Gifts, Benefits and Hospitality Policy and Procedures

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1. Purpose

This policy, , describes the position of the Office of the Victorian Information Commissioner (**OVIC**) on:

* responding to offers of gifts, benefits and hospitality
* providing gifts, benefits and hospitality.

This policy is intended to support individuals and OVIC to avoid conflicts of interest and to maintain high levels of integrity and public trust.

OVIC has issued this policy to support behaviour consistent with the *Code of Conduct for Victorian Public Sector Employees* of Special Bodies which is binding under section 61 of the *Public Administration Act*. All employees are required under clause 1.2 of the code to comply with this policy.

1. Applicability

This policy applies to all OVIC workplace participants, including employees, contractors, consultants and any individuals or groups undertaking activity for or on behalf of OVIC. For the purpose of this policy, all workplace participants will be referred to as ‘employees’.

1. Policy principles

This policy has been developed in accordance with requirements outlined in the binding *Minimum accountabilities for the management of gifts, benefits and hospitality* issued by the Victorian Public Sector Commission (VPSC).

This policy is underpinned by the following guiding principles:

* 1. Public interest

All employees must place public interest above their private interest when carrying out official duties. Employees have a duty to faithfully discharge their obligations under the Freedom of Information Act and the Privacy and Data Protection Act by:

* acting apolitically and providing frank and fearless advice to government
* complying with legislation and government policies
* performing their roles fairly and reasonably and adhering to the principles of natural justice
* applying the public sector values (Respect, Accountability, Integrity, Impartiality, Responsiveness, Leadership and Human Rights) set out at section 7 of the *Public Administration Act* 2004
* adhering to the *Code of Conduct for Victorian Public Sector Employees of Special Bodies*
* not accepting gifts, benefits or hospitality that could raise a perception of, or actual, bias or preferential treatment
* not accepting offers from current or prospective suppliers
* not accepting offers from those about whom they are likely to make business decisions.
  1. Accountability

All employees are accountable for:

* not engaging in the soliciting of gifts, benefits and hospitality for themselves or others
* declaring all non-token offers of gifts, benefits and hospitality
* declining all non-token offers of gifts, benefits and hospitality, or where an exception applies under this policy, seeking approval to accept the offer
* the responsible provision of gifts, benefits and hospitality.

Employees with direct reports are accountable for:

* overseeing management of their direct reports’ acceptance or refusal of non-token gifts, benefits and hospitality
* modelling good practice and promoting awareness of gifts, benefits and hospitality policies and processes.
  1. Risk-based approach

OVIC, through its policies, processes and corporate governance committee, will ensure gifts, benefits and hospitality risks are appropriately assessed and managed. Individuals with direct reports will ensure they are aware of the risks inherent in their team’s work and functions and monitor the risks to which their direct reports are exposed.

