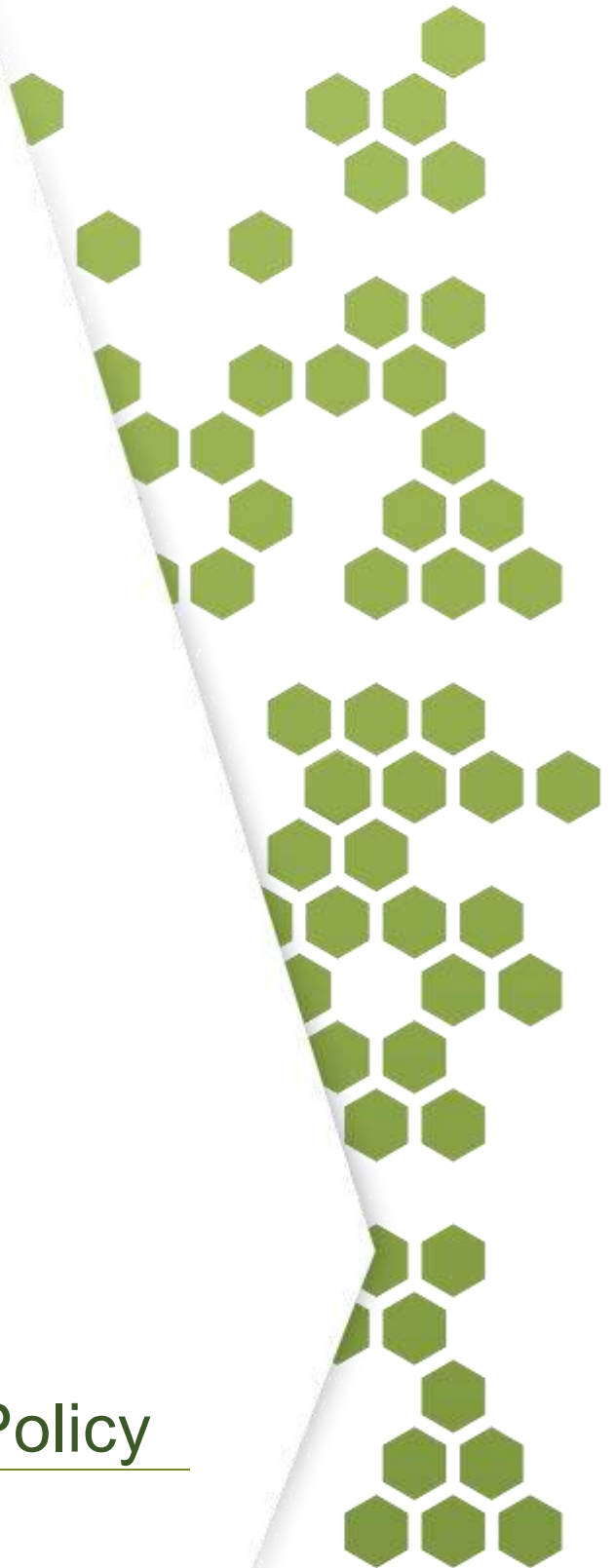




# EPA Gifts and Benefits Policy

August 2015



## EPA Gifts and Benefits Policy

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## Contents

<b>1. Introduction</b>	<b>1</b>
<b>2. EPA Gifts and Benefits Policy</b>	<b>2</b>
2.1 Persons to whom this policy applies	2
2.2 Failure to comply with this policy	2
2.3 Objectives of this policy	2
2.4 EPA Gifts and Benefits Procedures	2
2.5 Relevant legislation and directions	2
<b>3. What is a gift or a benefit</b>	<b>3</b>
<b>4. EPA staff obligations</b>	<b>4</b>
4.1 Managing risk as a regulator	4
4.2 What is expected of EPA staff, including contractors	4
<b>Appendix A: EPA Gifts and Benefits Procedures</b>	<b>6</b>
<b>1. Introduction</b>	<b>6</b>
1.1 Persons to whom this procedure applies	6
1.2 Failure to comply with this procedure	6
<b>2. Key definitions and further explanation</b>	<b>6</b>
2.1 Definitions	6
<b>3. Guidance for staff regarding gifts and benefits</b>	<b>8</b>
3.1 Decision Tree	8
3.2 Conflicts of interest	9
3.3 Directions regarding types of gifts and benefits	9
3.4 Hospitality	9
3.5 Network events	10
3.6 Travel and accommodation	10
3.7 Competitive scholarships and awards	11
3.8 Purchase incentive schemes	11
3.9 Acceptance of prizes	11
3.10 Gifts should have been declined but cannot be returned	11
<b>4. Disclose and register</b>	<b>12</b>
4.1 Trigger value amount for declaration	12
4.2 Gifts, benefits and hospitality declaration form	12
4.3 Delegate approvals	13
4.4 Registration on the EPA's Gifts, Benefits and Hospitality register	13
4.5 Review	13
<b>5. Disposal of gifts</b>	<b>13</b>
<b>6. Further advice and information</b>	<b>14</b>
<b>Appendix B: Gifts, benefits and hospitality declaration form</b>	<b>15</b>
<b>Gifts, benefits and hospitality declaration form</b>	<b>15</b>

## 1. Introduction

The NSW Environment Protection Authority (EPA) was re-established in February 2012 as a statutory authority with an independent governing Board.

The NSW EPA is the state's primary environmental regulator. We work with businesses, government and the community to manage and reduce pollution and waste.

As a regulator it is essential that the EPA is exemplary in its ethical practices.

EPA staff will conduct their activities in accordance with Government policies and the highest standards of ethical conduct. Our staff are bound by their statutory obligations under the *Government Sector Employment Act 2013* (GSE Act), which dictates core values for the government sector and the principles that guide their implementation. The Ethical Framework in Part 2 of the GSE Act 'recognises the role of the government sector in preserving the public interest, defending public value, and adding professional quality and value to the commitments of the Government of the day'.

