

## **State Service Act 2000**

Commissioner's Direction No.14

TITLE:

## **GIFTS AND BENEFITS**

ISSUE DATE: 11 July 2003

OPERATION DATE:11 July 2003

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### **1. Application**

- 1.1 This Direction applies to all Agencies, officers and employees but only in relation to, or consequential on, the official duties of officers or employees.

### **2. Purpose**

- 2.1 The purpose of this Direction is to assist State Service Agencies in ensuring officers and employees are aware of their statutory obligations in relation to the giving and receiving of gifts and benefits.

### **3. Introduction**

- 3.1 The *State Service Act 2000* contains State Service Principles that, in part, requires the State Service to be apolitical and perform its functions in an impartial, ethical and professional manner. The State Service Code of Code compliments the State Service Principles and establishes the conduct requirements for State Service officers and employees. The Code of Conduct, in part, requires officers and employees to behave honestly and with integrity in undertaking their duties.
- 3.2 Consistent with the attributes prescribed by the *State Service Act 2000*, the Tasmanian community expects that the giving and receiving of gifts or benefits does not influence a person employed in the State Service.
- 3.3 Therefore, it is important that no conflict exists, or appears to exist, between the public duty and private interest of an officer or employee in the State Service. Such conflict of interest, or appearance of conflict, may relate to an officer's or employee's past, current or future duties.

### **4. Legislative Requirements**

- 4.1 Section 9 (1) of the *State Service Act 2000* requires that an employee must behave honestly and with integrity in the course of State Service employment.
- 4.2 Section 9 (4) of the *State Service Act 2000* requires that an employee, when acting in the course of State Service employment, must comply with all applicable Australian law.
- 4.3 Section 9 (8) of the *State Service Act 2000* states that an employee must disclose, and take reasonable steps to avoid, a conflict of interest in connection with the employee's State Service employment.
- 4.4 Section 9 (11) of the *State Service Act 2000* states that an employee must not

make improper use of information gained in the course of his or her employment or the employees duties, status, power or authority in order to gain a gift, or seek to gain, a gift, benefit or advantage for the employee or for any other person.

- 4.5 Section 9 (12) of the *State Service Act 2000* requires that an employee who receives a gift in the course of his or her employment, or in relation to his or her employment, must declare the gift as prescribed by regulations.
- 4.6 Section 9 (16) of the *State Service Act 2000* extends these requirements to all officers.
- 4.7 Regulation 12 of the *State Service Regulations 2001* requires that a gift must be declared to the relevant Head of Agency.
- 4.8 Chapter IX of *The Criminal Code Act 1924* pertains to gifts and the corruption of public officers and extortion by public officers.

## **5. Definitions**

### **5.1 Gift:**

Means any gratuity or benefit gained by an officer, employee, or their immediate families (i.e. spouses, partners and dependant children), either monetary or otherwise (except by means of a will), in the course of the officer's or employee's duties or in relation to the officer's or employee's duties from any person or entity other than the employer. It includes, but is not limited to:

- a gift of money;
- a gift of a physical object;
- the conferring of a benefit;
- indirect or concealed gifts such as the permanent or indefinite loan of money or property, the sale or transfer of property at less than full value or the provision of a benefit which has a financial or commercial value for less than full value; or
- provision of hospitality (e.g. accommodation), travel (e.g. airfares), or entertainment for less than full value.

### **5.2 Procurement:**

Means any process by which an Agency secures goods or services from internal or external providers.

## **6. Directive**

### **6.1 Powers Exercised by the Head of Agency**

- (a) The Head of Agency must ensure that:
- (i) the Agency has guidelines relating to the giving and receiving of gifts and benefits that comply with the framework below;
  - (ii) all staff are made aware of the guidelines relating to the giving and receiving of gifts and benefits and the need to inform the Head of Agency should they be offered or receive a gift in the course of their employment; and
  - (iii) the State Service Commissioner is provided with a copy of the Agency guidelines and any subsequent revisions.

### **6.2 Framework for Guidelines Relating to the Giving and Receiving of Gifts and Benefits**

#### **6.2.1 Agency Guidelines**

- (a) The Head of Agency is to develop appropriate Agency guidelines to ensure that:
- (i) Government or Agency procurement decisions are not influenced by the receipt of gifts;
  - (ii) any officer or employee engaged in procurement processes is made aware of the statement in the Handbook for Government Procurement issued by the Department of Treasury and Finance that "it is a requirement that all Government buyers decline gifts, gratuities or any other benefits which may influence, or might be deemed to influence, equity or impartiality in procurement decisions"; and
  - (iii) clarity is provided in relation to:
    - what constitutes a gift, for example sponsored travel, hospitality, entertainment, payments or commercial/promotional objects;
    - any gifts that are not to be accepted in any circumstances - for example illegally obtained property, drugs or gifts intended to influence Agency decisions;
    - any gifts deemed to be acceptable, for example souvenirs, mementos, craft, remembrances or other tokens bestowed at an official function, marks of courtesy or of a seasonal nature of a minor value or gifts from personal friends and family members in a genuinely personal capacity and which do not give rise to or create the appearance of a conflict of interest; and

- the period of time in which a gift is to be reported.

### **6.2.2 Giving of Gifts**

- (i) The giving of gifts, other than in accordance with the official duties of employees or officers, is refrained from in any circumstances that would give rise to or create the appearance of a conflict of interest.

### **6.2.3 Declaration of Gifts**

- (i) As required by Section 9 (12) of the *State Service Act 2000*, an employee who receives a gift in the course of his or her employment or in relation to his or her employment, must declare the gift as prescribed by regulations.
- (ii) Regulation 12 of the *State Service Regulations 2001* requires that a gift must be declared to the relevant Head of Agency.

### **6.2.4 Sponsored Travel**

The Head of Agency is to ensure that employees or officers do not accept sponsored travel, without prior approval of their Head of Agency.

- (i) All sponsored travel, except that provided by the Commonwealth, is to be considered a gift for the purposes of reporting to Head of Agency.
- (ii) Sponsored travel may be approved if it is considered to be of benefit to the State. However, in approving such sponsored travel, the Head of Agency should be mindful of avoiding a conflict of interest, or the appearance of a conflict of interest.
- (iii) Sponsored travel is not made more acceptable when undertaken in the officer's or employee's own time or in an unofficial capacity, particularly where any link exists or could be construed to exist between the gift and the official duties of the officer or employee.

### **6.2.5 Functions, Hospitality and Entertainment**

- (i) Functions, entertainment and hospitality constitute a gift. The key issue in determining whether acceptance of hospitality is appropriate is whether the hospitality is aimed at influencing the officer or employee in the exercise of some specific or general duty or power either individually in directing the activities of their department or through the exercise of a discretion.

## **6.3 Breaches of an Agency's Guidelines on the Giving and Receiving of Gifts and Benefits**

- (i) The Head of Agency must ensure that all alleged breaches of an Agency's

guidelines on the giving and receiving of gifts and benefits are dealt with in accordance with the procedures set out in Commissioner's Direction No. 5 - Procedures for the investigation and determination of whether an employee has breached the Code of Conduct.

**6.4 Review of Agency Guidelines on the Giving and Receiving of Gifts and Benefits**

- (i) The Head of Agency must review the Agency's guidelines on the giving and receiving of gifts and benefits at least once every four years. The review must ensure that the guidelines continue to comply with the *State Service Act 2000* and this Direction.

Issued by authority of the State Service Commissioner pursuant to Section 20 (1) of the *State Service Act 2000*.

Date: 11 July 2003

STATE SERVICE COMMISSIONER