1. Definitions

|  |  |
| --- | --- |
| Gifts | Free or discounted items and any item that would generally be seen by the public as a gift. These include items of high value (e.g. artwork, jewellery, or expensive pens), low value (e.g. small bunch of flowers) and consumables (e.g. chocolates). Fundraising by public sector organisations that is consistent with relevant legislation and any government policy is not prohibited under the minimum accountabilities. |
| Benefits | Preferential treatment, privileged access, favours or other advantage offered to an individual. This may include invitations to sporting, cultural or social events, access to discounts and loyalty programs, and promises of a new job.  The value of benefits may be difficult to define in dollars, but as they are valued by the individual, they may be used to influence the individual’s behaviour. |
| Hospitality | The friendly reception and entertainment of guests. Hospitality may range from light refreshments at a business meeting to expensive restaurant meals and sponsored travel and accommodation. |
| Conflicts of interest | *Actual conflict of interest*: A real conflict between an employee’s public duties and private interests.  *Potential conflict of interest*: An employee has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.  *Perceived conflict of interest*: The public or a third party could form the view that an employee’s private interests could improperly influence their decisions or actions, now or in the future. |
| Supplier | Company or individual that supplies goods or services to the public sector organisation, or could reasonably be expected to seek to supply goods or services to the public sector organisation. This is consistent with the definition adopted by the Victorian Government Purchasing Board in its Supplier Code of Conduct. |
| Business associate | An external individual or entity which the organisation has, or plans to establish, some form of business relationship, or who may seek commercial or other advantage by offering gifts, benefits or hospitality. |
| Legitimate business benefit | Gifts, benefits and hospitality accepted or provided for a business purpose, in that it furthers the conduct of official business or other legitimate goals of the organisation, public sector or State. |
| Public official | As defined under section 4 of the Public Administration Act 2004. Public officials include:   * public sector employees * statutory office holders * directors of public entities. |
| Gifts Benefits and Hospitality Register | A record, preferably electronic, of all declarable gifts, benefits and hospitality. It records the date an offer was made and by whom, the nature of the offer, its estimated value, the raising of any actual, potential or perceived conflicts of interest or reputational risks and how the offer was managed. For accepted offers, it details the business reason for acceptance and the officer approving the acceptance. The Gifts Benefits and Hospitality Register will be published on OVIC’s website. |
| Token offer | The offer of a gift, benefit or hospitality that is offered as a courtesy or is of inconsequential or trivial value to both the person making the offer and the individual.  Whilst the primary determinant of a token offer is that it would not be reasonably perceived within or outside the organisation as influencing an individual or raising an actual, potential or perceived conflict of interest, it cannot be worth more than $50 (including cumulative offers from the same source over a 12 month period). |
| Non-token offer | The offer of a gift, benefit or hospitality that is, or may be perceived to be by the recipient, the person making the offer or by the wider community, of more than inconsequential value. All offers worth more than $50 are non-token offers and must be recorded on a gifts, benefit and hospitality register. Offers of a gift, benefit or hospitality with a value of under $50 may still be a non-token offer. Following approval, some gifts, benefits and hospitality may be accepted for legitimate business reasons as per section 5.3 below. |

1. Management of offers of gifts, benefits and hospitality

This section sets out the process for accepting, declining and recording offers of gifts, benefits and hospitality. Any exceptions to this process must have the prior written approval of the Information Commissioner.

* 1. Token offers

A token offer is an offer of a gift, benefit or hospitality that is of inconsequential or trivial value to both the person making the offer and the individual. It may include promotional items such as pens and note pads, and modest hospitality which would be considered a basic courtesy, such as light refreshments offered during a meeting.

Whilst the primary determinant of a token offer is that it would not be reasonably perceived within or outside the organisation as influencing an individual raising an actual, potential or perceived conflict of interest, it cannot be worth more than $50. If token offers are made often by the same person or organisation, the cumulative value of the offers over 12 months, or the perception that they may influence the recipient, may result in the offers becoming non-token.

Individuals may accepttoken offers of gifts, benefits and hospitality without approval or declaring the offer on OVIC’s Gifts, Benefits and Hospitality (GBH) register.

Individuals **must decline**  all offers (with the exception of token hospitality, such as beverages or sandwiches over a lunchtime meeting and gifts approved as being for legitimate business reasons as per section 5.3 of this policy):

* made by a current or prospective supplier
* made during a procurement or tender process by a person or organisation involved in the process
* made by a person or organisation they will likely make a decision involving approval of grants
* made by a person they will likely make a decision involving recruitment.
  1. Non-token offers

A non-token offer is an offer of a gift, benefit or hospitality that is, or may be perceived to be by the recipient, the person making the offer or by the wider community, of more than inconsequential value. The OVIC threshold for token offers is $50. All offers valued over $50 are considered as non-token offers.

OVIC’s position is that all non-token offers should be declined, however, there will be some exceptions where there is a legitimate business reason for accepting a non-token offer (see section 5.3).