The EPA has adopted The Code of Ethics and Conduct for NSW government sector employees, produced by the NSW Public Service Commission. This is on the EPA website under the title EPA Code of Ethics and Conduct.

The EPA operates under a Service Agreement, whereby it obtains all its corporate and essential services from the Office of Environment and Heritage (OEH). Thus the EPA adopts OEH corporate policies that also guide staff behaviour in the workplace and with stakeholders.

In addition, the EPA's Statement of Business Ethics provides guidance for the business sector, other government agencies and non-government organisations when doing business or having other dealings with the EPA. It outlines the EPA's ethical values and what we expect of ourselves, other organisations and individuals when we interact with them. The EPA's Statement of Business Ethics can be found on the EPA website.

## 2. EPA Gifts and Benefits Policy

Part 2 of the GSE Act establishes the *Ethical Framework for the government sector*.

The objective, core values and principles of the Ethical Framework are to be demonstrated in the conduct of all government sector employees and heads of government sector agencies. The core values are integrity, trust, service, and accountability.

Gifts are a feature of business and it is not uncommon for public servants to be offered gifts. 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.

This policy states how the EPA deals with offers of gifts and benefits.

The EPA has Gifts and Benefits Procedures that must be followed by staff when declaring gifts and benefits and for further information regarding their behaviour.

### 2.1 Persons to whom this policy applies

This code is applicable to all EPA staff including ongoing, temporary or casual employees, labour hire (contractors who are working as though they were an EPA staff member) and seconded staff. It does not apply to contractors who are not representing the EPA but are providing professional services to the EPA.

### 2.2 Failure to comply with this policy

Compliance with this policy is **mandatory**.

Compliance with this policy directive forms part of the contract of employment for a employees, and failure to comply with the policy may lead to termination of employment.

