



CORRECTIVE SERVICES NSW

Gifts and Benefits Policy

<i>Issued by</i>	<i>Probity and Staff Development Division</i>
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1 THE POLICY

All employees of Corrective Services NSW (“CSNSW”) should perform their duties without demand or expectation of any token, gift, benefit or reward. Employees should therefore:

- never offer or solicit gifts or benefits;
- never accept gifts or benefits, in particular money;
- always consider the value and purpose of a gift or benefit before making any decisions about offering or accepting it;
- immediately declare any offer of a gift or benefit to their supervisor.

In most circumstances, employees will be expected to refuse or politely decline any offer of a gift or benefit that is offered to them in relation to any duty, responsibility or function they have as an employee.

Without knowing the motivation of the person offering the gift or benefit, such an offer can create an actual, potential or perceived conflict of interest. A conflict of interest exists when an employee may be influenced, or could be perceived to be influenced or has the potential to be influenced, by a personal interest when carrying out the employee’s public duty.

2 PURPOSE/RATIONALE

A conflict of interest that adversely affects, has the potential to affect or may be perceived to affect, an employee’s decision-making may constitute corrupt conduct and may undermine public confidence in the integrity of CSNSW as well as the employee.

For reasons of transparency and accountability, all offers of a gift or benefit, regardless of value, must be immediately declared and recorded.

The purpose of this policy is to provide guidance and procedures for employees and managers when an offer of a gift or benefit is made to or by an employee.

3 SCOPE

This policy applies to all full-time, part-time, temporary and casual employees of CSNSW as well as Official Visitors and Contractors.

4 STRATEGIC FOCUS

CSNSW’s [Guide to Conduct and Ethics](#) – Section 2.5 “Conflicts of Interest”, especially Section 2.5.4 “Gifts and benefits”.

5 RELEVANT LEGISLATION

[Crimes \(Administration of Sentences\) Act 1999](#)

[Independent Commission Against Corruption Act 1988](#)

[Anti-Discrimination Act \(NSW\) 1977](#)

[Protected Disclosures Act 1994 \(NSW\)](#)

[Public Finance and Audit Act 1983](#)

[Public Sector Employment and Management Act 2002 \(PSEM Act\)](#)

6 RELATED POLICIES/DOCUMENTS

[Conflicts of Interest Policy](#)

[Management of Professional Conduct](#)

[Merit Selection](#)

[Engagement of Consultants/Contractors/Contracted Employees](#)

[Protected Disclosures](#)

Toolkit and guidelines on Managing Gifts and Benefits in the Public Sector found at www.icac.nsw.gov.au

7 RELATED MEMORANDA/INSTRUCTIONS

[Commissioner's Instruction 2010/02](#) "Conflicts of Interest"

8 DEFINITIONS

Benefit

A non-tangible item of value (eg; a new job or promotion, preferential treatment, access to confidential information) that one person or organisation confers on another.

Bribe

A gift or benefit offered to or solicited by a public official to influence that person to act in a particular way.

Bribery

For the purposes of this policy, the term 'bribery' also includes offences committed under section 249B and associated sections of the *Crimes Act 1900* (NSW), involving acts of offering or soliciting a corrupt commission or gain / reward to or by an employee to influence that person to act in a particular way.

Conflict of Interest

A conflict of interest exists, is perceived to exist or has the potential to exist where an employee has personal interests which could improperly influence the performance of their official duties.

For the purposes of defining a conflict of interest, an employee's 'personal interests' include not only their own personal, professional or business interests but also those of their family, friends and associates.

A conflict of interest could be a precursor to corrupt conduct as it may adversely affect, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official duties by an employee of Corrective Services NSW.

Gift

An item of value (eg; gift voucher, entertainment, hospitality, travel, commodity, property) which one person or organisation presents to another. In the business context, gifts can have different meanings and purposes. The purpose of the gift, to a certain extent, affects how it should be managed.

Gift of influence – A gift that is intended to generally ingratiate the giver with the recipient for favourable treatment in the future.

Gift of gratitude – A gift offered to an individual or agency in appreciation of performing specific tasks or for exemplary performance of duties. Gifts to employees who speak at official functions would be considered gifts of gratitude.