OVIC employees **must refuse** all non-token offers:

* likely to influence them, or be perceived to influence them, in the course of their duties or raise an actual, potential or perceived conflict of interest
* by a person or organisation about which they will likely make a decision
* likely to be a bribe or inducement to make a decision or act in a particular way
* that extend to their relatives or friends
* with no legitimate business benefit
* of money, or used in a similar way to money, or something easily converted to money
* made in secret.

If an individual considers they have been offered a bribe or inducement, the offer must be reported to the appropriate Deputy Commissioner and or the Chief Operating Officer. Any criminal or corrupt conduct will be reported to the Independent Broad-based Anti-Corruption Commission and Victoria Police.

If you are offered a gift, benefit or hospitality at work, take the GIFT Test to guide your decision-making:

|  |  |  |
| --- | --- | --- |
| **GIFT Test** |  |  |
| **G** | Giver | **Who is providing the gift, benefit or hospitality and what is their relationship to me?**  Does my role require me to select contractors, award grants, regulate industries or determine government policies? Could the person or organisation benefit from a decision I make? |
| **I** | Influence | **Are they seeking to gain an advantage or influence my decisions or actions?**  Has the gift, benefit or hospitality been offered to me publicly or privately? Is it a courtesy or a token of appreciation or valuable non-token offer? Does its timing coincide with a decision I am about to make or endorse a product or service? |
| **F** | Favour | **Are they seeking a favour in return for the gift, benefit or hospitality?**  Has the gift, benefit or hospitality been offered honestly? Has the person or organisation made several offers over the last 12 months? Would accepting it create an obligation to return a favour? |
| **T** | Trust | **Would accepting the gift, benefit or hospitality diminish public trust?**  How would the public view acceptance of this gift, benefit or hospitality? What would my colleagues, family, friends or associates think? |

* 1. Accepting Non Token Offers - Legitimate Business Reasons

All accepted non-token offers **must** be approved in writing by the individual’s manager (via the attached **Gifts, Benefits and Hospitality Declaration**) and be consistent with the following requirements:

* it does not raise an actual, potential or perceived conflict of interest or have the potential to bring the individual, OVIC or the public sector into disrepute
* there is a legitimate business reason for acceptance ie. It is offered in the course of the individual’s official duties, relates to the individual’s responsibilities and has a benefit to OVIC, the public sector or the State.

The business reason for accepting the non-token offer must be recorded on the attached **Gifts, Benefits and Hospitality Declaration Form** with sufficient detail to link the acceptance to the individual’s work functions and benefit to the OVIC, public sector or State. This information will also be recorded on the OVIC Gifts, Benefits and Hospitality Register and published on OVIC’s website.

Examples of acceptable and unacceptable levels of detail to be included when recording the business reason are below.

|  |  |
| --- | --- |
| Acceptable: | “Individual attended Event A in an official capacity and reported back to the OVIC on the event.”  “Individual presented to a visiting international delegation. The delegation presented the Individual with a cultural item worth an estimated $200. Declining the gift would have caused offence. The Gift was accepted, written approval was subsequently obtained for the gift, which became property of OVIC” |
| Unacceptable: | “Networking”  “Maintaining stakeholder relationships” |

* 1. Declaring, recording non-token offers of gifts, benefits and hospitality

Individuals must declare all non-token offers, whether accepted or declined by completing and providing a **Gifts, Benefits and Hospitality Declaration Form** to their manager and the Chief Operating Officer. Where there is no opportunity to seek written approval from their manager prior to accepting a gift or hospitality, the individual must seek approval from their manager and complete a OVIC Gifts, Benefits and Hospitality Declaration Form within five business days.

* 1. Ownership of gifts offered to individuals

Non-token gifts accepted by an individual for their work or contribution may be retained by the individual where their manager or organisational delegate has provided written approval. Employees must transfer to OVIC official gifts or any gift of cultural significance or significant value (over $50).