### 2.3 Objectives of this policy

The objectives of this policy and the associated guidelines are:

1. to provide clear and detailed guidance to EPA staff about what is a gift or a benefit and what their obligations are when offered a gift or benefit
2. to ensure staff are acting within their statutory obligations under Part 2 GSE Act
3. to ensure consistency with The Code of Ethics and Conduct for NSW government sector employees.

### 2.4 EPA Gifts and Benefits Procedures

Staff should refer to the EPA Gifts and Benefits Procedures for additional information on:

- managing gifts, benefits and hospitality
- the approval process for accepting a gift, benefit and hospitality
- disclosing a gift, benefit and hospitality
- disposing of gifts that cannot be returned to the giver.

### 2.5 Relevant legislation and directions

Legislation and/or mandating instruments that this policy supports are:

- *Crimes Act 1900*
- *Government Information (Public Access) Act 2009*

- *Independent Commission Against Corruption Act 1988*
- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998*
- *Public Interest Disclosures Act 1994*
- *Public Finance and Audit Act 1983*
- *Government Sector Employment Act 2013*
- EPA Code of Ethics and Conduct
- *Public Service Commissioner Direction No 1 of 2014 under the Government Sector Employment Act 2013*
- EPA Statement of Business Ethics.

### 3. What is a gift or a benefit

A **gift** is an item of value which one person or organisation gives to another.

A **benefit** is a non-tangible item of value.

Examples include but are not limited to:

- any item, including vouchers, shares, and other monetary equivalents
- service
- entertainment
- prizes
- hospitality
- travel
- property
- a new job or a promotion
- preferential treatment or access to confidential information

provided by a:

- customer
- client
- those the EPA regulates or potentially could regulate
- applicant
- supplier
- potential supplier
- external organisation
- or other

which has an intrinsic value and/or a value to:

- the recipient
- a member of their family

- relation
- friend or
- associate.

Further definitions and explanations are provided in the EPA Gifts and Benefits Procedures annexed to this policy.

## 4. EPA staff obligations

### 4.1 Managing risk as a regulator

The EPA is an independent environmental regulator. The NSW public has entrusted EPA staff to undertake their work to the highest ethical standards. It is important to uphold that trust. There can be serious consequences for the EPA and its staff where the management of gifts and benefits is mishandled.

Most gifts and benefits are intended simply as a memento or a small token of appreciation. 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.

Perceptions are very important. Accepting a gift or benefit that could be perceived by other persons to be an inducement is inconsistent with the standards of conduct required by the Ethical Framework and is prohibited.

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

While all staff need to be cautious when offered a gift, benefit or hospitality, staff involved in the following activities need to be 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.

### 4.2 What is expected of EPA staff, including contractors

#### 4.2.1 Prohibition on the acceptance of gifts and benefits

The EPA strictly prohibits its staff from accepting:

- any gift or benefit offered to them while they are serving in their capacity as an EPA employee aimed to influence their duties
- gift or benefit where they currently, or may in the future, exercise discretion in the making of a decision affecting the giver

- a gift or benefit where it is to be provided to a family member, relation, friend or associate
- bonus gifts for agency purchases of any value for personal use
- gifts and benefits associated with procurement.

Token gifts such as pens, stationery etc. which have 'branding' must also be avoided as this may give the perception to others that you are advertising a certain private entity.

Note there are some limited circumstances where EPA staff can accept gifts as outlined in section 4.2.2 below.

Refer to the definition of a gift and a benefit in section 3 and further explanation in the EPA Gifts and Benefits Procedures.

### **4.2.2 When is it appropriate to accept a gift or benefit**

There are limited circumstances where it is acceptable to accept a gift or benefit. These include:

- Modest hospitality that is considered low risk offered to EPA staff, including pens, pamphlets, food and beverages that are provided by another agency or individual as part of normal work-related activities including interviews, business meetings, conferences and seminars where they are given to all participants. A further explanation of a low-risk hospitality is provided in the procedures.
- Approved gift tokens of appreciation to individuals who have given non-paid presentations at conferences or other events.
- Ceremonial gifts from visiting delegates.
- Gifts accepted for cultural, protocol or other reasons, where returning it would be inappropriate.
- Approval to accept a gift, benefit or hospitality over \$25.