Token gift – A gift that is offered in business situations to an agency or public official representing an agency. Such gifts are often small office or business accessories (e.g. pens, calendars, folders) that contain the company logo. They are usually products that are mass-produced and not given as a personal gift.

Ceremonial gift – An official gift from one agency to another agency. Such gifts are often provided to a host agency when conducting official business with delegates from another organisation. Although these gifts may sometimes be offered to express gratitude, the gratitude usually extends to the work of several people in the agency, and therefore the gift is considered to be for the agency, not a particular individual.

Token gifts and ceremonial gifts may be presented at least partially in gratitude. For the purposes of this policy, however, ceremonial and token gifts are treated differently from gifts of gratitude.

Serial gifts – Gifts or benefits from the same source as previous gifts or benefits, often of low value but their cumulative value may be considered sufficient to cause an employee to act outside their official duty.

Gifts and Benefits register

An official agency record that holds hard copies of completed *Declarations of Offers of a Gift or Benefit* showing details of such offers and how they were managed. A Gifts and Benefits register should be kept and maintained at the local workplace by the manager.

Misconduct

In relation to gifts and/or benefits, 'misconduct' includes but is not limited to:

- failure to declare an offer of a gift or benefit when the employee could have reasonably been expected to do so;
- accepting a gift or benefit without reporting it;
- soliciting personal gifts or benefits;
- failure to comply with policies governing specific conflicts of interest;

9 PROCEDURAL INSTRUCTIONS

Prior to accepting an offer of a gift or benefit, regardless of value, an employee must make full disclosure of the offer to their immediate supervisor in writing as per the procedures outlined below. The gift or benefit is not to be accepted unless their supervisor's permission is obtained.

If a circumstance arises whereby it was not reasonably foreseen or is otherwise not practicable for an employee to obtain permission prior to offering or accepting a gift or benefit, the employee is to make a full disclosure in writing of the offer and the surrounding circumstances at the first opportunity.

If the relevant senior officer determines that acceptance of a gift or benefit would be inappropriate, it should be politely declined, returned and the decision recorded.

Professional boundaries relating to non-acceptance of any gifts from offenders must be made clear to all offenders and be consistently maintained.

The soliciting of personal gifts or benefits by any employee of CSNSW is strictly prohibited.

General Considerations

See *Decision Making Guide* at Attachment 1. In deciding whether the receipt or giving of a gift or benefit is appropriate, the employee or manager should also consider whether the acceptance or offer of a gift or benefit:

- creates an actual conflict of interest;
- creates a perception of a conflict of interest;
- creates the potential for a conflict of interest;
- allows an employee to take advantage of their position to obtain a benefit;
- may be perceived as allowing a contractor to gain an advantage over a competitor;
- may be perceived as affecting the impartial discharge of an employee's duties;
- is an inappropriate spending of public money;
- can be justified in terms of the public interest; and
- can withstand public scrutiny.

9.1 Specific Considerations

In deciding whether the receipt or giving of a gift or benefit is appropriate, the employee or manager should also:

- distinguish between gifts given as promotional items to a number of recipients (such as diaries) and a gift given specifically to an individual with no promotional indicators;
- distinguish between gifts which can be shared amongst colleagues or otherwise used for the benefit of CSNSW and those which can only be used by the individual;
- distinguish between minor acts of hospitality which do not need to be recorded (eg cup of coffee, sandwiches at a meeting), more substantial acts which may or may not be appropriate (such as business meals and small gifts) and lavish or gratuitous acts which are generally inappropriate (such as dinner at a five star restaurant, expensive gifts or entertainment);
- avoid actual, potential or perceived inducements. Consider the current or potential relationship between the giver and CSNSW, *for eg*; whether the giver is a person or company which is already in business with CSNSW, is attempting to establish a business relationship with CSNSW or is likely to be seeking to do so in the foreseeable future;
- consider the role of the recipient (*ie*; could the subject reasonably be perceived by the giver to be a person of influence);
- consider who benefits: the employee personally, CSNSW or the person/company offering the gift or benefit.

9.3 Declaring an offer of a gift or benefit

All employees must declare all offers of gifts or benefits.

All disclosures of an offer of a gift or benefit should be immediately recorded on the [Declaration of Offer of Gift or Benefit](#) form at Attachment 2 and show who made the offer, who the offer was made to, what the offer was (including an estimated monetary value if applicable) the decision as to whether or not the offer was accepted and, if accepted, the reason for that decision including the perceived benefit to CSNSW.

Once completed by both the employee and their supervisor, a hard copy of the Declaration is to be placed in the Gifts and Benefits Register held at the local workplace.

In instances where large volumes of token / ceremonial gifts are presented to CSNSW on a regular basis, rather than to an individual, *for eg;* to the Commissioner's Office, to Senior Executives, and the Brush Farm Corrective Services Academy by visiting national and international delegate(s) / visitors, local standard operating procedures are to be put in place and adhered to consistent with the intent of this policy.

9.4 Disposal of gifts

When a gift is received that cannot be refused or returned, then it must be disposed of in some way. The method of disposal should be recorded on the *Declaration of Offer of a Gift or Benefit* and the following methods are suggested:

- share the gift amongst all staff;
- hold a fundraiser with the gift as a prize;
- donate the gift to an appropriate charity;
- hold an auction with the proceeds going to an appropriate charity;
- if the gift is useful to the work of CSNSW, keep the gift at the workplace for the ultimate benefit of the public purse

9.5 Bribery

Where it is considered that there has been an attempt to, or offer of a bribe, a corrupt inducement or reward to an employee of CSNSW, **employees** are required to:

- immediately reject the offer;
- terminate the interaction with the person;
- create a record of the events;
- immediately report the incident to their supervisor;
- write a formal report

The report should detail the date; time; place of the incident; the circumstances of the offer (what it involved and what you think it was intended to persuade you to do); who offered it and their contact details(if known); what you said or did; any other relevant details; the employee's signature and the date.

Upon receipt of the report, **Managers** are to:

- interview the employee immediately, or on the next occasion the employee attends duty
- assist and advise the employee exactly how future contact with the person who offered the bribe should be conducted;
- take appropriate management action to avoid any negative impacts of a conflict of interest;
- provide written advice/directions to the employee. A copy must be given to the employee;
- report the matter to their line manager

If the attempt to solicit a bribe, a corrupt inducement or reward has been made by an employee of CSNSW, the same process is to apply.

In the case of an offender, or a relative or friend of an offender, making the attempt to, or offer of a bribe, a corrupt inducement or reward to an employee of CSNSW, the supervisor must also record the information in the offender's case file and fax the report to Corrections Intelligence Group (CIG) on 9748-0624.

Upon notification that there has been an attempt to, or offer of a bribe, a corrupt inducement or reward to or by an employee of CSNSW, **the Commissioner** has an obligation under the Independent Commission Against Corruption ("ICAC") Act, 1988 to:

- the inform the ICAC about any matter suspected on reasonable grounds concerns, or may concern, corrupt conduct. This includes reporting incidents that the Commissioner believes constitutes bribery;
- report the incident to the NSW Police;
- maintain appropriate records relating to any referrals

10 SANCTIONS FOR BREACH OF POLICY

Remedial or disciplinary action will be taken against any employee for a breach of this policy.

11 REVIEWING A DECISION

Employees who disagree with the proposed management of an offer of a gift or benefit or bribe should request a review by the manager who made the decision in the first instance. If resolution cannot be achieved, the employee may request a more senior manager/supervisor to review the decision.

12 REVIEW DATE

Review date: August 2012

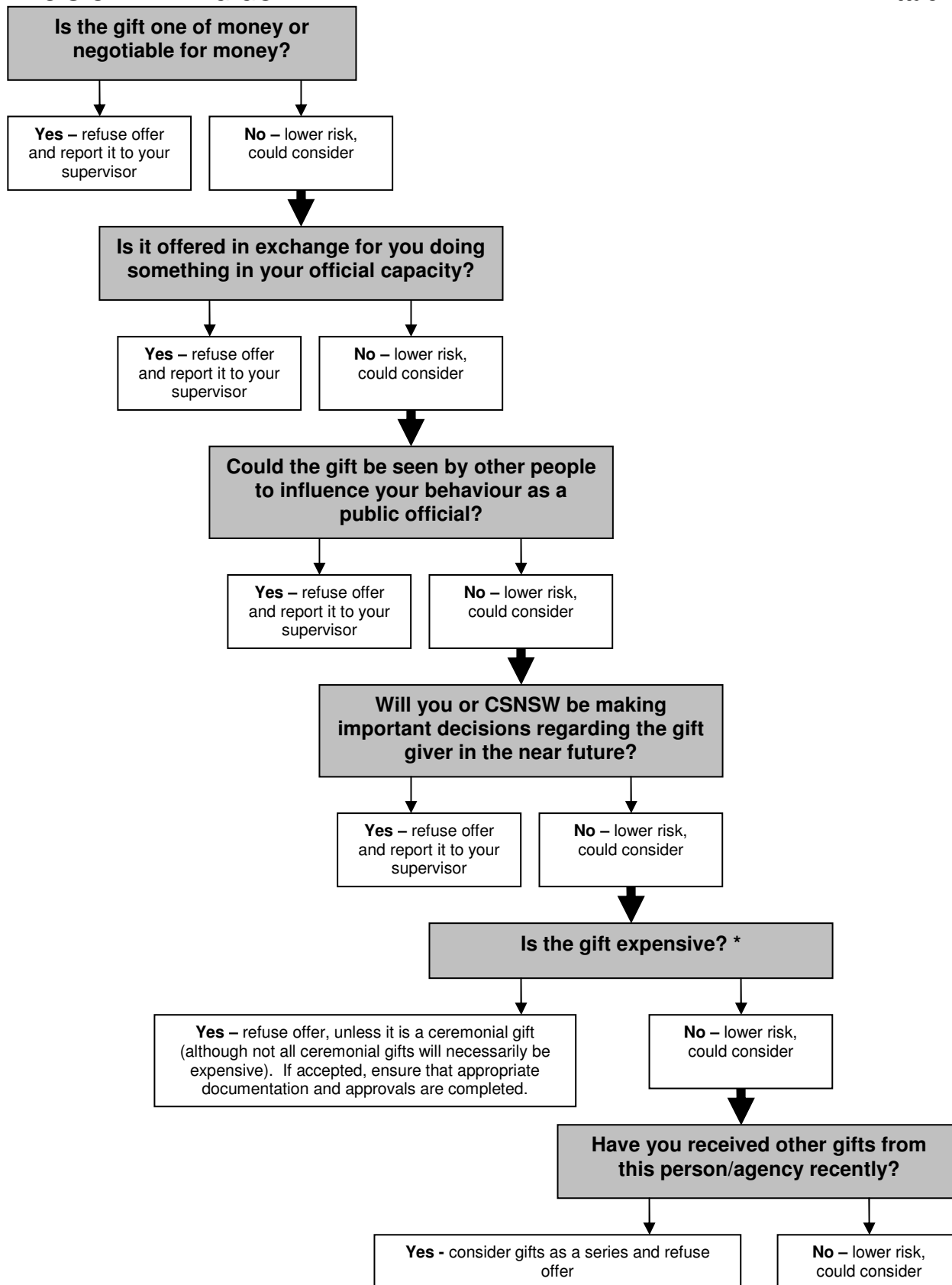
Ownership: Assistant Commissioner, Probity and Staff Development is assigned ownership to ensure the policy is maintained and updated.

Contact: Ethics Officer (02) 4824 2260 or (02) 8346 1769

13 ATTACHMENTS

- 1 Decision Making Guide
- 2 Declaration of Offer of a Gift or Benefit

DECISION MAKING GUIDE:



Once a decision has been made about whether or not it might be appropriate to accept a gift, complete the form "**Declaration of Offer of a Gift or Benefit**" (shown above and found on the intranet under Probity and Staff Development, Forms).

DECLARATION OF OFFER OF A GIFT OR BENEFIT



Date offered:	
Offered to: (name, position, contact details)	
Offered by: (name, position, agency, contact details)	
Description of gift or benefit offered:	
Estimated value (\$):	
Reason for offer:	
Response to offer:	
Signature of recipient:	
Decision:	
Decision made by: (Supervisor's name, designation and location)	
Signature of decision maker:	
Date:	
<p>NB: Once this form is complete, it is to be printed off, signed by the person authorising and retained in a hard copy file in the General Manager / Manager / Officer in Charge / Supervisor's office for Audit purposes.</p>	
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