1. Management of the provision of gifts, benefits and hospitality

This section sets out the requirements for providing gifts, benefits and hospitality.

Gifts, benefits and hospitality may be provided to welcome guests, to facilitate the development of business relationships, to further public sector business outcomes and to celebrate achievements.

* 1. Requirements for providing gifts, benefits and hospitality

When deciding whether to provide gifts, benefits or hospitality, or the type of gift, benefit or hospitality to provide, individuals must ensure:

* any gift, benefit or hospitality is provided for a business reason in that it furthers the conduct of official business or other legitimate organisational goals, or promotes and supports government policy objectives and priorities
* that any costs are proportionate to the benefits obtained for the State, and would be considered reasonable in terms of community expectations (the ‘HOST’ test below is a good reminder of what to think about in making this assessment)
* it does not raise an actual, potential or perceived conflict of interest.

The HOST test is a good reminder of what to think about when deciding whether to offer hospitality or gifts to staff or stakeholders:

|  |  |  |
| --- | --- | --- |
| **HOST Test** |  |  |
| **H** | Hospitality | **To whom is the gift or hospitality being provided?**  Will recipients be external business partners, or individuals of the host organisation? |
| **O** | Objectives | **For what purpose will hospitality be provided?**  Is the hospitality being provided to further the conduct of official business? Will it promote and support government policy objectives and priorities? Will it contribute to staff wellbeing and workplace satisfaction? |
| **S** | Spend | **Will public funds be spent?**  What type of hospitality will be provided? Will it be modest or expensive, and will alcohol be provided as a courtesy or an indulgence? Will the costs incurred be proportionate to the benefits obtained? |
| **T** | Trust | **Will public trust be enhanced or diminished?**  Could you publicly explain the rationale for providing the gift or hospitality? Will the event be conducted in a manner which upholds the reputation of the public sector? Have records in relation to the gift or hospitality been kept in accordance with reporting and recording procedures? |

* 1. Containing costs

Individuals should contain costs involved in the provision of gifts, benefits and hospitality wherever possible. The following questions may be useful to assist individuals to decide the type of gift, benefit or hospitality to provide.

* Will the cost of providing the gift, benefit or hospitality be proportionate to the potential benefits?
* Is an external venue necessary or does the organisation have facilities to host the event?
* Is the proposed catering or hospitality proportionate to the number of attendees?
* Does the size of the event and number of attendees align with intended outcomes?
* Will providing the gift, benefit or hospitality be viewed by the public as excessive?

Records relating to the provision of hospitality, such as approval forms and records relating to procurement and expenditure, must be retained in accordance with their requirements under the *Financial Management Act 1994*.

1. Reporting

The information from Gifts, Benefits and Hospitality forms will also be recorded on OVIC’s Gifts, Benefits and Hospitality Register. To provide public transparency, the Gifts, Benefit and Hospitality Register will be published on OVIC’s public website. The register will make public all offers whether accepted or declined valued at $50 or over .

OVIC’s corporate governance committee will receive a six monthly report on the gifts, benefits and hospitality policy, processes and register, including analysis of any gifts, benefits and hospitality risks (including multiple offers from the same source and offers from business associates), risk mitigation measures and any proposed improvements.

1. Related policy, legislation and other documents

Relevant legislation includes:

* Standing Directions 2018 Under the Financial Management Act 1994
* Independent Broad-based Anti-corruption Commission Act 2011
* Financial Management Act 1994
* Public Administration Act 2004

Other related policies and guidance include:

* Code of conduct for Victorian Public Sector Employees of Special Bodies 2015
* VPSC’s Gifts, benefits and hospitality policy guide 2018

1. Breaches

Actions inconsistent with this policy may constitute misconduct under the *Public Administration* Act *2004,* which includes:

* breaches of the binding Code of Conduct for Victorian Public Sector Employees of Special Bodies, such as sections of the code covering conflict of interest (section 3.7), public trust (section 3.9) and gifts and benefits (section 4.2)
* individuals making improper use of their position.