### **4.2.3 Disclosure and reporting requirements**

The EPA has a Gifts, Benefits and Hospitality register. All gifts and benefits accepted or refused MUST be recorded on the register.

The EPA Gifts and Benefits Procedures outlines what is required in making a declaration.

**Please note:** Attempts at bribery must be resisted and immediately reported to the branch director. It may be appropriate to report this as a Public Interest Disclosure. Refer the Public Interest Disclosure Policy and Procedures.

### **4.2.4 EPA gifts to others**

There may be occasions when the EPA gives gifts to others.

EPA staff can offer:

- ceremonial gifts to visiting delegates
- modest hospitality to individuals and representatives of other agencies who visit EPA for work related purposes
- approved gift tokens of appreciation to individuals who have given non-paid presentations to EPA staff.

Generally these gifts should not exceed the nominal value of \$25.

All gifts, benefits and hospitality offered must be disclosed unless they are of token value which under this policy is considered to be up to the value of \$25.



## Appendix A: EPA Gifts and Benefits Procedures

### 1. Introduction

Part 2 of the *Government Sector Employment Act 2013* (GSE Act) establishes the *Ethical Framework for the government sector*.

The objective, core values and principles of the Ethical Framework are to be demonstrated in the conduct of all government sector employees and heads of government sector agencies. The core values are integrity, trust, service, and accountability.

Gifts are a feature of business and it is not uncommon for public servants to be offered gifts. 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.

This procedure should be read in conjunction with EPA Gifts and Benefits Policy and the *EPA Code of Ethics and Conduct*.

#### 1.1 Persons to whom this procedure applies

This procedure is applicable to all EPA staff including ongoing, temporary or casual employees, labour hire (contractors who are working as though they were an EPA staff member) and seconded staff. It does not apply to contractors who are not representing the EPA but are providing professional services to the EPA.

#### 1.2 Failure to comply with this procedure

Compliance with this procedure is **mandatory**.

Compliance with this procedure directive forms part of the contract of employment for an employee, and failure to comply with the policy may lead to termination of employment.

## 2. Key definitions and further explanation

### 2.1 Definitions

A definition as to what is a gift or a benefit is provided in the EPA Gifts and Benefits Policy.

All terminology in this procedure is taken to mean the generally accepted or dictionary definition with the exception of the following terms which have a specifically defined meaning:

For the purpose of this procedure, the following definitions apply:

- **Low-risk hospitality** includes free or subsidised meals or beverages provided to individuals infrequently (and/or reciprocally) by individuals and representatives of other agencies (including private sector organisations) associated with meetings or visits in connection with official functions.
- **High-risk hospitality** includes invitations to staff (also extends to staff family members, relations, friends and associates) to corporate boxes, concert tickets, supplier-run Melbourne Cup events or golf days, lunches or dinners to 'seal the deal' or the signing of a contract.
- A **bribe** is a gift or benefit that is offered to or solicited by a public officer to influence that person to act in a particular way.

## EPA Gifts and Benefits Policy

- A **network event** is a third-party run event for the purpose of advising the Government on policy, or administering a program or to improve a staff member's knowledge on new industry practices.
- **Conflict of interest** refers to situations where a conflict arises between public duty and private interest which could influence the performance of official duties and responsibilities.
- Gifts or benefits of **token value** are lesser or equal to \$25.

