

POLICY FOR THE GIVING AND RECEIPT OF GIFTS AND BENEFITS BY EMPLOYEES OF THE QUEENSLAND PUBLIC SERVICE

Date of Issue: 10 December 2007

Effective from: 1 January 2008

1. PURPOSE

This policy outlines the ethical considerations and procedures involved in the giving and receiving of gifts and benefits by employees of the Queensland Public Service.

2. APPLICATION

This policy applies to the giving and receipt of gifts and benefits by all public service employees. Agencies may implement their own gifts and benefits policy that is consistent with this Policy.

This policy should be read in conjunction with the principles which concern the giving and receipt of gifts and benefits in other documents, namely, the *Public Sector Ethics Act 1994*, *Codes of Conduct*, the *Public Service Act 1996*, the *Financial Management Standard 1997*, the *Crime and Misconduct Act 2001*. Provisions in the Cabinet Handbook and the Ministerial Handbook may also be relevant.

3. DEFINITIONS

Accountable Officer has the meaning given by the *Financial Administration and Audit Act 1977* or the appropriate officer who has responsibility for the financial administration of the agency, if the agency is not subject to the *Financial Administration and Audit Act 1977*.

Employee health and well-being program means a program designed to promote health by encouraging individuals to lessen their exposure to common health risks and to actively prevent the onset of disease.

Fair market value means the reasonable retail value of the gift or benefit.

Gifts and Benefits refers to items given and received by public service employees in the course of official duties. It includes gifts and/or benefits which may be tangible (of lasting value) or intangible (of no lasting value). Examples of gift and benefits are provided in Appendix 1. It does **not** include any gifts or benefits given or received under an appropriately approved employee health and well-being program or an appropriately approved rewards and recognition program. It does **not** include benefits negotiated when an agency sponsors a service, product or activity on its own or with another government agency, as may occur under the Queensland Government Sponsorship Policy.

Public Perception means the perception of a fair-minded person in possession of the facts.

Public Service Employee is defined as any person employed under a provision of the *Public Service Act 1996* and includes any person employed by the Queensland Government to whom all or some of the provisions of the *Public Service Act 1996* have been applied by means of a regulation.

Register of Gifts means the register established under the *Financial Management Standard 1997*.

Rewards and Recognition Program means gifts or benefits received by public service employees awarded under an appropriately approved agency program that recognises contributions towards meeting agency outcomes and objectives.

4. PRINCIPLES

- Being a public service employee involves a public trust. This means that duties must be carried out impartially and with integrity. Consequently, it is not appropriate for public service employees to be offered, to accept or to give gifts and benefits that affect, may be likely to affect or could reasonably be perceived to affect, the performance of their official duties.
- Public service employees must at all times be mindful of their obligation to maintain and enhance public confidence in the integrity of public administration.
- Public service employees must not ask for or encourage the giving of any form of gift or benefit in connection with the performance of official duties. This includes entering any discretionary competitions which involve a prize.
- Any gift or benefit accepted, regardless of monetary value, implies, or may imply, a relationship which may interfere with objectivity and independence.
- In most situations public service employees can decline offers of gifts or benefits courteously by explaining that acceptance would be against agency policy and consequently that they have no discretion in the area.
- Most gifts or benefits accepted by a public service employee remain the property of the agency. The agency may determine if it is appropriate for the recipient to retain the gift or benefit.

5. POLICY OVERVIEW

This policy provides a framework to enable public service employees to consider the giving and receiving of gifts and benefits in the course of their official duties.

The following headings – acceptance of gifts and benefits; reporting of gifts and benefits; and retention of gifts and benefits – must be considered strictly in the order that they appear. The first consideration must always be whether it is appropriate to consider accepting or offering a gift or benefit. Only if it is appropriate to accept or offer the gift or benefit, should consideration be given to issues of reporting and retention.

6. ACCEPTANCE OF GIFTS AND BENEFITS

The first consideration must always be whether a gift or benefit is appropriate to accept. There are two major considerations – why was the offer made and the public perception of acceptance.

Public service employees should discuss these issues with a supervisor or manager to ensure appropriate approval is obtained prior to a decision about whether to accept a gift or benefit.

A Useful Decision Making Guide has been included in appendix two as an example of how an employee may consider whether a gift or benefit should be accepted. It is provided as an example only and specific circumstances should be discussed with a supervisor or manager.

6.1 Why was the offer made?

Each type of gift carries with it different risks that should be considered when deciding whether or not to accept a gift or benefit. (This is not an exhaustive consideration of why gifts may be offered).