Disciplinary action consistent with the relevant industrial instrument and legislation, including dismissal, may be taken where an individual fails to adhere to this policy.

OVIC’s procedures for handling complaints are set out in another policy document entitled **OVIC Internal Complaints Procedures**

Policy Management Details

|  |  |
| --- | --- |
| Title and version number | Gifts Benefits and Hospitality Policy |
| CM record number | D17/224960 |
| Policy owner/branch | Office of the Victorian Information Commissioner |
| Date of Information Commissioner approval | 18 April 2018  Reviewed by CGC on 21 May.  Approved by Information Commissioner on 06 August 2021 |
| Effective date | 18 April 2018 |
| Review frequency | Annually |
| Last Review Date | Reviewed by CGC on 21 May |

Gifts, Benefits and Hospitality Declaration Form

This declaration form supports the OVIC’s Gifts, Benefits and Hospitality Policy. Employees must declare all non-token offers of gifts, benefits and hospitality (whether accepted or declined) on and seek written approval from their manager or organisational delegate to accept any non-token offer.

|  |  |  |  |
| --- | --- | --- | --- |
| Individual to complete | | | |
| Name |  | Declaration date |  |
| Position title |  | Contact number |  |
| Branch/Unit |  |  |  |
| Details of the gift, benefit or hospitality | | | |
| 1. Date offered | |  | |
| 1. Describe the gift, benefit or hospitality offered | |  | |
| 1. Estimated or actual value | |  | |
| 1. Offered by (name of individual/organisation making the offer) | |  | |
| 1. Is the person or entity making the offer a business associate of the organisation (Y/N)? If yes, describe the relationship between them and the organisation. If no, describe the relationship between you and the person or organisation making the offer. | |  | |
| 1. Reason for making the offer | |  | |
| 1. Would accepting the offer:    1. create an actual potential or perceived conflict of interest exist (Y/N); or    2. bring you, the organisation or the public sector into disrepute (Y/N)?   (If either is answered YES, then the offer must be declined in accordance with OVIC’s Gifts Benefits and Hospitality Policy ) | | Detail of conflict of interest: | |
| 1. Is there a legitimate business benefit to the organisation, public sector or State for accepting the offer, i.e. does it meet the following:    1. it was offered during the course of your official duties (Y/N); and    2. it relates to your official responsibilities (Y/N); and    3. it has a benefit to the organisation, public sector or State (Y/N).   (If NO then offer must be declined, and if YES then the business benefit must be detailed, in accordance with OVIC’s Gifts Benefits and Hospitality Policy ) | | Detail of business benefit: | |
| 1. I accepted the offer | | YES / NO | |
| 1. Signature | |  | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Manager to complete | | | | |
| Name |  | | Declaration date |  |
| Position title |  | | Contact number |  |
| Branch/Unit |  | |  |  |
| Complete if individual declined offer | | | | |
| 1. I have reviewed this declaration form and submitted it for inclusion on the organisation’s gifts, benefits and hospitality register. | | Signature:  Date: | | |
| Complete if individual accepted offer | | | | |
| 1. I have reviewed this declaration form and, confirm that, to my knowledge, accepting this offer:    1. does not raise an actual, potential or perceived conflict of interest for the individual or myself; and    2. will not bring the individual, myself, the organisation or the public sector into disrepute; and    3. will provide a clear business benefit to the organisation, the public sector or the State. | | Signature:  Date: | | |
| 1. Detail decision regarding ownership of tangible offers (e.g. specify whether employee retained gift; transferred to organisation’s ownership; returned to offeror; donated to charity etc.) | |  | | |

**Completed form to be submitted to Chief Operating Officer for inclusion on OVIC’s Gifts, Benefits and Hospitality Register.**