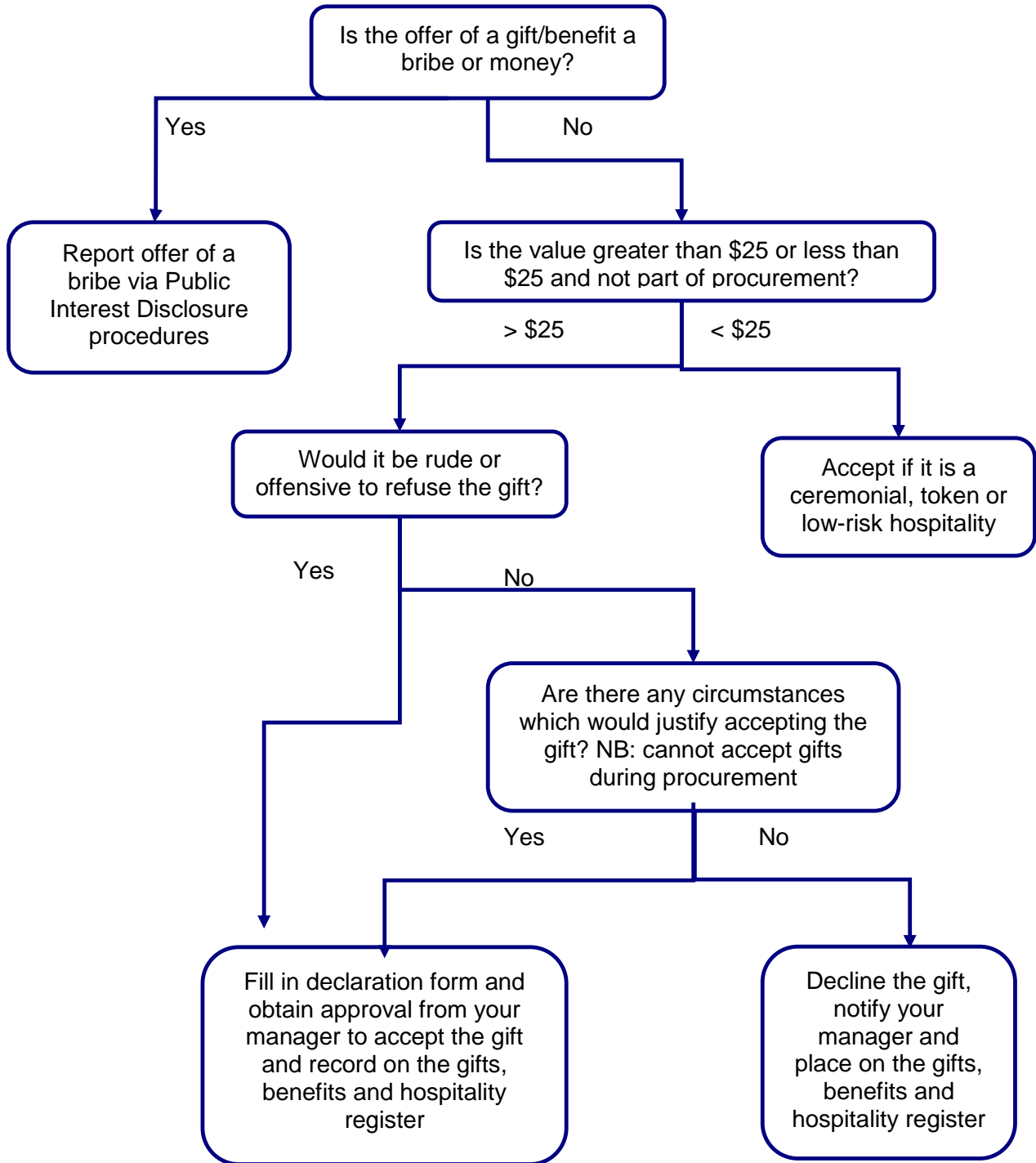
A centralised **gift register** of all gifts, benefits and hospitality declarations is maintained by the EPA governance section.

### 3. Guidance for staff regarding gifts and benefits

#### 3.1 Decision Tree

The EPA Gifts and Benefits Policy is summarised in the decision tree below.

**Gift Policy Decision Tree**



## 3.2 Conflicts of interest

Actual conflicts of interest or reasonably perceived conflicts of interest will arise where an EPA staff member accepts a gift or a benefit as prohibited under the EPA Gifts and Benefits Policy.

