.

It is also my view that the acceptance of a randomly-drawn prize by an officer attending an approved work or stakeholder event which is open to the public or a broadly defined class of employees is generally appropriate and given its random nature cannot be characterised as an attempt to influence a particular Government decision or procurement activity. The acceptance of a declared and approved randomly drawn prize is in accordance with the law and Government policy as it currently applies.

Seasonal tokens, such as a calendar or a chocolate, or token mementos, such as a badge or pen, should not be considered gifts and this is clearly articulated in the Department's policy as acceptable without declaration.

No findings about individual conduct, yet individual officers of the Department are able to be identified in Reports

Given the lack of evidence to support any finding of individual misconduct, or any breach of current law or Government policy as it applies to the receipt of gifts and benefits, by an individual Department employee, I request that all references to the actions taken by the Department in relation to conduct of its employees generally, or to the conduct of any particular employee of the Department are removed from the Report to ensure that no individual can be identified.

I further note that the information provided by notice recipients (i.e. private companies) has not been verified by the Commission, yet is relied upon to cast aspersions upon the integrity of the Department and the character of individuals. In a large number of instances, no evidence has been provided in the Report to support that the offer of a gift or hospitality was even received by the Department or individual, let alone accepted or an event even attended. It is my view that, in these cases, the Report should clearly state that there is no evidence that the offer of a gift or hospitality was received.

No evidence of a Department 'government buyer' accepting a gift or hospitality in breach of policy

At several points throughout the Report, invalid statements are made in relation to identified or unidentified employees of the Department constituting 'government buyers' with the inference that they control the Department's procurement and expenditure decisions. These statements appear to be based upon an uninformed view of the financial delegations and authorities set for the Department and the process for undertaking and approval of Government procurement.

Financial delegations are highly and tightly held within the Department of Treasury and Finance, and I reject the assertion that the employees you have identified influence or approve Government procurement. For procurement activities, these financial delegations are exercised within the strict procurement guidelines set by the Treasurer's Instructions, which require formal procurement assessment approaches involving several levels of approval before a procurement is finalised (ranging from 3 direct quotes and Director and Deputy Secretary authorisation, Procurement Review Committee approval, to the larger Request for Tender processes (above \$250 000), involving a

diverse and multi-person panel, Procurement Review Committee, Deputy Secretary, Secretary and potentially Treasurer approval).

Not one of the Department employees potentially identifiable in the Report as receiving a gift or benefit (such as a cup of coffee, seasonal token, or invitation to a stakeholder event) hold the appropriate financial delegation to approve the awarding of a Government contract to any one of the commercial entities identified in the Report as providing a gift or benefit.

Without an adequate explanation of each Department's levels of financial delegation, or procurement approval process, statements in the Report that each of the employees receiving gifts or benefits are 'government buyers', or could influence a decision to exercise a financial delegation to award a contract to any of the commercial entities named, or would even participate in a procurement process are misleading and untrue, and should be removed from the Reports or appropriately qualified.

I note that additional guidance for officers participating in procurement activities in relation to the management of conflicts of interest and the acceptance of gifts and benefits is provided by the Treasurer's Instructions, including:

*"Government buyers involved in procurement must decline gifts, gratuities or any other benefits **which may influence, or might be deemed to influence, equity or impartiality.**" [emphasis added]*

I have carefully examined each of the instances potentially linked to the Department listed in the Report, and I am firmly of the view that none of the examples of the offer or receipt of gifts and benefits by an employee of this Department is in breach of this guidance, or had the capacity to influence equity or impartiality of the employees concerned, noting that in any event, none of the employees had the financial delegation or positional power to influence a procurement outcome.

2. Response to Recommendations of the Board

Recommendation 1 – to the Secretary of the Department of Premier and Cabinet [Recommended revisions to ED8 or replacement gifts and benefits policy]

Although Recommendation 1 has not been referred to me, as discussed with Ms Merryfull and the Auditor-General, the Department of Treasury and Finance is currently consulting with agency representatives in order to prepare a new Gifts and Benefits Policy to be adopted and applied by all General Government Sector agencies.

A single, clear whole-of-government policy to replace individually-developed agency policies will assist Heads of Agencies, Government employees, and ultimately Government suppliers, to ensure transparent and consistent application of policy as it applies to the declaration of gifts or benefits, and the continued development of appropriate commercial networks and government stakeholder relationships.

Whilst the Board's recommendations and selected components of the Report will help guide and inform the development of the new policy, it is my view that the new whole-of-government policy should continue to recognise a contemporary and practical model for the receipt and disclosure of appropriate gifts and benefits, as is currently supported and clearly contemplated by the existing law and policy.

At its simplest level, the new whole-of-government policy will make it clear that, as a Government employee, you:

- must not *solicit* the offer or provision of a gift or benefit, under any circumstance;

- are not entitled to accept a gift or benefit from a *prohibited person*, under any circumstance;
- are not entitled to accept a gift or benefit of *money or money equivalent*, under any circumstance; and
- are not entitled to accept a gift or benefit that may cause an *actual, perceived or potential conflict of interest*.

In all other instances, if a Government employee receives or is offered a gift or benefit during the course of their employment (i.e. which is not *solicited*, not *money or money equivalent*, not from a *prohibited person* and not placing the employee in an *actual, perceived or potential conflict of interest*) and the employee wishes to retain it, they must declare the gift or benefit to their Head of Agency and request approval, with the declaration and decision to be recorded in the Agency Gifts and Benefits Register.

It is also intended that the policy will confirm that any officer or Government employee engaged in procurement processes should also be aware that it is a requirement that all Government buyers decline gifts and gratuities or any other benefits which may influence, or might be deemed to influence, equity or impartiality in procurement or disposal decisions.

Treasury will carefully review Recommendation 1 and the Report, and work together with agency representatives to ensure that the new policy is informed by the work of the Commission.

Recommendation 2 – to the Secretary of the Department of Treasury and Finance [Revise Treasurer's Instructions 1101 and 1201]

Treasurer's Instructions 1101 *Procurement Principles: goods and services* and 1201 *Procurement Principles: building and construction/roads and bridges* will be revised to complement and align with the new policy (as referred above). Treasury will also undertake a review of all current Government purchasing information and guidelines (printed and online) to ensure alignment with the new policy and revised Treasurer's Instructions.

Recommendation 3 – to each of the agency heads (principal officers) to whom the report is referred [Instructions to be given to Tasmanian Government Suppliers]

As noted above, Treasury will undertake a review of all published Government purchasing information to ensure alignment with the new policy and revised Treasurer's Instructions, including information available to Government suppliers. Information from the new policy will be included in revised publications to aid the understanding of Government suppliers.

Recommendation 4 – to each of the agency heads (principal officers) to whom the report is referred [Publication of Agency Gift Registers]

This Recommendation has been responded to on behalf of all Heads of Agency by the Secretary of the Department of Premier and Cabinet.

Recommendation 5 – to the Secretary of the Department of Premier and Cabinet [Agency Heads to declare gifts to the Minister administering the State Service Act 2000 (the Premier)]

I agree and support the comments of the Secretary of the Department of Premier and Cabinet in relation to this Recommendation 5.

Conclusion

It is my view that parts of the Report may be valuably used to improve and enhance current Government policy as it relates to gifts and benefits. As I have noted in my response to the Recommendations, the Report and the Recommendations of the Board will be carefully considered and used to inform the development of a new whole-of-government gifts and benefits policy.

However, given the number of serious deficiencies, inaccuracies and erroneous assertions contained in the copy of the Report that I have received, I maintain the view that it would be inappropriate for the Report to be tabled in Parliament or otherwise publicly released in its current form.

Should you have any queries or require any further information regarding this matter, I can be contacted on [REDACTED]



Tony Ferrall
Secretary

11 September 2015

**Contact details have been redacted from this page.*

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