- Can it be perceived that it is a gift or benefit to influence? These gifts or benefits are intended to generally ingratiate the giver with the recipient for favourable treatment in the future. Acceptance of these gifts or benefits should not be accepted.
- Can it be perceived that it is a gift or benefit of gratitude? These are gifts offered to an individual or agency in appreciation of specific tasks or for exemplary performance of duties. This includes gifts for staff who speak at official functions as part of their duties. Such gifts are frequently offered, and in many circumstances, it would be inappropriate to refuse them. Acceptance of these gifts or benefits should only be contemplated when services to a client are completed to avoid any expectation of favourable ongoing treatment or the impressions of such to others. Acceptance of these gifts or benefits can be considered as they represent a lower risk.
- Was it a memento or token gift or benefit? Token gifts are offered in business situations to an agency or public service employee representing an agency. They are usually products that are mass-produced and not given as a personal gift. This includes sponsors material provided to all delegates at a conference. Acceptance of these gifts or benefits can be considered as they represent a lower risk.
- Was it a ceremonial gift or benefit? These are official gifts that are offered by one organisation to another. Such gifts are often provided to a host agency when conducting official business with delegates from another organisation. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the agency, and therefore the gift is considered to be for the agency not a particular individual. Acceptance of these gifts or benefits can be considered as they represent a lower risk.

6.2 The public perception of acceptance

Public perception of the acceptance of a gift or benefit can be affected by various factors, such as:

- The relationship between the giver and the public service employee. If the public service employee is in a position to provide advice or make decisions about (but not limited to) granting licences, inspecting and regulating businesses or giving approvals, it is more likely that the gift would be perceived as inappropriate.
- The transparency and openness of the gift. If the gift is offered to a public service employee in a public forum, it is less likely to be perceived as a gift of influence than if it were offered in a private context.
- The value of the gift. Expensive gifts are more likely to be perceived as gifts to win favours.
- The frequency of gift giving. Agencies should take into account previous gifts given by an individual or organisation to a public service employee. While the perception that one gift may not be considered sufficient to cause a public service employee to act outside their official duty, the sum of multiple gifts may

be considered sufficient to do so. Multiple gifts from the same donor or from donors in a similar relationship with the public service employee, where the cumulative value is more than \$100 in any financial year, must be reported under section 8.1.

6.3 Offers of Cash

Any offer of cash, or any items which are readily converted into cash (e.g. lottery ticket, 'scratchie', shares), must be refused whatever the circumstances. Accepting money in any form will breach a number of public service policies and legislative requirements, including the Criminal Code¹. It may be seen as an attempt at bribery. If you are not in a position to refuse the acceptance of such a gift, you should immediately pass it on to your supervisor, manager or an accountable officer within your agency.

6.4 Benefit to the State of Queensland

Any gift, other than a token or memento, should not be accepted unless it can be shown to be of benefit to the agency, the State of Queensland and the public generally.

7. GIVING OF GIFTS OR BENEFITS

The principles in section 6 – Acceptance of Gifts or Benefits - also apply to the giving of gifts or benefits by public service employees. Consideration must be given to why the gift is being offered (refer to section 6.1) and the public perception of the giving of the gift or benefit (refer to section 6.2).

Any gift or benefit must be for official purposes and accountable officers must be able to identify the benefit for the agency, the State of Queensland and the public generally.

Agencies should consider the implications of Fringe Benefit Tax (FBT) when making decisions about giving gifts or benefits.

7.1 Official Hospitality

Expenditure for official hospitality should be considered only where it is considered essential to facilitate the conduct of public business through persons who are able to do so, either by advice or because of their vocation or business needs. Such hospitality should not be a substitute for business meetings which would ordinarily be conducted in the workplace.

In certain cases, it may be periodically appropriate to provide hospitality to individuals of particular importance to the agency or the State. Examples would include:

- Interstate and overseas visitors (where the department or agency has an interest in, or a specific obligation towards, facilitating the visit);
- Representatives of business or industry, trade unions and recognised community organisations, the press and other media; and
- Representatives of other levels of government (in exceptional circumstances only).

Other types of hospitality which may be considered reasonable may include:

¹ For example, the *Public Sector Ethics Act 1994*, *Crime and Misconduct Act 2001*, *Criminal Code 1899*, *Public Service Act 1996*.

- Provision of tea, coffee, morning or afternoon tea for official visitors; and
- Provision of light refreshments/lunches for internal meetings, conferences, seminars and workshops.

Generally, working meals should be of a light nature at the work/meeting location, unless associated with a seminar or other function at a particular venue.

7.2 Corporate Gifts

In certain cases it may be appropriate for public service employees to provide corporate gifts to individuals or organisations on behalf of the State. Examples of such cases may include:

- Presentation to sponsors of events;
- Presentation to artists in appreciation of their work;
- Presentation to judges of events or awards acting in an honorary capacity (does not include employees of the department);
- Presentation to foreign dignitaries or delegations visiting Queensland;
- Presentation by eligible public service employees when travelling overseas on official Government business.

The practice of giving gifts should not be common or frequent in occurrence. The appropriateness of gift giving should be considered and appropriate approval must be obtained from the accountable officer. Where a gift is to be made on behalf of the State, consideration should be given to selecting an appropriate gift from the Official Gift Range maintained by Protocol Queensland.

7.3 Gifts or benefits offered to public service employees

Any gift or benefit that is offered to a public service employee on behalf of their employing agency or the State, except those offered as part of an appropriately approved employee health and well-being program, appropriately approved rewards and recognition program or relevant Directive², should comply with the requirements of this Policy.

8. REPORTING OF GIFTS AND BENEFITS

8.1 Which gifts or benefits should be reported?

Any gift or benefit that has a fair market value of more than \$100 must be recorded in a gifts and benefits register. If multiple gifts are from the same donor or from donors in a similar relationship with the public service employee, in any financial year and the cumulative value is more than \$100, then each gift or benefit must be reported.

Any gifts of cultural or historical significance must be reported, regardless of their value.

Agencies who have public service employees in sensitive roles (for example providing advice or making decisions about [but not limited to] granting licences, inspecting and regulating businesses or giving approvals, internal audit, tendering, purchasing) should give consideration to reporting all gifts or benefits offered.

² For example, Directive 2/07 Rewards for Creating Commercially Valuable Intellectual Property.

If public service employees are in any doubt about whether a gift or benefit should be reported, they should discuss this with their supervisor, manager or accountable officer within their agency.

8.2 Determining values

Public service employees are encouraged to have an appropriate person verify the estimated value of a gift. Deliberately undervaluing a gift or benefit to avoid reporting it or to fraudulently keep it may be official misconduct.

8.3 Gifts and Benefits Register

The receipt and giving of gifts with a fair market value of more than \$100 must be recorded in the register. The register is to be subject to regular review. The reviewer must be independent and should communicate any results of the review to the accountable officer. The purpose of such a review should include analysis for trends or patterns which may cause concern and need corrective and preventative action.

A proforma for recording gifts and benefits is included at appendix three. Agencies may use this form for recording purposes.

9. RETENTION OF GIFTS AND BENEFITS

9.1 Accepted gifts of \$100 value or less

Any gift or benefit, other than a token or memento, which has a fair market value of \$100 or less and is accepted by a public service employee, may remain the property of the employee.

Any gifts of cultural or historical significance must remain the property of the agency, regardless of their value.

9.2 Accepted gifts of more than \$100 value

Any gift or benefit, which has a fair market value of more than \$100 and is accepted by a public service employee, is the property of the employee's agency.

All gifts of cultural or historical significance must remain the property of the agency, regardless of their value.

If the gift or benefit has a fair market value of between \$100 - \$350 (and is not a gift of cultural or historical significance), the accountable officer may give approval for a public service employee to retain the gift or benefit in appropriate circumstances.

If the gift or benefit has a fair market value of over \$350 (and is not a gift of cultural or historical significance), the accountable officer may give approval for a public service employee to retain a gift or benefit, in exceptional circumstances.

If a gift or benefit is retained by the agency, it must be used for public benefit and in an appropriate manner.

9.3 Gifts or benefits should not involve time away from official duties

Public service employees should not be away from their official duties at public expense. Gifts or benefits can only be used outside the public service employee's normal working hours or on approved leave, unless the gift or benefit forms part of the public service employees' official duties and appropriate approval is obtained.

Offers of tickets or corporate hospitality at sporting events, the theatre or other major recreation attractions are to be treated in the same manner as all other gifts or benefits. Any public service employee attending a sporting event, theatre or recreation attraction as part of a gift or benefit, must ensure that this occurs outside the public service employee's normal working hours or on approved leave.

APPENDIX 1

EXAMPLES OF GIFTS AND BENEFITS

In this policy, the term 'gifts and benefits' refers to items given and received in the course of official duties and includes, but is not limited to:

- Gifts of alcohol, clothes, products
- Gifts of travel or accommodation
- Preferential treatment such as queue jumping, use of facilities, hospitality or benefits generally
- Food and drink received or given as part of a meeting, conference, trade display or other event attended as part of official duties
- Cap, pen, pencil, notepad, bottle of wine, bunch of flowers, box of chocolates
- Free use of facilities such as gyms, holiday homes or discounted travel
- Corporate offers of transportation, accommodation, tickets, meals and functions as part of a major event
- Awards or prizes including lucky door prizes or similar
- Tickets to the theatre, cultural events, sporting and other events or access to a private spectator box at a sporting or other venue
- Restaurant meals and beverages
- Sports team sponsorship

APPENDIX TWO - USEFUL DECISION-MAKING GUIDE