## 3.3 Directions regarding types of gifts and benefits

### 1. Attempts at bribery

Staff must refuse to offer or accept any gift or benefit that they believe is offered as a bribe. Individuals should make a Public Interest Disclosure if they are concerned that they or a colleague has been offered a bribe, or that a colleague has sought a bribe. See the Public Interest Disclosure Policy and Procedure on how this should be done.

### 2. Gifts of money/gift vouchers

In no circumstances must gifts of money in connection with official duties be requested or accepted. This includes gift vouchers, shares, personal loans and other monetary equivalents.

### 3. Gifts and benefits that exceed \$25

Gift or benefit that exceeds a value of \$25 must not be offered or accepted.

### 4. Gifts and benefits associated with procurement and purchasing

Staff employed in procurement, involved in significant procurement activity or involved in low-end purchasing and procurement should not offer or accept any gift or benefit from potential suppliers and must refuse such offers.

This includes invitations to supplier-sponsored Christmas parties/events but does not include moderate hospitality such as tea, coffee or sandwiches offered during meetings.

### 5. Gifts and benefits to family members and friends

Gifts and benefits to family members or friends that arise in connection with an individual's official duties, or could be perceived to be connected with official duties by a reasonable observer, must not be offered or accepted.

### 6. Bonus gifts for purchases

Individuals involved with procurement and tendering should also be aware that unsolicited gifts could also be offered by a company offering a free gift to clients who order a certain quantity of a product i.e. a purchase incentive scheme.

To ensure EPA remains impartial, the bonus/gift must not be accepted. Options available include not proceeding with the purchase or not accepting the bonus/gift. The following section provides more information on purchase incentive schemes.

### 7. Cumulative gifts of token value

If a staff member is offered two or more gifts of appreciation or gratitude within a twelve month period regardless of the value of the gift, from the one company/individual source, they are regarded as a cumulative gift.

## 3.4 Hospitality

How to deal with offers of hospitality requires special attention. This is particularly the case where staff, 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. This procedure has adopted the Public Service Commission's classification of 'hospitality' into low risk and high risk.

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 **high-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, or 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.

Acceptance of high-risk hospitality should always be accompanied by a commensurately greater level of transparency and disclosed 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.

### 3.5 Network events

Often it is important to attend third party run events for the purpose of advising the Government on policy, or administering a program or to improve their knowledge on new industry practices. Such hospitality may fall within the high-risk hospitality category and for the purpose of this policy and procedure. The attendance of a network event must be disclosed and approved by the relevant delegate as outlined in section 4.3. Delegates should ensure that acceptance of such offers does not create a conflict of interest.

It is not appropriate to accept offers of paid travel or accommodation in relation to such events.

### 3.6 Travel and accommodation

Staff should never seek or solicit an upgrade from a travel or accommodation provider in relation to official travel. If, however, a travel or accommodation provider seeks to upgrade the staff for operational reasons, at no charge to the employee or EPA and portfolio agencies (for example, where an airline upgrades a traveller to business class because it

has overbooked economy class for that flight) the staff may accept the upgrade, but should disclose the upgrade, using the ***Gifts, benefits and hospitality declaration form***.

### 3.7 Competitive scholarships and awards

EPA staff may be eligible to apply for competitive scholarships or awards in recognition of their achievements or potential in their field of expertise. Examples include the NSW Premier's Awards and the Institute of Public Administration Australia Awards. Such scholarships are permitted with the approval of the relevant delegate.

Recipients of such awards should record all relevant details of the award, including details of their manager's approval, in the ***Gifts, benefits and hospitality declaration form***.

### 3.8 Purchase incentive schemes

Bonus gift, benefit or hospitality offered through a purchase incentive scheme to staff purchasing goods or services in their official capacity should be refused or returned. Personal use of bonus gift, benefit or hospitality is strictly prohibited. If it is not practical to refuse or return the bonus gift, benefit or hospitality, refer to disposal options covered in section 5 in the Procedures.

