

# Gifts, benefits and hospitality

## Responding to gift offers - (1) Model policy

Boards and employees of major DELWP agencies

Your agency's policy on how board members and employees respond to offers of gifts, benefits and hospitality should be consistent with this model policy.

### About the model policy for portfolio agencies

#### Which agencies does the model policy apply to?

This model policy applies to the over 100 major public entities and other statutory boards, committees, councils, panels, etc. in the Department of Environment, Land, Water and Planning (DELWP) portfolio, including large (category 1 and 2) committees of management of Crown land reserves.<sup>1</sup>

#### Your agency's policy

All agencies in the DELWP portfolio must have a policy on *Gifts, benefits and hospitality - responding to gift offers* that sets out how board members and employees (senior executives and other staff, including 'in house' contractors and consultants) must respond to gift offers received as a result of their role with the agency.

#### DELWP model policy

Your agency's policy should be consistent with the DELWP model policy, which incorporates:

- the *Minimum accountabilities for the management of gifts, benefits and hospitality* issued by the Victorian Public Sector Commission (VPSC) and other binding obligations<sup>2</sup>
- good public sector governance practice.

<sup>1</sup> For small (category 3) committees of management, see [www.delwp.vic.gov.au/committees](http://www.delwp.vic.gov.au/committees).

<sup>2</sup> Almost all DELWP agencies are public entities and therefore subject to the *Public Administration Act 2004* (PAA) and related codes and obligations (e.g. [Directors' Code of Conduct](#) and [Code of Conduct for Victorian Public Sector Employees](#)). Most, except usually small (category 3) committees of management of Crown land reserves, are bound by Divisions 2 and 3 of Part 5 of the PAA (s 79 to s 85), which apply to public entities that:

- were established after 1 July 2005, OR
- have had their establishing Act amended to deem that the agency is subject to these provisions (e.g. CMAs and water corporations), OR
- are included in an Order made by the Governor in Council under section 75(a) of the PAA and published in the Government Gazette (e.g. alpine resort management boards).

# Responding to gift offers – (1) Model policy

## DELWP or VPSC model policy?

Your agency should use the DELWP model policy rather than the generic model policy issued by the VPSC:

- ✓ The DELWP model policy is written specifically for DELWP agencies.
- ✓ The VPSC's minimum accountabilities are incorporated into the DELWP model policy.

## Adapting the DELWP model policy

If your agency is proposing to adapt the model policy it should contact its DELWP relationship manager or team for advice. Please note that:

- Your agency can choose to adapt the model policy to include stronger or additional requirements (e.g. to prohibit any gift offers from being accepted at all).
- If your agency's establishing Act contains additional or stronger 'gifts' requirements than the model policy then the model policy **must** be adapted to include those obligations.

The model policy uses generic terms. Your agency can substitute its own terms, for example:

- *board*: committee, council, panel, etc.

- *board member*: director, committee member, etc.

Please note that from time-to-time DELWP may issue adaptations to this model policy that apply specifically to your agency/type of agency, or issue policy-related guidelines or requirements. If this occurs, DELWP will advise your agency of these changes.

## Further information

### On Board

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

### DELWP relationship manager and team

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

### Providing gifts

There is also a model policy on providing gifts.

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ISBN 978-1-74287-744-0 (online - set)

22 December 2016 (version 1.00) – 1600.30

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This document is also available on the internet at [www.delwp.vic.gov.au/onboard](http://www.delwp.vic.gov.au/onboard).

[insert name of agency]

# Gifts, benefits and hospitality – responding to gift offers

## Board and employee policy

### 1. Scope

This policy sets out the agency's standards and procedures for responding to gift offers. It applies to all board members and employees (i.e. senior executives and other staff, including 'in house' contractors and consultants).

### 2. Aim

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

Gift offers are discouraged and must never be accepted unless there is clear justification, consistent with the prohibitions in this policy, to do so.

### 3. Key principles and accountabilities

The key principles are:

- **Obligations:** board members and employees act in accordance with their respective obligations and with good public sector governance practice (see item 16).
- **Public interest:** board members and employees act in the public interest, in compliance with this policy.
- **Culture of integrity:** the agency fosters a culture of integrity. Board members and employees are supported to raise any unresolved gifts issues.
- **Risk-based:** the agency's risks in relation to gift offers are assessed, managed, and monitored.
- **Processes:** the agency's procedures are transparent and accountable. Processes are in place to ensure that board members and employees are aware of the requirements of this policy and how to comply with it.

#### Consistent with DELWP model policy

The agency's policy is consistent with the [DELWP model policy](#) on *Gifts, benefits and hospitality – responding to gift offers*, which is published by the Department of Environment, Land, Water and Planning ('DELWP').<sup>1</sup>

<sup>1</sup> The DELWP model policy is designed specifically for DELWP portfolio agencies. It should be used rather than the generic model policy issued by Victorian Public Sector Commission ('VPSC'). The DELWP model policy incorporates:

- the binding *Minimum accountabilities for managing gifts, benefits and hospitality* ('Minimum accountabilities'), which are located in the *Gifts, Benefits and Hospitality Framework* ('the Framework') issued by the VPSC;
- other obligations in the *Public Administration Act 2004* ('PAA'), the *Code of Conduct for Directors of Victorian Public Entities* ('Directors' Code of Conduct') and the *Code of Conduct for Victorian Public Sector Employees*; and
- good public sector governance practice.

## Accountabilities

Board members and employees are responsible for ensuring that their own conduct meets the required standards of integrity. They place the public interest above their own interests when carrying out their official duties. This includes declaring all gift offers in accordance with this policy and refusing prohibited gifts (item 5).

The chair, the chief executive officer ('CEO'), and employees with direct reports are responsible for being aware of, and monitoring, the risks inherent in their team's work and functions. They model good practice and promote awareness of this policy and related processes.

## 4. Definitions

### 4.1 Gift offer

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

- **items or services**, for example, items such as a Christmas hamper, desk calendar, box of chocolates, bottle of wine, commemorative object, or 'door prize' at a function; services such as tree-logging or house painting.
- **benefits** such as preferential treatment, privileged access, favours or other advantages or intangibles, for example, access to a discount or loyalty program, or the promise of a new job.
- **hospitality that exceeds common courtesy**. 'Hospitality' is the friendly reception and treatment of guests. It includes offers of food, drink, travel, accommodation, events or activities (e.g. sporting, social, industry, arts, entertainment, or other events/activities). 'Common courtesy' is polite, basic and modest. It does not raise a conflict of interest. Whether an offer exceeds common courtesy depends on the circumstances (i.e. what is offered, by whom, to whom, when and why).

#### Example – does not exceed common courtesy

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

- a cup of coffee at another organisation's premises;
- a modest working lunch, such as sandwiches and pastries, at another organisation's premises;
- a cup of coffee at a café (unless there is a conflict of interest).<sup>2</sup>

#### Example – gift offer

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

- a 'fine dining and wines' working lunch at another organisation's premises;
- an offer to pay for a working lunch at a café;
- an offer of a free spot at an industry golf day.<sup>3</sup>

### Direct or indirect

A gift offer may be direct or indirect. It may be made directly to a board member or employee or indirectly via an offer to their relative or close associate, including:

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

<sup>2</sup> For example, there is a conflict of interest if it is offered by a stakeholder with an interest in a policy decision that the person is likely to make or can influence. Note that all conflicts of interest must be refused - see item 5, 'Prohibited gifts'.

<sup>3</sup> Note that in these examples the gift offered is inconsistent with community expectations and must be refused - see item 5, 'Prohibited gifts'.

### Is the gift offer ‘token’ or ‘reportable’?

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

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

#### Example – exceeds token value

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

#### Example – other significance

A gift offered by a visiting delegation, such as a delegation from another country, is reportable, regardless of its monetary value. Even if it is not of cultural or historic significance, it is of ‘other’ significance.

## 4.2 Conflict of interest

A ‘conflict of interest’ is a conflict between a board member’s or employee’s public duty to act in the best interests of the agency and their private interests (financial or non-financial). A conflict exists whether it is:

- **real** – it currently exists;
- **potential** – it may arise, given the circumstances; or
- **perceived** – members of the public could reasonably form the view that a conflict exists, or could arise, that may improperly influence the person’s performance of their duty to the agency, now or in the future.

## 4.3 Bribe

A ‘bribe’ is an offer of money or other inducement made with the intention to corruptly influence a board member or employee in the performance of their duties. Bribery or attempted bribery of a public official is a criminal offence.

## 4.4 Legitimate business reason (benefit)

A ‘legitimate business reason’ is a business purpose that furthers the official business or other legitimate goals of the agency, public sector, or State.

## 4.5 Responsible person

The ‘responsible person’ is the person whom the board member or employee notifies of any gift offers they receive; notifies of suspected bribery attempts; and seeks advice from about this policy and how to comply.

	Responsible Person
<b>Employee</b>	Line manager
<b>Board member or CEO</b>	Chair
<b>Chair</b>	Deputy chair [ <i>or if none exists</i> : ‘board member appointed by the board’]. Where appropriate, the chair should also seek advice from the Minister and/or DELWP.

## 5. Prohibited gifts

A board member or employee must refuse any gift offer that:<sup>4</sup>

- is **money** or is similar to money (e.g. gift vouchers) or easily converted into money (e.g. shares);
- is a **conflict of interest** (real, potential or perceived) – e.g. is offered by an external source with an interest in a decision that the board member or employee is likely to make or can influence, including in relation to:
  - procurement of goods or services;
  - tender processes;
  - awarding of a grant or sponsorship;
  - setting of policy;
  - enforcement, licensing or regulation; or
  - contracts;
- could in any other way create a **reasonable perception** that it is offered to influence, or could influence, the judgement of the board member or employee (i.e. how he/she acts, or fails to act, now or in the future);
- is inconsistent with **community expectations**; or
- could in any other way bring their **integrity**, or that of the agency, into disrepute.<sup>5</sup>

If it is a reportable gift offer (item 9), it must also be refused unless there is a '**legitimate business reason**' to accept it.<sup>6</sup>

### 5.1 Gift offers of hospitality

To ensure compliance with the above requirements, board members and employees must be particularly cautious about accepting gift offers of hospitality (i.e. food, drink, travel, accommodation, events or activities). Gift offers of hospitality are often inconsistent with community expectations. There is also a high risk of conflict of interest. In such cases, the gift offer must be refused *even if there is a legitimate business reason to accept*.<sup>7</sup>

In particular, note that:

- **High risk events and activities**

Invitations to attend or participate in a sporting, social, 'industry', arts, entertainment, or other event or activity are high risk. Examples of gift offers that must be refused include:

- attend as a guest in a corporate box at the football or at a car or horse racing event;
- attend a concert or theatre event;
- attend an industry golf day or play golf at a reduced fee;
- be 'shouted' a meal at a restaurant; or
- accept complimentary or discounted tickets for a family member to attend the tennis.

<sup>4</sup> Consistent with Minimum accountability 2.

<sup>5</sup> For example, if accepting the gift offer could be perceived as endorsement of a product or service.

<sup>6</sup> Note that the following are not a 'legitimate business reason':

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

<sup>7</sup> Consistent with para 6.2.2 of the Framework.

- **Conferences and familiarisation tours**

Gift offers in relation to conferences or familiarisation tours (e.g. sponsored attendance, participation, travel, or accommodation) must be declined unless there is:

- **clear justification**, such as where the invitation is issued by a government department, or the event is funded by DELWP, or, depending on the circumstances, the offeror is a peak body; and
- **prior written approval** that sets out clear reasons is specifically granted by the CEO (for employees) or the responsible person (for the chair, board members, and CEO). The signed and dated approval must be attached to the gift offer declaration form (item 10) and noted in the gifts register (item 11).<sup>8</sup>

## 5.2 Recording prohibited gift offers

To assist the agency to monitor the frequency and nature of prohibited gift offers, it is essential that all such offers are disclosed in accordance with the requirements for token (item 8) or reportable (item 9) gift offers.

## 5.3 Misuse of position

Accepting a prohibited gift offer may constitute misuse of a board member's or employee's position, a breach of this policy and/or a breach of the relevant code of conduct, and may result in disciplinary action. In addition, if the gift was offered with the expectation of something in return, such as preferential treatment, accepting it may constitute a bribe (item 6) or other form of corruption and lead to criminal prosecution.

## 6. Attempts to bribe

A board member or employee who receives a gift offer that he/she believes is an attempted bribe must refuse the offer. He or she must:

- immediately notify the responsible person and lodge a gift offer declaration form (item 10), so that their refusal can be properly recorded; or
- report the matter to the Independent Broad-based Anti-corruption Commission (IBAC) as a protected disclosure.<sup>9</sup>

A board member or employee who believes that another board member or employee may have solicited or been offered a bribe which the other person has not reported must either notify the responsible person or report the matter to IBAC as a protected disclosure.

The CEO must have processes in place to ensure that he or she is notified when a responsible person becomes aware of a bribery issue. The CEO must notify IBAC of any matter which he/she believes on reasonable grounds may be corrupt conduct or, if appropriate, notify the police of a suspected offence.<sup>10</sup>

## 7. Ban on soliciting gifts

Board members and employees must not solicit gifts for themselves or anyone else, in any form. To do so may constitute misuse of their position, a breach of this policy and/or a breach of the relevant code of conduct and may result in disciplinary action. It may also constitute corruption and lead to criminal prosecution.<sup>11</sup>

<sup>8</sup> The agency is the owner of the sponsored travel and accommodation, etc. (item 9). Approval is given for the board member or employee to utilise the gift at the agency's behest – see 'Public interest approval' in item 9.2

<sup>9</sup> Note that if a matter is referred to IBAC or the police there may be legal implications which necessitate variation to the usual record-keeping processes in items 8 to 11.

<sup>10</sup> Consistent with Minimum accountability 4.

<sup>11</sup> Consistent with Minimum accountability 1.

## 8. Token gift offers

A board member or employee who is offered a gift of **token value** (as defined in item 4.1) that is not a prohibited gift (item 5) may:

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

### Disclosing token gift offers

*Regardless of whether a token gift offer is accepted, it must be disclosed as soon as practicable to the responsible person. The board member or employee who receives the offer must send an email to the responsible person that sets out:*

- the date of the offer;
- the source (organisation or individual) of the offer;
- what was offered and why;
- that it was a token offer, including an estimate of:
  - the value of the gift offered; and
  - the combined value of all gifts offered to them from that source in the last 12 months;
- whether it was a prohibited gift (item 5) and, if so, why; and
- whether the offer was accepted or refused.

A gifts declaration form (item 10) does not need to be completed. Nor does the gifts register (item 11).

### Example – acceptance of token gift

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

### Example – refusal of token gift

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

### Keeping track of token gift offers

The board member or employee disclosing the token gift offer and the responsible person must each retain a copy of the email. An email record:

- assists the board member/employee to fulfil their responsibility to keep track of whether offers made to them by that source exceed a combined value of \$50 in the last 12 months (i.e. the reportable threshold); and
- assists the responsible person to monitor the risks inherent in their team's work and functions.<sup>12</sup>

<sup>12</sup> A responsible person may decide to maintain a spreadsheet with an overview of token gift offers disclosed to them by email. This will assist in monitoring risks and compliance with this policy (item 13).

## 9. Reportable gift offers

A board member or employee who is offered a **reportable** gift (as defined in item 4.1) must, *regardless of whether the gift is accepted*:

- verbally disclose the offer to the responsible person as soon as practicable; and
- within five working days of the offer, sign and lodge a properly completed gift offer declaration form (item 10).

A gift offer must not be accepted if it is a prohibited gift (item 5).

### 9.1 Ownership of reportable gifts

A board member or employee who accepts a reportable gift does so **on behalf of the agency**. The agency is the owner of the gift.

### 9.2 Dealing with accepted gifts

The CEO must have processes in place for the receipt and use or disposal of reportable gifts by the agency. As part of these processes:

- **Gifts of cultural, historic or other significance**

Consideration should be given to donating gifts of cultural, historic or other significance to an appropriate public institution, such as the Melbourne Museum, State Library, or National Gallery of Victoria.

- **Donating other reportable gifts**

Consideration should be given to donating other reportable gifts, or the proceeds of their sale, to a non-profit organisation or public institution.<sup>13</sup>

- **'Public interest' approval for use of gift by board member or employee**

Occasionally, it will be in the **public interest** for approval to be given for a board member or employee to use a reportable gift 'as their own' at the behest of the agency.

Applications for 'public interest approval' will be determined by the board (for board members and the CEO) or the CEO (for employees) in accordance with the following criteria:

- approval is required to avoid the person being in breach of this policy through no fault of their own;
- prior written approval have been granted, in accordance with item 5.1 of this policy, for sponsored hospitality to be accepted in relation to a conference or familiarisation tour; or
- *[insert any other(s)].*

*[If the agency is so large that the CEO may need to authorise other senior employees to determine an applications on his or her behalf, contact the DELWP relationship manager or team to discuss.]*

The reason(s) for any public interest approval that is granted must be well documented, attached to the gift offer declaration form, and recorded in the gifts register.

## 10. Gift offer declaration form

The gift offer declaration form is set out in **Appendix 1** of this policy. The CEO must have processes in place for the lodging and processing of gift offer declaration forms.<sup>14</sup>

<sup>13</sup> Consistent with Minimum accountability 3.

<sup>14</sup> Note that completed declaration forms must be retained in accordance with the *Public Records Act 1973*.

## 11. Gifts Register

A *Register of responses to reportable gift offers* ('gifts register') must be maintained that includes a record of:

- all **reportable** gift offers and responses (based on completed gift offer declaration forms); and
- if the gift offer was accepted, how the gift will be used or disposed of by the agency.

The gifts register template is set out in **Appendix 2**.

The CEO must have processes in place for ensuring that the register is up-to-date; is protected from unauthorised changes; and is published on the agency's external website (see item 11.1).<sup>15</sup> This includes designating employee position(s) whose occupant(s) manage these functions.

In addition:

- **Employees**

The CEO must ensure that employees are provided with regular reminders of the need to lodge gift offer declaration forms (see item 14.2).

- **Board members**

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

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

If changes are declared, these will be noted in the minutes, together with the board member's undertaking to lodge a gift offer declaration form (item 10) within five working days.

### 11.1 Publishing of gifts register on external website

A copy of the gifts register that complies with privacy obligations (see next item) must be published on the agency's external website. It should be updated at least every six months. Entries should remain on the website for at least the current and previous financial year.<sup>16</sup>

*[If no website exists, contact DELWP for advice.]*

## 12. Privacy protection

The CEO must have processes in place to ensure that the agency complies with the *Privacy and Data Protection Act 2014* when collecting, using, and disclosing personal information in relation to gift offers (token and reportable). This includes ensuring that:

- identifying information is deleted from the copy of the gifts register that is published on the agency's external website, as set out in **Appendix 2**; and
- a *Privacy collection statement - gift offers* is published on the website that is consistent with the [template statement](#) issued by DELWP.<sup>17</sup>

<sup>15</sup> Consistent with Minimum accountability 9.

<sup>16</sup> To assist readers, the 'de-identified' copy of the gifts register should be located with the privacy collection statement (item 12) and copy of this policy and guidance for external stakeholders (item 14.5) on the website.

<sup>17</sup> DELWP's template *Privacy collection statement - gift offers* is available from [www.delwp.vic.gov.au/onboard](http://www.delwp.vic.gov.au/onboard).

## 13. Monitoring compliance

The administration and quality control of the agency's policy and processes, including the gifts register and gift offer declaration forms, must be subject to regular scrutiny.<sup>18</sup>

### Annual report by CEO to Audit committee

The CEO must provide a report at least annually to the Audit committee that includes the matters set out in **Appendix 3** in relation to:

- risk analysis;
- steps taken to improve compliance; and
- recommendations for improvement.

### Annual report by Audit committee to board

The Audit committee must submit a report at least annually to the board that takes into account the CEO's report and includes any other information or recommendations that the Audit committee chooses to include.

## 14. Promoting and improving compliance

To promote and improve compliance with this policy:

### 14.1 Business rules

The CEO must have suitable business rules, processes, and record-keeping requirements in place for the practical implementation of this policy.<sup>19</sup>

### 14.2 Induction and refresher training – board members and employees

The chair (for board members and the CEO) and the CEO (for employees) must ensure that all board members and employees receive **induction training** and annual **refresher training**, including:

- information about the aim, principles, accountabilities, and requirements of this policy;
- practical guidance on how to comply with it (e.g. where to obtain gift offer declaration forms, how to refuse a gift without giving offence, etc.); and
- advice that a breach of this policy may constitute a breach of a binding code of conduct and may result in disciplinary action and, in the case of corrupt conduct, criminal prosecution.<sup>20</sup>

A copy of the agency's policy and related practical guidance must be provided to each board member and employee when they commence their term of appointment/employment. Updates to the policy and related guidance must be provided as soon as practicable after they occur.<sup>21</sup>

### Summary flow chart

To assist employees and board members, a flowchart of how to respond to gift offers is set out in **Appendix 4**.

<sup>18</sup> Consistent with Minimum accountability 12.

<sup>19</sup> Consistent with Minimum accountability 8.

<sup>20</sup> Consistent with Minimum accountability 10.

<sup>21</sup> Consistent with paras 5.2.1 and 5.2.3 of the Framework.

### 14.3 Gifts hub – board members and employees

The CEO must designate an employee position whose occupant manages (or acts as) a 'Gifts hub' to provide responsible persons and other board members and employees with a central point from which to obtain expert advice and guidance materials.

### 14.4 Contracts for 'in house' contractors and consultants

All contracts for 'in house' contractors and consultants (including those engaged through an employment agency) must explicitly state that the contractor or consultant is bound by this policy and by the [Code of Conduct for Victorian Public Sector Employees](#).<sup>22</sup>

### 14.5 External stakeholders (tenderers, suppliers, external contractors, etc.)

All contracts for suppliers and external contractors must ensure that the contract can be revoked (or renegotiated) by the agency if the supplier or external contractor offers a prohibited gift to a board member or employee.<sup>23</sup>

The CEO must have processes in place to ensure that external stakeholders have ready access to information that explains the prohibitions and restrictions in this policy. This includes ensuring that:

- an up-to-date copy of this policy is published on the agency's external website;<sup>24</sup> and
- suitable guidance material is:
  - included in information packages for prospective tenderers and suppliers;
  - provided directly to all suppliers and external contractors, with regular reminders thereafter; and
  - published on the agency's website.<sup>25 26</sup>

*[If no website exists, substitute 'provided to the public upon request, free of charge'.]*

### 14.6 Remedial action

The CEO must have processes in place to ensure that patterns of frequent or prohibited gift offers are identified and, where appropriate, **remedial action** is taken - e.g. a letter is sent to the source of the offers explaining why such offers must not be made.

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<sup>22</sup> This includes the contracts for all contractors or consultants who:

- supervise employees of this agency;
- undertake work similar in nature to the work undertaken by employees of this agency at a premises or location generally regarded as a workplace of this agency; and/or
- use or have access to the agency's resources or information not normally accessible or available to the public.

<sup>23</sup> Consistent with para 5.1.4 of the Framework.

<sup>24</sup> Consistent with Minimum accountability 13.

<sup>25</sup> Information to external stakeholders should, where appropriate, also make reference to any applicable whole of Victorian government supplier codes of conduct.

<sup>26</sup> Consistent with Minimum accountability 11.

## 15. Culture of integrity

It is essential that board members, employees, and external stakeholders are supported to raise queries and issues about gift offers, including queries and issues relating to their own conduct or that of others.

### Assistance with making decisions

A board member or employee who is uncertain how to comply with this policy should seek advice from their responsible person. They can also seek advice from the Gifts hub (item 14.3). This does not abrogate their responsibility to make the right decision.

### Possible breach of this policy

A board member or employee who may have breached this policy must immediately notify the responsible person and remedy any breach.

### Speaking up

A board member or employee who believes that another board member/employee may have breached this policy must:

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

If the matter involves corruption or serious misconduct, the board member or employee can choose to instead report the matter to IBAC as a protected disclosure.<sup>27</sup>

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

## 16. Obligations and good practice

Board members and employees must act in accordance with their respective obligations and with good public sector governance practice, including:

- the establishing Act, being *[insert]*;
- the *Public Administration Act 2004* ('PAA');<sup>28</sup>
- binding codes and accountabilities issued by the Victorian Public Sector Commission, in particular:
  - [Code of Conduct for Directors of Victorian Public Entities](#) ('Directors Code of Conduct');
  - [Code of Conduct for Victorian Public Sector Employees](#); and
  - [Minimum accountabilities for managing gifts, benefits and hospitality](#) (numbers 1 to 4 and 8 to 13);<sup>29</sup>
- government policy;
- any directions, guidelines and/or statements of obligation or expectation issued by the Minister; and
- all other laws and obligations that bind the agency.<sup>30</sup>

<sup>27</sup> Making a 'complaint' to IBAC under the *Protected Disclosures Act 2012* gives legal protection to the person making it that their identity will remain confidential and they will be protected from reprisals.

<sup>28</sup> In particular:

- s 7: public sector values (i.e. integrity, impartiality, accountability, respect, responsiveness, human rights, leadership);
- s 79: 'duties of directors' (board members);
- s 13A: requirement to provide information to the Secretary of DELWP;
- s 81(1)(b): duty to inform the minister and the Secretary of DELWP of major risks to agency;
- s 81(1)(g): requirement to have an adequate gifts policy in place for board members.

<sup>29</sup> The minimum accountabilities are incorporated into DELWP's model policy, which this agency's policy is consistent with.

## 17. Regular review of this policy

The board will review this policy on an annual basis or more frequently, if required, to keep up-to-date with changes to laws, government policy, etc. This policy should be consistent with the most recent version of the DELWP model policy.<sup>31</sup> This policy was **last reviewed on** *[insert]*.

## 18. Related policies

- Gifts, benefits and hospitality - providing gifts
- Board policies on:
  - Conflict of interest
  - Meetings and decisions
  - Code of conduct.

## 19. Further information

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

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<sup>30</sup> *[insert this footnote if the agency is subject to the Financial Management Act 1994]* For example, the requirement in the 'Instructions supporting the Standing Directions of the Minister for Finance 2016' for agencies which are subject to the *Financial Management Act 1994* to have policies and procedures in place in relation to gifts, benefits and hospitality – see Instruction 2.1(i) and Direction 3.4(e).

<sup>31</sup> See item 3 of this policy, including footnote 1.

## Appendix 1 – Gift offer declaration form

### Declaration by a board member or employee who receives a reportable gift offer

#### How to fill out this form

The information that you provide in this form will be entered into the *Register of responses to reportable gift offers* ('gifts register'). A de-identified copy of the register is published on the agency's external website *[insert direct link]*.

For assistance in filling out this form contact your 'responsible person' – i.e. line manager (for employees), chair (for board members and the CEO), or deputy chair *[or 'board member appointed by the board']* (for the chair).

For the definition of a 'reportable gift offer' and to decide whether a gift is 'prohibited' see item 4.1 and item 5 of the agency's policy on *Gifts, benefits and hospitality – responding to gift offers* ('the policy'). For a quick overview, see the 'summary flowchart' in Appendix 4 of the policy.

A copy of the policy and related guidance is available from *[insert link]*, your responsible person or the Gifts Hub *[insert Gifts hub contact details]*. The policy is also published on the agency's website *[insert link]*.

#### How to lodge this form

*[Insert details of how to lodge the form when it has been completed.]*

#### 1. Date of offer (insert)

#### 2. Source of offer

- (i) Organisation (or individual stakeholder):
- (ii) Name and title of person making offer:
- (iii) Type of organisation:  
(e.g. supplier, prospective tenderer, industry stakeholder with commercial interest, not-for-profit stakeholder, etc.)

#### 3. Description of gift offered (insert)

#### 4. Value

Do you believe that the gift offered may be of cultural, historic or other significance? Yes  No

Estimated value of gift offered: \$ .....

Have you received any other gift offers from this source in the last 12 months? Yes  No

If yes, estimate the total value of gift offers you have received from this source in the last 12 months: \$ .....

#### 5. Prohibited?

No  Yes - Conflict of interest  OR other reasonable perception that judgement may be influenced   
 Inconsistent with community expectations  May bring integrity into disrepute  Money or similar

If yes, briefly describe why:

Example: "Conflict of interest - offered by tenderer about whom I am likely to make or can influence a decision."

## 6. Accepted or declined?

The gift offer was: declined  OR accepted **on behalf of the agency**

If the gift offer was accepted, what is the 'legitimate business reason' for doing so (i.e. business purpose that furthers the official business or other legitimate goals of the agency, public sector or State)?

See item 5 of the policy for examples of reasons that are insufficient (e.g. 'It would have been impolite to refuse').

## 7. Public interest approval (only complete if relevant)

Occasionally, it will be in the public interest (see item 9.2 of the policy) for a board member or employee to be granted approval to use a reportable gift as their own. If you are applying for this to occur, on what basis?

- To avoid being in breach of the policy through no fault of my own (see ATTACHED explanation);
- Prior written approval has been granted under item 5.1 of the policy for sponsored attendance at a conference or familiarisation tour (see ATTACHED approval);
- [Insert any other criteria listed in item 9.2 of the policy]

## 8. Comments (if any)

## 9. Signed and dated declaration

I confirm that the information I have provided is true and correct.

Name:

Title/position no. [if relevant, also specify other, e.g. 'division']:

Signature:

Date:

## Acknowledgement by 'responsible person'

**Noted**  I have noted the contents of the above declaration.

Comments (if any)

Example: "XYZ appears to be a frequent offeror of gifts. Remedial action is recommended."

Example: "In my view, the application for 'public interest approval' is justified. My reasons are attached."

Name:

Title/position no. [if relevant, also specify other, e.g. 'division']:

Signature:

Date:

## Office use only:

[Insert a section to record the following information, or attach a separate document that includes this information:]

**A. Gifts register:** confirmation that the register has been updated.

**B. Remedial action:** any remedial action to be taken (e.g. letter to frequent offeror about policy requirements).

**C. Accepted gifts:** if the gift was accepted:

- (i) how the agency will use or dispose of the gift in accordance with the policy;
- (ii) if the gift (or its proceeds) are being donated, details of the organisation receiving the donation; and
- (iii) signature (dated) of the person(s) authorising these decisions, including their name and title/position no.

**D. Assets register:** confirmation that, if applicable, the assets register has been updated.

## Appendix 2 – Register of responses to reportable gift offers

The template for the *Register of responses to reportable gift offers* is as follows. When publishing the register on the agency’s website delete all identifying information.

A	B	C	D	E	F	G	H	I	J	K	L	M
Entry no.	Date gift offered	Offeror	Offeror number	Prohibited gift? If so, why?	Board member or employee to whom the gift was offered	Description of gift offered	Cultural, historic or other significance?	Est. value of this offer	Est. combined value	Was the gift accepted or declined?  If accepted, record the legitimate business reason (benefit).	If the gift was accepted:  (1) How is it to be used/disposed of?  (2) Who authorised this decision?	Any relevant:  (1) Comments  (2) Remedial action.
#/year		Include: (i) Name of offeror (organisation offering gift). (ii) Name and title of person making offer on behalf of offeror. (iii) Type (e.g. supplier; prospective tenderer; industry stakeholder with commercial interest; ‘not for profit’ stakeholder; etc.).  <b>When publishing on website delete all information in this column EXCEPT do not delete (iii) ‘type of organisation’.</b>	The ‘offeror number’: <ul style="list-style-type: none"> <li>is assigned to an organisation the first time that an offer it makes is recorded in the register</li> <li>remains the same for every reportable offer made by that organisation</li> <li>enables gift patterns to be identified when the register is published on the internet.</li> </ul>	Reasons include: <ul style="list-style-type: none"> <li>Money or similar</li> <li>Conflict of interest (‘COI’). Note reason why.</li> <li>Could otherwise reasonably be perceived as influencing judgement.</li> <li>Inconsistent with community expectations</li> <li>Could bring integrity into disrepute</li> <li>No legitimate business reason</li> </ul> <b>When publishing on website delete any identifying information.</b>	Include: (i) name (ii) title/position no. (iii) type – i.e. board member, executive, or employee  <i>[Other data can also be required e.g. ‘division’]</i>  <b>When publishing on website delete all information in this column EXCEPT do not delete (iii) board member, executive, or employee.</b>	<b>When publishing on website delete any identifying information.</b>	Note that: <ul style="list-style-type: none"> <li>All gifts of cultural, historic, or other significance are reportable, regardless of their monetary value.</li> <li>Any gift from a visiting delegation or any other official gift is of ‘significance’.</li> </ul> <b>When publishing on website delete any identifying information.</b>	Est. \$ value of this gift offer.	Est. total \$ value of all gift offers from this source to the board member or employee in last 12 months.	<b>When publishing on website delete any identifying information.</b>	(1) For example: ‘entered into Assets Register’; ‘donated to Melbourne Museum’.  (2) Note name and title/position no. of person who authorised how the gift is to be used or disposed of by the agency.  <b>When publishing on website delete all information in (2).</b>	(1) Note any relevant comments, including by whom made.  (2) Note any remedial action that has been or will be taken additional to that noted in comments.  <b>When publishing on website delete any identifying information, for example, substitute:</b> <ul style="list-style-type: none"> <li>offeror number for offeror’s name</li> <li>‘board member’ for name and details of chair or board member</li> <li>‘executive’ for name and details of CEO or other executive</li> <li>‘employee’ for name and details of employee.</li> </ul>

## Responding to gift offers – (1) Model policy

A	B	C	D	E	F	G	H	I	J	K	L	M
Entry no.	Date gift offered	Offeror	Offeror number	Prohibited gift? If so, why?	Board member or employee to whom the gift was offered	Description of gift offered	Cultural, historic or other significance?	Est. value of this offer	Est. combined value	Was the gift accepted or declined?  If accepted, record the legitimate business reason (benefit).	If the gift was accepted:  (1) How is it to be used/disposed of?  (2) Who authorised this decision?	Any relevant:  (1) Comments  (2) Remedial action.
01/17	9.12.16	Takem Pty Ltd  John Smith, Marketing officer  (Supplier)	55	Prohibited gift:  Conflict of interest. Offered by supplier about whom employee is likely to make or can influence a decision.	Anita Green  Senior Purchasing Officer  (Employee)	Christmas hamper	No	\$70	\$85	Declined	Not applicable	'Explained was prohibited gift as I am a purchasing officer. Directed supplier to info on website.' (Anita Green)
02/17	20.4.17	Water Steady Pty. Ltd  Alex Hutton, Director  (Industry stakeholder)	63	Prohibited gift: COI. Offered by industry stakeholder with interest in policy decision board is to make (outcome of green paper).	Charles Pink  Board member  (Board member)	Lunch at a cafe	No	\$45	\$70	Declined	Not applicable	'AH wanted to discuss green paper "over lunch at Mimi's, my shout". (Charles Pink)
03/17	10.5.17	South Pacific Nations Sustainability Alliance  Lyn Tan, Head of delegation  (Visiting international delegation)	64	No.	Francine Gold  Chair  (Board member)	Wall clock made of sustainably harvested timbers sourced from South Pacific.	Yes.	\$500	\$500	Accepted.  Reason: hosting delegation improves international relations for State.	(1) Donated to XYZ institution.  (2) Andrea Fennel, CFAO	'Gift received as thank you for escorting visiting international delegation' (Francine Gold)

## Responding to gift offers – (1) Model policy

A	B	C	D	E	F	G	H	I	J	K	L	M
Entry no.	Date gift offered	Offeror	Offeror number	Prohibited gift? If so, why?	Board member or employee to whom the gift was offered	Description of gift offered	Cultural, historic or other significance?	Est. value of this offer	Est. combined value	Was the gift accepted or declined?  If accepted, record the legitimate business reason (benefit).	If the gift was accepted:  (1) How is it to be used/disposed of?  (2) Who authorised this decision?	Any relevant:  (1) Comments  (2) Remedial action.
04/17	9.7.17	Takem Pty Ltd  Andrea Honey, Marketing officer  (Supplier)	55	Prohibited gift:  Conflict of interest. Offered by supplier about whom employee is likely to make or can influence a decision.	James Fry  Manager, Purchasing  (Employee)	Free ticket to 'Office of the Future' trade exhibition (where offeror has a stand).	No	\$65	\$65	Declined	Not applicable	'Explained prohibited gift. (James Fry)  'Supplier has pattern of prohibited offers. Suggest remedial action' (Bob Ng – responsible person)  <b>Remedial action:</b> letter sent to CEO on 28.5.16
05/17	12.9.17	Birchup Ltd  Sandra Sutton, Managing Director  (Industry stakeholder, commercial interests)	32	Prohibited gift:  Reason 1 – COI. Stakeholder with interest in decisions executive can influence.  Reason 2 – Inconsistent with community expectations  Reason 3 – No legitimate business purpose.	John Black  CEO  (Executive)	Attendance for two at AFL Grand Final in corporate box.	No	\$450	\$450	Declined	Not applicable	'Explained prohibited gift. Sent guidance materials by email dated 14.9.16' (John Black)

## Responding to gift offers – (1) Model policy

A	B	C	D	E	F	G	H	I	J	K	L	M
Entry no.	Date gift offered	Offeror	Offeror number	Prohibited gift? If so, why?	Board member or employee to whom the gift was offered	Description of gift offered	Cultural, historic or other significance?	Est. value of this offer	Est. combined value	Was the gift accepted or declined?  If accepted, record the legitimate business reason (benefit).	If the gift was accepted:  (1) How is it to be used/disposed of?  (2) Who authorised this decision?	Any relevant:  (1) Comments  (2) Remedial action.
06/17	10.9.17	Green Growth Forums  Sally Bower, Director, Education  (Not for profit. Regional collective of environment agencies)	44	Prohibited gift:  No legitimate business reason to accept.	Jan Baker  Executive Director, Sustainable Growth Division  (Employee)	Box of chocolates	No	\$25	\$55	Declined	Not applicable.	'Gift offered for presenting at 2 <sup>nd</sup> forum this year. Accepted token gift (\$30 bottle of wine) for 1 <sup>st</sup> presentation. Explained could not accept this offer as exceeds \$50 reportable threshold without 'legitimate business benefit'. (Jan Baker)

## Appendix 3 – Annual report to Audit committee

The CEO's annual report to the Audit committee (item 13) must, at a minimum, include the following information:

### A. Risk analysis

#### Sources, type, and targeting of gift offers (patterns and anomalies)

Reportable gifts: an analysis of patterns and anomalies in the gifts register, including an overview of:

- (i) *Gifts offered*: the types and value range of gifts offered, in particular:
  - main sources (organisations and individuals) of high value and/or frequent offers;
  - which areas of the agency and which positions (chair, board member, CEO, other employee positions) were subject to high value and/or frequent offers; and
  - patterns in areas identified by the Audit committee for high scrutiny (e.g. tendering and procurement).
- (ii) *Prohibited gifts*: the level, nature and sources of prohibited gifts offers.
- (iii) *Acceptance of gifts*: the total number, value, and percentage of gift offers accepted v. refused.
- (iv) *Use and disposal*: how the agency used or disposed of the gifts it received.
- (v) *Bribes*: any reports of suspected bribery attempts.

Token gifts: to the extent, if any, that the Audit committee requires, an analysis of token gift offers - e.g. some or all of (i) to (iii) above - in particular, prohibited token gift offers.

#### Level of compliance with policy

An overview of the estimated level of compliance with this policy, including:

- (i) Whether there are fewer entries in the gifts register than would reasonably be expected given the size and functions of the agency.
- (ii) Based on research conducted (e.g. surveys and focus groups with board members and employees; random and targeted spot checks with current/recent suppliers and external contractors, etc.), the estimated level of failure to:
  - disclose reportable gifts by lodging a gift offer declaration form;
  - disclose token gifts by emailing the responsible person;
  - refuse prohibited gifts.

### B. Steps taken to improve compliance (risk mitigation measures)

An overview of steps taken in the last year to improve compliance with this policy, including:

- (i) substantive changes to business rules, processes and record-keeping requirements;
- (ii) activities to promote awareness of, and improve compliance with, this policy, noting who the activities were directed to (i.e. board members, employees and/or external stakeholders);
- (iii) remedial action taken to address patterns of frequent or prohibited gift offers (e.g. letters to offerors); and
- (iv) progress in implementing any recommendations made to, and accepted by, the Audit committee and/or board.

### C. Recommendations (future improvements)

New recommendations, if any, for:

- (i) improving compliance with this policy; and/or
- (ii) updating this policy and related business rules, processes and record-keeping requirements.

## Appendix 4 - Flowchart

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

**'GIFT' includes:**

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

Yes

No (hospitality does not exceed common courtesies)

Policy does not apply

Policy applies

Is it a prohibited gift?

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

Yes

No

It is prohibited

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

Yes – it is 'reportable'

Token or reportable?

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

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

No

Yes

No – it is 'token'

'Reportable' obligations

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

'Token' obligations

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

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