

Public Service Commissioner Direction

No 1 of 2022

under the

Government Sector Employment Act 2013

I, Kathrina Lo, Public Service Commissioner of New South Wales, pursuant to section 13 of the *Government Sector Employment Act 2013*, give the following direction.

Dated 19 August 2022



Kathrina Lo

Public Service Commissioner

Public Service Commissioner Direction

No 1 of 2022

Under section 13(1) of the *Government Sector Employment Act 2013*

1. Application

This direction is given to all heads of all government sector agencies.

Compliance with this direction is mandatory, subject to section 13 (4) and (5) of the *Government Sector Employment Act 2013*.

2. Date of operation

This direction has effect from 1 November 2022 until further notice.

3. Definitions

In this direction:

government sector agency has the same meaning as in section 3 of the *Government Sector Employment Act 2013*, as amended from time to time.

head of a government sector agency has the same meaning as in section 3 of the *Government Sector Employment Act 2013*, as amended from time to time.

Managing Gifts and Benefits: Minimum Standards means the standards contained in Section 2.1 of *Behaving Ethically: A Guide for NSW government sector employees* as published on the Public Service Commission website on 26 August 2022 and set out at Schedule 1.

4. Direction

I direct the head of each government sector agency to implement the *Managing Gifts and Benefits: Minimum Standards* on and from 1 November 2022, and to require employees of that agency to comply with those standards.

5. Replacement of former direction

This direction replaces the following direction (former direction) on and from 1 November 2022:

(1) Public Service Commissioner Direction No 1 of 2014 (**October 2014 Direction**) made by the former Commissioner on 31 October 2014.

Note: The October 2014 Direction requires the heads of the government sector agencies listed in Schedule 1 to that Direction to implement the *Managing Gifts and Benefits: Minimum Standards* by 1 September 2015.

6. Savings

Conduct that occurred while the former direction was in effect remains subject to that direction as if it had not been replaced.

Note: References to government sector agencies and heads of government sector agencies listed in the Schedule to Direction 1 of 2014 are, where relevant, construed or treated in accordance with applicable *Administrative Changes Orders* or other applicable legislation.

7. Publication

This direction will be made publicly available on the Public Service Commission website as soon as practicable after it is given.

2.1 Managing gifts and benefits

Gifts and benefits – the risks

In the course of their work, NSW government employees – or, occasionally, their families, relations, friends or associates – may be offered gifts or benefits by customers, clients, applicants, suppliers, or other persons or organisations.

Most gifts and benefits are intended simply as a memento or a small token of appreciation – for example, a book or coffee mug presented to a speaker at a conference. Accepting a gift or benefit of this kind is unlikely to be inconsistent with an employee's obligations under the *Ethical framework for the government sector*.

However, sometimes a gift or benefit may be offered to influence a government employee in making a decision, or to provide a favour which will advance the interests of the giver, either now or in the future. 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.

Accepting a gift or benefit that could be perceived by other persons to be an inducement or incentive is inconsistent with the standards of conduct required by the *Ethical framework for the government sector*.

Soliciting or accepting a gift or benefit as an actual inducement or incentive to make a decision, or to provide a favour, is not only inconsistent with the *Ethical framework for the government sector*, but constitutes corrupt conduct under the *Independent Commission Against Corruption Act 1988* and may lead to criminal prosecution.

There can be serious consequences for the employer and the employee where the management of gifts and benefits is mishandled. Departments/agencies risk the loss of public trust, financial losses and possible legal actions. Employees risk embarrassment, and action relating to their alleged misconduct which may affect their employment and even lead to prosecution.

The effective management of gifts and benefits involves more than simply establishing a threshold value for reporting, or even imposing a complete prohibition on accepting a gift or benefit.

Active management and a thorough understanding of the agency's operating environment are also required, if the risks associated with relationships and influence are to be identified and mitigated.

Remember – the goal of a system for managing gifts and benefits is to minimise the risk that unethical or corrupt behaviour will occur.

2.1 Managing gifts and benefits

Legislative context

In NSW Departments and agencies, Secretaries and agency heads are responsible for the general conduct and management of their organisations, in accordance with the core values in the *Ethical framework for the government sector*.

Clear policies and practices for the effective management of gifts and benefits are critical to this responsibility.

Consistent with the Public Service Commissioner's function "to lead the strategic development and management of the government sector workforce in relation to general conduct and compliance with ethical practices", this guide contains minimum standards for Departments and agencies in managing gifts and benefits.

The minimum standards are informed by the obligations placed on employees by the *Ethical framework for the government sector* – in particular, the requirements to:

- Place the public interest over the personal interest
- Act professionally with honesty, consistency and impartiality
- Provide transparency to enable public scrutiny.

2.1 Managing gifts and benefits

Minimum standards

Each Department and agency must have in place:

- A **policy** for the management of gifts and benefits
- A gifts and benefits **register**
- **Training and support** for employees.

Policy

The Department/agency policy must:

Define 'gifts and benefits'

An exhaustive definition would be:

'any item, service, prize, hospitality or travel, provided by a customer, client, applicant, supplier, potential supplier or external organisation, which has an intrinsic value and/ or a value to the recipient, a member of their family, relation, friend or associate'.

Establish value thresholds, if appropriate

Consider whether it is appropriate to establish value thresholds, both single instance and cumulative:

- Below which a gift or benefit can be accepted without the approval of a manager, or its being recorded in the register
- Above which a gift or benefit must be declined or, where this is not practicable – accepted, registered and then donated to charity.

The Audit Office of NSW suggests, as a guide, that the first threshold be \$25 and the second \$100.¹ However, these thresholds could vary, depending on the specific functions and operating environment of the Department/agency.

State employees' obligations clearly

Make an unambiguous statement about employees' obligations in relation to gifts and benefits. This could take the form of dos and don'ts.

For example:

Don't:

- Solicit a gift or benefit
- Accept a gift or benefit as an inducement or incentive to act in a certain way
- Accept a gift or benefit where there could be a perception that it has been offered as an inducement or incentive to act in a certain way
- Accept cash, cheques, money orders or gift vouchers
- Accept a gift or benefit where it is to be provided to a family member, relation, friend or associate
- Accept a gift or benefit where you currently, or may in the future, exercise discretion in the making of a decision affecting the giver
- Accept a gift or benefit if you are unsure whether you should.

Do:

- Read, understand and comply with the gifts and benefits policy
- Politely decline a gift or benefit which is not allowed
- Seek management approval to accept a gift or benefit which is allowed
- Promptly record gifts and benefits in the register.

Address conflicts of interests

Make it clear that where a conflict of interests exists (that is, where there is an actual, potential or reasonably perceived conflict between an employee's private interests and their impartial performance of their official duties) the offer of a gift or benefit should always be declined and registered.

¹ NSW Auditor General's Report: Managing Gifts and Benefits, 2013

2.1 Managing gifts and benefits

Outline an approval process

Normally, an approval process for accepting a gift or benefit would identify who can approve, any value threshold for mandatory reporting and recording, and who holds the Department/agency gift register.

Identify specific risks

The structure and functions of a Department/agency will influence the nature and level of risk it faces in managing gifts and benefits. Senior managers should identify risks that are specific to their organisation, or to a business unit, and ensure that these are addressed adequately in the gifts and benefits policy. Including real-life examples and/or scenarios, which highlight the risks inherent in the organisation's operating environment, will assist employees to better understand their obligations.

Risks identified by similar organisations, and their experiences with gifts and benefits, should be monitored and considered as potential risks for your own organisation.

Specify how breaches will be handled

Specify what action will be taken when an employee breaches the gifts and benefits policy. In most cases, breaches will be covered by the Code of Ethics and Conduct; Department/agency codes; relevant legislation, including the *Government Sector Employment Act 2013*; and the *Government Sector Employment (General) Rules 2014* (NSW).

Register

The Department/agency gifts and benefits register should be transparent and auditable. Whether a physical document or an electronic file, the register should also be straightforward, secure and held centrally. Consideration should also be given to publishing the register on the Department/agency website.

To be effective the register should record:

- Date of the offer or receipt
- Name and business unit of the receiver
- Name and organisation of the giver
- Description of the gift or benefit
- Estimated value of the gift or benefit, where possible supported by evidence
- Description of the context in which the gift or benefit was offered and/or received
- Disclosure of any relationship – business or personal – between the giver and receiver
- Name of the approving manager or supervisor
- Decision, for example:
 - Accept and retain – the employee or Department/ agency will accept and retain or
 - Accept and dispose – the Department or agency will accept and dispose (in accordance with relevant asset disposal policies) e.g. donate to charity or
 - Refuse – acceptance of the gift or benefit is refused
- Reasons for the decision.

The reliability of the system will be improved if register entries are reviewed regularly by a designated senior manager to ensure actions are consistent with the policy.

2.1 Managing gifts and benefits

Training and support

Departments and agencies should provide employees with training and support in managing gifts and benefits.

Train all employees

Training in the Department/agency gifts and benefits policy should be provided to all new starters as part of their induction, along with training on the *Ethical framework for the government sector* and relevant Code(s) of Ethics and Conduct. This is especially important for employees working in the government sector for the first time. Agencies must also 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. Formal training about this matter should be integrated into existing cyclical training or development activities including performance development programs. The nature and type of awareness or training must take into account the risk and likelihood of receiving a gift or benefit based on the employee's role. Employees' obligations can also be reinforced by supervisors during performance review discussions and team meetings.

Consider also 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.

Ensure advice is readily available

Designate a senior manager who is available to advise employees on their gifts and benefits obligations, and to escalate issues if necessary.

Consider publishing a 'statement of business ethics'

Many organisations now publish a statement of business ethics to assist their customers, applicants, suppliers, and potential suppliers. This statement explains how the organisation will behave when providing services, seeking information, regulating, or making purchases. It is in relation to the last of these activities – procurement – that including a summary of the Department/agency gifts and benefits policy can be particularly useful.

2.1 Managing gifts and benefits

Other things to consider

Hospitality

How to deal with offers of hospitality requires special attention in a Department/agency gifts and benefits policy.

This is particularly the case where employees - because of the nature of their jobs - are expected to develop effective working relationships with contacts in the commercial sector, but, at the same time, must ensure that such relationships do not result in preferential treatment (or the appearance of preferential treatment) for those commercial contacts.

Guidelines can assist employees to make the right decisions, but there will always be grey areas demanding careful judgment. Ultimately, the question to be decided is this:

'Would a reasonable person think that the hospitality was intended to influence the recipient to act in the interests of the giver, either now or in the future?'

Examples of **low risk** hospitality include:

- Functions where the recipient attends in an official capacity as their organisation's representative
- Hospitality provided as part of a conference package, where the Department/agency has paid a fee for the employee to attend
- Catered briefings, roundtables, launches etc, where invitees from a range of external organisations are present
- Occasional working lunches, where the hospitality is incidental and of low value - say, sandwiches and coffee.

Examples of **higher risk** hospitality include:

- Restaurant meals (except as described in the first and third dot points above)
- Invitations to corporate boxes or marquees
- Invitations to lunches, dinners or other events to 'seal the deal', or to 'celebrate' finalisation of a procurement process or the signing of a contract
- Invitations to functions held in private homes
- Invitations which extend to family members, relations, friends and associates.

As a general rule, where there is doubt about whether to accept hospitality, employees and their managers should err on the side of caution. Each agency needs to decide what is acceptable hospitality, having regard to the operating environment, agency responsibilities and identified risks. Acceptance of hospitality that is higher risk should always be accompanied by a commensurately greater level of transparency. Employees should record receipt of hospitality in accordance with the agency's policy, including any value thresholds, as soon as is practicable.

If hospitality is accepted in good faith, but a third party attempts to use the occasion to raise a materially significant matter relating to their business or private affairs, the employee should politely decline to discuss the matter and, if appropriate, propose that a formal meeting be organised for a later date.

2.1 Managing gifts and benefits

Sporting, entertainment and cultural events

How to deal with invitations and free tickets to sporting, entertainment and cultural events may require special attention in a Department/agency gifts and benefits policy, depending on the organisation's functions and operating environment.

In many cases, the value of such invitations and tickets will be significant, possibly beyond the acceptance threshold established in the Department/agency policy.

However, it is important to distinguish between situations where an employee's attendance at an event is unrelated to their work responsibilities, and where their attendance is for the purpose of advising the Government on policy, or administering a program. The former would constitute a gift or benefit, the latter would not. Nonetheless, for transparency, it is preferable for the acceptance and allocation of invitations and tickets to be managed and recorded centrally. If this is not practicable on a whole-of-agency basis, it should be done at division or branch level.

Invitations and tickets from unrelated third parties – that is, from parties not directly involved in the event – should always be treated as gifts and benefits.

Travel and accommodation

From time to time, government sector employees may be offered travel or accommodation upgrades during official travel within Australia or overseas.

Employees should never seek or solicit an upgrade from a travel or accommodation provider in relation to official travel.

Where a travel or accommodation provider seeks to upgrade an employee for operational reasons, at no charge to the employee or their agency (for example, where an airline upgrades a traveller to business class because it has its overbooked economy class for that flight) the employee may accept the upgrade, but should record receipt of the upgrade in their agency's gifts and benefits register.

Competitive scholarships and awards

Government sector employees may be eligible to apply for competitive scholarships or awards in recognition of their achievements or potential in their field of expertise. Examples include, but are not limited to: NSW Premier's Teacher Scholarships; the NSW Premier's Awards; the Institute of Public Administration Australia Awards; and the Commonwealth Bank Foundation Teaching Awards.

Agency policies may permit employees to accept, with the approval of a manager, professional scholarships and awards won as a result of an open and competitive application process, even where the value of the award exceeds any applicable value threshold for gifts and benefits established by the agency.

Recipients of such awards should record all relevant details of the award, including details of their manager's approval, in their agency's gifts and benefits register.

Higher risk jobs

While all government employees need to be cautious when offered a gift or benefit, Departments and agencies should make sure employees, involved in the following activities, are especially alert to the potential risks:

- Making, or advising on, purchasing decisions
- Evaluating tenders, quotes, proposals or applications
- Administering, or advising on, grants or approvals
- Managing contracts
- Regulating individuals, organisations or industries
- Delivering valuable services to individuals, companies or organisations, including the hiring of staff.

2.1 Managing gifts and benefits

Read more

In addition to complying with their Department/ agency policy for managing gifts and benefits, employees must act consistently with the Code of Ethics and Conduct and any Department/ agency codes.

Employees should also be referred to the resources that can be found in *Behaving Ethically: A guide for NSW government sector employees* published by the Public Service Commission to guide employees on their conduct, decision-making and interaction with the Government, customers and colleagues.

Further information that may also be useful to employees in managing gifts and benefits and conflicts of interest is available from the NSW Ombudsman (see www.ombo.nsw.gov.au) and the Independent Commission Against Corruption (see www.icac.nsw.gov.au).

See also *Government Sector Finance Act 2018*, Treasurer's Direction 2021-04, and *Gifts of government property* concerning gifts of government property made by or on behalf of a GSF agency.