### 3.9 Acceptance of prizes

Any gift or benefit, apart from a token value gift or benefit that is won as a result of entering a competition while engaging in official duties e.g. lucky door prizes at seminars must be treated as a gift and must be disclosed.

If a purchaser–business relationship exists with the organisation that provided the prize or is likely to have a business relationship, then acceptance of the prize may lead to a perception of improper influence. In such circumstances the prize should be declined.

### 3.10 Gifts should have been declined but cannot be returned

There may be circumstances where a prohibited gift may not easily be returned. Examples include, but are not limited to:

- a wrapped gift that the recipient does not open in the presence of the gift giver
- anonymous gifts received through the mail or left for the official without a return address
- a gift received in a public forum where attempts to refuse or return it would cause significant embarrassment.

In such circumstances, the gift must be disclosed using the *Gifts, benefits and hospitality declaration form* and must be given to the relevant delegate who will determine the appropriate outcome for the gifts.

## 4. Disclose and register

All gifts, benefits and hospitality that are accepted or declined over \$25 must be declared using the *Gifts, benefits and hospitality declaration form*. The form must then be approved, then emailed to the [epa.giftsandbenefits@epa.nsw.gov.au](mailto:epa.giftsandbenefits@epa.nsw.gov.au) for registration.

### 4.1 Trigger value amount for declaration

**Declined Gifts, benefits and hospitality over \$25** – the *Gifts, benefits and hospitality declaration form* must be completed by the staff member and emailed to [epa.giftsandbenefits@epa.nsw.gov.au](mailto:epa.giftsandbenefits@epa.nsw.gov.au), for inclusion on the Gifts, Benefits and Hospitality register. The form does not have to be signed by the relevant delegate but must be copied to your supervisor.

**Gifts, benefits and hospitality over \$25** – the *Gifts, benefits and hospitality declaration form* must be completed by the staff member before such an offer can be accepted. This must be signed by the relevant delegate as outlined in section 4.3 below. The *Gifts, benefits and hospitality declaration form* must be emailed to [epa.giftsandbenefits@epa.nsw.gov.au](mailto:epa.giftsandbenefits@epa.nsw.gov.au) for inclusion on the Gifts, Benefits and Hospitality Register.

**Cumulative gifts of token value** – if a staff member is offered two or more gifts of appreciation or gratitude within a twelve-month period regardless of the value of the gift, from the one company/individual source, they are regarded as a cumulative gift. Such gifts or benefits must be disclosed using the Gifts, benefits and hospitality declaration form.

### 4.2 Gifts, benefits and hospitality declaration form

The information to be included in the *Gifts, benefits and hospitality declaration form* (in appendix B) includes:

- 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
- whether it is a cumulative or single gift, benefit or hospitality
- 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
  - Accept and dispose – the department or agency will accept and dispose (in accordance with relevant asset disposal policies) e.g. donate to charity
  - Refuse – acceptance of the gift or benefit is refused and where the gift has already been provided it is returned
  - Reasons for the decision.

### 4.3 Delegate approvals

For the purposes of approval on the *Gifts, benefits and hospitality declaration form* or approval to accept a gift or benefit the following delegations apply.

Position	Responsibility
The Secretary, Department of Premier and Cabinet	Delegated to approve gifts, benefits and hospitality disclosed by the EPA Chair and CEO, NSW Environment Protection Authority
The EPA Chair and CEO	Delegated to approve gifts, benefits and hospitality disclosed by the executive team
Executive Directors	Delegated to approve gifts, benefits and hospitality disclosed by Director level positions
Directors	Delegated to approve gifts, benefits and hospitality disclosed by staff below Director level
OEH Governance Branch EPA Governance Officer	Implement and support the policy, through advice, awareness building and skills development. Maintenance of the Gifts, Benefits and Hospitality Register and email-box Collate and report statistics and other results of this policy.

### 4.4 Registration on the EPA's Gifts, Benefits and Hospitality register

EPA maintains a Gifts, Benefits and Hospitality Register. Once the *Gifts, benefits and hospitality declaration form* is approved, then this must be emailed to the following email address – [epa.giftsandbenefits@epa.nsw.gov.au](mailto:epa.giftsandbenefits@epa.nsw.gov.au) for registration.

A copy should also be placed in EPA's records management system, TRIM. TRIM folders for each branch have been set up.

### 4.5 Review

The EPA will review the Gifts, Benefits and Hospitality Register every two years.

## 5. Disposal of gifts

This section applies to:

- prohibited gifts that cannot be returned
- gifts that have been accepted but deemed to be EPA property, not property of the EPA recipient staff member.

The following disposal options may be undertaken:

- sharing the gift among all staff members
- keep the gift within EPA for the ultimate benefit of the public purse, such as a gift that is useful for the EPA's work
- donating the gift to an appropriate charity or to be raffled to raise funds for a charity
- gifts from visiting delegations or personalised gifts such as plaques should be given to the EPA Chair and CEO.



## 6. Further advice and information

For further advice and information on the management of gifts, benefits and hospitality you should either:

- Call the EPA Governance Officer
- Email: [epa.giftsandbenefits@epa.nsw.gov.au](mailto:epa.giftsandbenefits@epa.nsw.gov.au)
- Call the OEH Senior Team Leader, Probity

## Appendix B: Gifts, benefits and hospitality declaration form



### Gifts, benefits and hospitality declaration form

**For declined gifts, benefits and hospitality**

The form does not need to be signed by the line manager but should be copied to your manager when submitted for registration to [epa.giftsandbenefits@epa.nsw.gov.au](mailto:epa.giftsandbenefits@epa.nsw.gov.au) for inclusion on the Gifts, Benefits and Hospitality Register.

**For gifts, benefits and hospitality that require approval before being accepted**

Approval from your delegated officer must be sought before the gift, benefit or hospitality is accepted.

Tick here if this form lists cumulative gifts/ benefits/hospitality offered from one provider over a 12 month period.

Once completed and signed, email the scanned form to [epa.giftsandbenefits@epa.nsw.gov.au](mailto:epa.giftsandbenefits@epa.nsw.gov.au) to be included on the EPA's Gifts, Benefits and Hospitality Register. Also TRIM the signed form and place in dedicated Branch folder.

**Section 1: Staff member's details**

Name:	Employee number:
Position title:	Contact number:
Division/Branch:	

**Section 2: Details of the offered gift/benefit/hospitality**

Description of the gift/benefit/hospitality:

Who offered the gift/benefit/hospitality?

What was done with the gift or benefit? (tick)

declined

accepted

Approximate value: \$	Date of offer:
If a value of the gift or hospitality is not known the officer disclosing the gift/benefit/hospitality must provide an estimated value.	

**Section 3: Recipient's disclosure**

I have not withheld any relevant information and declare the following:

1. I have read and understood the EPA's Gifts, Benefits and Hospitality Policy and Procedures.
2. The information provided in this disclosure form is, to the best of my knowledge, true at the time of disclosure.

Recipient's signature:

Date:

**Section 4: Line manager assessment (for disclosure made by non-Senior Executive staff)**

Line manager's comments:

If a conflict of interest exists, how has this been managed:

Proposed treatment of the gift/benefit/hospitality:

Manager's signature: Date:

Manager's name:

Manager's position title:

**Section 5: Decision on the treatment of the gift/benefit/hospitality (delegated officer to complete)**

Delegated officer's comments:

Delegated officer's decision:

- I approve the acceptance of the gift/benefit/hospitality
- I do not approve the acceptance of the gift or benefit and it will be disposed of in the following manner:

Reasons for the decision:

Delegate's signature:

Date:

Delegated officer's name:

Delegated officer's title: