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# New South Wales Auditor-General's Report

## Performance Audit

### Managing gifts and benefits

Department of Planning and Infrastructure  
Environment Protection Authority  
Transport for NSW  
WorkCover Authority

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## The role of the Auditor-General

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Public Finance and Audit Act 1983*.

Our major responsibility is to conduct financial or 'attest' audits of State public sector agencies' financial statements. We also audit the Total State Sector Accounts, a consolidation of all agencies' accounts.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to agencies to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to agencies and reports periodically to parliament. In combination these reports give opinions on the truth and fairness of financial statements, and comment on agency compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an agency is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an agency's operations, or consider particular issues across a number of agencies.

Performance audits are reported separately, with all other audits included in one of the regular volumes of the Auditor-General's Reports to Parliament – Financial Audits.

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In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Managing drug exhibits and other high profile goods: NSW Police Force.**

A handwritten signature in black ink that reads 'Peter Achterstraat'.

**Peter Achterstraat**  
Auditor-General  
28 February 2013

## Foreword

Fraud can take many forms in the public service. It can be as simple as false entries on an employee's timesheet or it can be as elaborate as a falsely valued property or lease deal. The major fraud control survey I released in 2012 showed that fraud control measures are improving, but there is more work to be done.

Recent investigations by the ICAC have highlighted the risks associated with public sector employees receiving undisclosed gifts and benefits.

Sound policies and registers alone will not prevent people choosing to deliberately hide the receipt of gifts and benefits. They will, however, assist those seeking to do the right thing and make it harder for wrongdoers to claim they were confused or unaware.

As a general rule, public servants should never expect to get anything extra for doing what they are paid to do. They should never solicit personal gifts or accept any payment, gift or benefit intended or likely to influence them to stray from the proper exercise of their official duties.

Dealing with gifts and benefits is not straightforward. The situation can be complex given the vastly different operating contexts and risk environments faced by NSW public sector agencies. This audit highlights the effort agencies devote to formulating and reviewing gift and benefit policies tailored to their business and also identifies good practices and some areas for improvement.

The audit also highlights the lack of State-wide guidance to assist agencies. I think a set of minimum standards is needed to guide all public servants in managing the offers of gifts and benefits they receive from external parties. Such standards will also make it easier for suppliers, licensees, lessees and other organisations that deal with the public sector to better understand what the rules are and how to comply.

I have included in this report the attributes that could form the basis for such minimum standards and a decision flow chart on gifts and benefits to further assist agencies.

It is important that gifts and benefits are dealt with in a practical way. In my opinion, agencies should set a monetary amount under which gifts and benefits can be accepted without further approval or recording provided there is no perceived conflict of interest.

As a guide, an amount of around \$25 would cover such things as sandwiches and coffee during a lunch time meeting or a small box of chocolates provided by a thankful student or patient. If a more substantial gift or benefit is offered, this needs to be recorded in a register thereby triggering a decision by a senior officer about how to deal with it. In some circumstances it may be appropriate for the gift to be accepted and possibly even retained by the recipient. I would encourage agencies to set a monetary limit, perhaps around \$100, beyond which gifts or benefits should generally be declined or donated to charity.

I encourage all agencies to consider the findings of this audit and make sure their own gifts and benefits policies, procedures and registers are sound. And in setting their policies, agencies need to be mindful that perceptions are critical.

Peter Achterstraat  
Auditor-General



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# Executive summary

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## Background

Public servants must perform their duties with honesty, impartiality, integrity, trustworthiness, respect for the law and due process.

Public servants can only do this if their personal interests do not conflict with their public duty. The public will lose trust in the public service if they perceive that public servants are putting their own interests above those of the taxpayer and are not 'doing the right thing'.

A gift or benefit is anything of value that is offered to a public sector employee in the course of their work, apart from normal employment entitlements. Gifts are a feature of business relationships and it is not uncommon for public sector officers to be offered gifts.

Gifts and benefits such as hospitality can influence public servants to favour a person or company for reasons other than merit, leading to decisions that may not be in the best interests of their agency and ultimately taxpayers. Whether or not this has occurred, the perception that it has is damaging to the individual, agency and ultimately the whole public sector.

Dealing with gifts and benefits is not straightforward. The situation can be complex given the vastly different operating contexts and risk environments faced by NSW public sector agencies.

In this audit we examined whether five NSW public sector entities that perform licensing/regulatory functions were effectively managing gifts and benefits. We considered whether these entities:

- had sound, well communicated gifts and benefits policies
- effectively recorded the details of gifts and benefits and made appropriate decisions in relation to their acceptance, or otherwise, and treatment.

Recent investigations by the Independent Commission Against Corruption (ICAC) have highlighted the risks associated with public sector employees receiving undisclosed gifts and benefits. Sound policies and registers alone will not prevent people choosing to deliberately hide the receipt of gifts and benefits. They will, however, assist those seeking to do the right thing and make it harder for wrongdoers to claim they were confused or unaware.

## Conclusion

Overall, the audited entities are managing some aspects of gifts and benefits effectively but other aspects require improvement.

We found that all five entities had gifts and benefits policies that addressed some but not all of the attributes of a sound policy. All five have communicated their gifts and benefits policies to staff and external stakeholders, although in each case we identified opportunities to better communicate their policies. The entities are currently reviewing their policies having regard to our findings.

All five entities had registers in place for recording the details regarding each gift and benefit. Some registers had more complete information than others. However, none of the registers included sufficient information for us to gauge whether the decisions regarding the treatment of each gift and benefit were appropriate (e.g. reason for the offer, relationship between giver and recipient, any conflict of interest).

At the same time, current official guidance on gifts and benefits for NSW Government agencies is limited. There is no set of minimum standards which agencies can incorporate in their policies, communication and registers to underpin the effective management of gifts and benefits.

Given the lack of official guidance and the improvement opportunities identified in our case study agencies, there is likely to be scope for many public sector agencies to improve their gifts and benefits policies, communication and registers.

We have included in Appendix 2 of this report the attributes that could form the basis for such minimum standards. These were derived from our research and were used for the analysis in each case study in this report.

## Supporting findings

### Do entities have sound, well communicated gift and benefit policies?

#### Entities' gifts and benefits policy

All five entities have produced a policy and guidance on gifts and benefits.

All five prohibit the soliciting of personal gifts and require gifts and benefits accepted that are above a nominal value be recorded in a register. Two of the five went further by requiring all gifts to be recorded.

All five require offers of bribes to be reported.

All five prohibit the acceptance of gifts of money. One entity went further by also prohibiting the acceptance of gift vouchers.

Three of the five require that gifts suspected as being for influence are to be declined. Three of the five require hospitality that extends beyond courtesy be declined. Three entities have established a nominal gift value and three require the consideration of cumulative gifts.

Two of the five:

- require all gifts offered to public officers who exercise discretionary authority in relation to the gift-offerer/gift-giver to be declined
- specify that prizes are to be treated as gifts.

One of the five specifies that family members are not to be the recipients of gifts and benefits. One of the five requires that offers of gifts that are declined also be recorded.

#### Communicating the gifts and benefits policy

All entities provide access to relevant documents including policies and guidance through their intranet and/or internet.

Three of the five entities routinely promote their position on the treatment of gifts and benefits by reminding staff of the policy and procedures. Two entities routinely promote the policy and register via a newsletter.

Four of the five entities provided managers with guidance to assist them in coming to a decision in relation to gifts and benefits.

All five entities have provided formal training covering the gifts and benefits policy. Four entities provide induction training that includes the policy.

Four of the five have produced a statement of business ethics, outlining the gifts and benefits policy for external organisations such as licensees, lessees, suppliers and service providers.

All five entities have a policy and guidance on acceptance of gifts

Two entities indicated that they had actively communicated their statement to external organisations.

All entities could better communicate the likely actions and possible sanctions if the policy is not complied with.

### Do entities effectively record the details of gifts and benefits and make appropriate decisions in relation to their acceptance, or otherwise, and treatment?

#### Information recorded in each entity's gifts and benefits register

All five entities have a gift register in place to record the details of gifts and benefits received.

All five recorded details of the person or organisation offering the gift, a description of the gift and its estimated value. Four out of five entities recorded a decision against each gift.

Two out of five recorded the reason for the offer. None of the registers explicitly recorded the relationship of the gift giver to the recipient whilst only one commented on potential for conflict of interest.

Three of the registers identified a decision-maker in relation to each declared gift. However, only one register explicitly identified a senior officer responsible for making the decisions.

Each agency has processes in place to ensure all staff are aware of the register, where it is held and under what circumstances information should be recorded in it. Two agencies produced regular newsletters explaining the location of the register.

Two out of five entities have produced declaration forms for gifts and benefits further illustrating the information requirements for each register.

#### Decisions in relation to the acceptance and treatment of gifts and benefits

As previously stated, none of the five registers recorded the relationship between the giver and the recipient and only one commented on the potential for conflict of interest. Three out of five registers did not record the reason for the offer. Without this information it was not possible to conclude that all the decisions regarding gifts and benefits were appropriate.

There is no evidence to indicate entities have conducted reviews to gauge compliance with the policies and procedures, especially regarding whether all gifts and benefits are being reported.

#### Standards and guidance for the treatment of gifts and benefits

Agencies develop their own policies and procedures to suit their individual operating contexts and risks, but currently there is limited official guidance on gifts and benefits.

There is no set of minimum standards available to agencies to help them ensure that their policies and procedures are sound and communicate a definitive position on gifts and benefits.

We have included in Appendix 2 the attributes that we consider represent possible minimum standards. These are based on our research and formed the basis for the analysis in each case study in this report.

Gifts registers lack sufficient information to gauge whether gifts are appropriate



## Recommendations

### Recommendation One

The Public Service Commission, by December 2013, develop a set of minimum standards for gifts and benefits policies and registers which are to be followed by all NSW public sector agencies. (Page 19)

### Recommendation Two

The Department of Planning and Infrastructure (including Sydney Harbour Foreshore Authority); the Environment Protection Authority; Transport for NSW and the WorkCover Authority, by August 2013, review their policies and registers and make the improvements identified in this report. (Page 18)

Recommendations specific to each entity are contained in the detailed findings section of this report.

## Response from Department of Planning and Infrastructure



Office of the Director General

Mr Peter Achterstraat  
Auditor-General  
Audit Office of New South Wales  
GPO Box 12  
Sydney NSW 2001

13/03592


Dear Mr Achterstraat

I refer to your letter of 12 February 2013 concerning Performance Audit – Managing gifts and benefits.

The Department of Planning and Infrastructure (including Sydney Harbour Foreshore Authority) has reviewed the report and undertakes to implement the improvements recommended in the report by August 2013.

I thank you for the opportunity to provide comment on the report.

Yours sincerely

  
Sam Haddad  
Director General  
12/3/2013

# Response from Environment Protection Authority



Our reference: DOC13/5111  
Contact: Sylvia Bell

Mr Peter Achterstraat  
Auditor General  
Audit Office NSW  
Level 15, 1 Margaret Street  
Sydney NSW 2000

Dear Mr Achterstraat

## Performance audit: Managing Gifts and Benefits

I refer to your letter of 12 February 2013 enclosing extracts from the final report for the performance audit on managing gifts and benefits inclusive of a review of the Environment Protection Authority (EPA).

The EPA has a service agreement with the Office of Environment and Heritage (OEH) that covers the maintenance of the EPA gifts and benefits register and policy.

The EPA understands that there are very real risks associated with being offered and accepting gifts or benefits in the course of its work and that a transparent process and policy is essential for the EPA.

The EPA has already undertaken several initiatives to address the audit recommendations:

- The gift register has been improved so that there is greater transparency in decision making. Additional information is now recorded; the relationship of the gift giver to the recipient, the reason for the gift, and the disclosure of any conflict of interest
- An addendum to the current gifts and benefits policy has been written to address recommendations for improvements to the current policy for EPA staff and to provide further explanation regarding the changes to the register as noted above
- The EPA has developed and undertaken a communications program including training on the code of conduct and gifts and benefits package as part of the *Introduction to the EPA* course and reminder emails, for example the email for Easter 2013 will be sent out to all staff by the EPA's Chair CEO
- A Statement of Business Ethics from the EPA Chair and CEO has been prepared for the EPA's Board approval, which will subsequently be made available on the EPA's internet site.

In addition, the EPA is liaising with OEH regarding further actions in response to recommendations regarding improvements to the gifts and benefits policy.

The EPA appreciates the opportunity to participate in the performance audit process and acknowledges the professional manner in which the audit was undertaken and the guidance provided.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Buffier', written over a white background.

**BARRY BUFFIER**  
Chair and CEO  
Environment Protection Authority

- 5 MAR 2013

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# Response from Transport for NSW



Our Reference: HR13/04238

Mr Peter Achterstraat  
Auditor General  
Audit Office of NSW  
GPO Box 12  
SYDNEY NSW 2001

Dear Mr Achterstraat

## **Performance Audit : *Managing Gifts and Benefits***

Transport for NSW (TfNSW) welcomes the detailed analysis of its policies and records management systems relating to the declaration and recording of gifts and benefits received by its officers.

TfNSW notes that this audit identified inconsistencies within its Code of Conduct and Conflicts of Interest Policy in relation to the acceptance, declaration and recording of gifts and benefits.

Since receipt of your draft performance audit report and following on from earlier discussions with staff from your office about this matter, TfNSW has decided to adopt a policy whereby \$25.00 is the monetary amount under which gifts and benefits can be accepted without further approval or recording provided there is no perception of conflict of interest.

TfNSW will also adopt a monetary limit of \$100.00, beyond which gifts or benefits received should generally be declined.

In accordance with your recommendations, offers of any such gifts or benefits of or over the value of \$25.00 will be required to be declared and recorded, regardless of whether or not they were accepted.

Cumulative gifts and benefits must also be recorded and approval obtained to accept them. This includes two or more gifts given to a staff member irrespective of the gift giver or the value of the gift.

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As part of the review process presently being undertaken by the TfNSW Human Resources policy function, the Code of Conduct and Conflicts of Interest Policy are presently being amended to reflect the policy, as detailed above, and to incorporate the other final findings made by the Audit Office as a result of this audit.

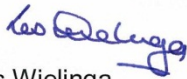
A specific response to individual recommendations is attached (**Attachment A**).

Finally, I note the report's reference at paragraph 6.2 to an example where one TfNSW staff member failed to declare his sponsored attendance at a lunchtime industry seminar during October 2012.

As your office was previously advised, this matter has since been declared and recorded on the TfNSW Gifts and Benefits Register and further education and training will be provided.

Thank you for the opportunity to provide this response.

Yours sincerely



Les Wielinga  
Director-General

**Specific Response to Individual Recommendations outlined in the final Audit Performance Report – Managing Gifts and Benefits, issued 13 February 2013.**

**1. TfNSW improve its code of conduct in relation to gifts and benefits by:**

- **Prohibiting the acceptance of gift vouchers, shares and other monetary equivalents**
- **Requiring offers of gifts and benefits that are declined to be declared/recorded**
- **Requiring a nominal/token value to apply to cumulative gifts and benefits**
- **Requiring gifts to family members to be declined and prizes obtained during work related functions to be treated as gifts**
- **Prohibiting the acceptance of bonus gifts for agency purchases for personal benefit**
- **Providing guidance on the disposal of gifts deemed to be unacceptable.**

As detailed above, TfNSW will be adopting a policy whereby \$25.00 is the monetary amount under which gifts and benefits can be accepted without further approval or recording, provided there is no perception of conflict of interest.

TfNSW will also adopt a monetary limit of \$100.00 beyond which gifts or benefits received should generally be declined.

Cumulative gifts and benefits must also be recorded and approval obtained to accept them. This includes two or more gifts given to a staff member irrespective of the gift giver or the value of the gift.

All of the other recommendations listed above are supported and are presently being implemented by TfNSW Human Resources and Audit Risk.

**2. TfNSW improve the way it communicates its gifts and benefits policy by:**

- **Ensuring the code of conduct and conflict of interest policy are consistent in their treatment of gifts and benefits**
- **Ensuring all staff receive regular formal training in the code of conduct and gifts and benefits**
- **Highlighting the consequence of breaching the code, which may include suspension, loss of employment, loss of entitlements and even prosecution.**

Supported and presently being implemented by TfNSW Human Resources and Audit & Risk.

**3. TfNSW improve its gifts and benefits register by:**

- **Recording the date of the offer and identifying the decision-maker**
- **Recording the relationship of the gift giver to the recipient and the disclosure of any conflict of interest**
- **Conducting reviews to gauge compliance with the policy and procedures, including assessing whether all staff and stakeholders are aware of the policy and all relevant gifts and benefits are being reported.**

Supported and presently being implemented by TfNSW Audit & Risk.

## Response from WorkCover Authority



### Safety, Return to Work & Support Division

Safety, Return to Work and Support Division  
92-100 Donnison Street, Gosford, NSW 2250  
Locked Bag 2906, Lisarow, NSW 2252

13 March 2013

Mr Peter Achterstraat  
Audit Office of NSW  
Level 15, 1 Margaret Street  
GPO Box 12  
SYDNEY NSW 2000

Dear Mr Achterstraat

#### **Performance audit - Managing gifts and benefits**

I refer to your letter addressed to Ms Julie Newman, Chief Executive Officer enclosing the final report on the recent performance audit on managing gifts and benefits.

I have reviewed the final report and confirm that all recommendations made in the report, as they relate to WorkCover, are agreed to and have already been adopted or are in the process of being adopted, across not only WorkCover, but all agencies within the Safety, Return to Work and Support Division.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Watson'.

John Watson, PSM  
Acting Chief Executive Officer  
Safety, Return to Work and Support

## Response from Public Service Commission



A1343767

Mr Peter Achterstraat  
Auditor-General  
Audit Office of New South Wales  
Level 15  
1 Margaret Street  
SYDNEY NSW 2000

Dear Auditor-General

Thank you for the opportunity to respond to your Final Report of the Performance Audit of Managing Gifts and Benefits, dated 13 February 2013.

I support your recommendation that the Public Service Commission (PSC) develop minimum standards for gifts and benefits policies and registers for NSW public sector agencies by December 2013.

In your Final Report, you note the complexities inherent in managing gifts and benefits in NSW public sector agencies. With these in mind, I intend to take a principles-based approach to developing minimum standards for gifts and benefits policies and registers. This approach will allow NSW public sector agencies some flexibility to decide how best to meet their obligations, having regard to their diverse functions, operating environments and risk profiles.

I note the attributes you have included in Appendix 2 of your Final Report. In framing minimum standards, I will have regard to these as well as to evidence of good practice in other jurisdictions and other sectors.

I note your guide to fixing minimum and maximum nominal values, below which a gift or benefit could be accepted without its being entered in a register, and above which a gift or benefit should generally be returned. However, I will also consider other options, which may include allowing an agency head the discretion to determine the appropriate value for the agency, based on clear heads of consideration applied with regard to the agency's specific operating environment.

Thank you for the opportunity to comment on this Final Report.

Yours sincerely

A handwritten signature in blue ink that reads 'Graeme Head'. Below the signature, the date '13/3/13' is written in blue ink.

Graeme Head  
Public Service Commissioner

Integrity, Trust,  
Service & Accountability

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# Overview

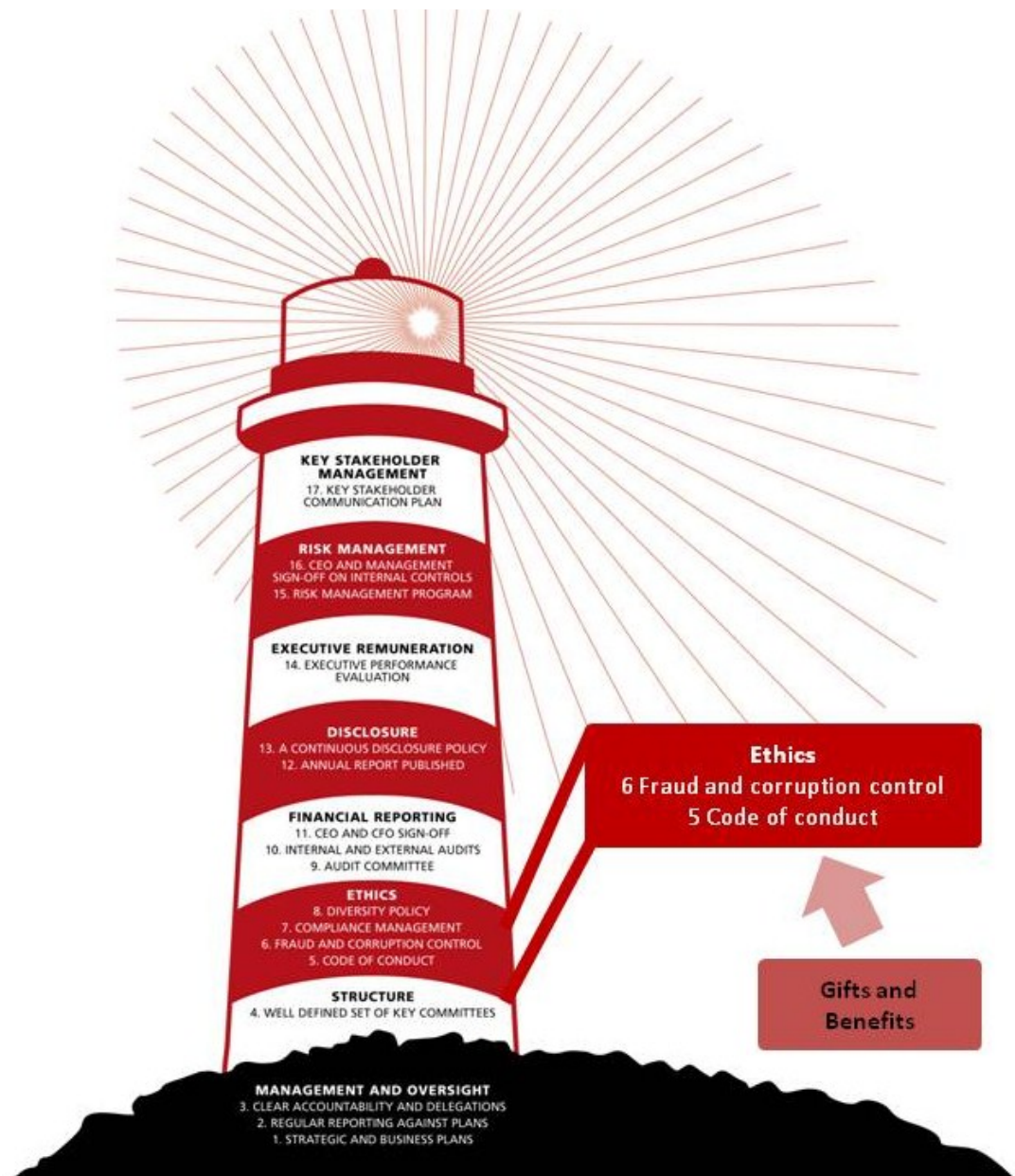
## 1. Introduction

### 1.1 Governance, gifts and benefits

Good governance is about those high-level processes and behaviours that ensure an agency **performs** by achieving its intended purpose, and **conforms** by complying with all relevant laws, codes and directions and community expectations of probity, accountability and transparency.

A key element of good governance is fraud and corruption control and one important aspect is the effective management of gifts and benefits within public sector agencies.

#### Exhibit 1: Audit Office Governance lighthouse



Source: Audit Office 2012

Gifts can create perceptions of a conflict of interest

While gifts and benefits primarily fall under ethics in our lighthouse, they also relate to several other key elements including stakeholder management, risk management and disclosure.

A gift is an item of value (e.g. gift voucher, entertainment, hospitality, travel, commodity, property etc.) which one person or organisation presents to another. A benefit is a non-tangible item of value (e.g. a new job or promotion, preferential treatment or access to confidential information etc.).

Gifts such as hospitality can influence public servants to favour a person or company for reasons other than merit, leading to decisions that may not be in the best interests of their agency and ultimately taxpayers.

**It is a component of ethical behaviour to feel obliged to reciprocate when a kindness or gift is provided.<sup>1</sup>**

Gifts can create perceptions of a conflict of interest, and managers, colleagues and the public are right to question why they are offered and sometimes accepted. It is often not a question of whether a gift or benefit is or was an attempt to influence a public official, but what a reasonable 'impartial observer' would think.

Things which could influence the perception of a gift or benefit would include:

- the scale, lavishness or value
- the frequency of occurrence, and
- the degree of openness surrounding the occasion or gift.

If gifts and benefits are not managed appropriately there will be negative consequences for the agency and individuals. For an agency, this can include embarrassment, loss of public trust, financial losses and legal actions. For an individual, this can include embarrassment, disciplinary action and possibly loss of job and criminal prosecution.

It is not uncommon for public sector officers to be offered gifts during the course of their work. An Independent Commission Against Corruption (ICAC) online survey of suppliers in 2011 found that the offering of gifts and benefits worth \$20 or more by suppliers to public sector procurement officials is perceived as frequent by half of the suppliers. Additionally, approximately two-fifths of suppliers indicated that public officials accept such gifts frequently.

As more and more government services are delivered in collaboration with the private and non-government sectors, the risk of inappropriate acceptance of gifts and benefits is likely to increase. In these circumstances, the need for effective management of gifts and benefits becomes even more important.

## 1.2 Inappropriate gifts and benefits

Recent investigations by the ICAC have highlighted the risks associated with public sector employees receiving undisclosed gifts and benefits. As a result, there is increased public scrutiny on public sector agencies to reassess current practices and implement robust internal controls to manage receipt of gifts and benefits.

<sup>1</sup> Mr Gary Croke, QC, Queensland Integrity Commissioner, October 2007

Recent ICAC investigations have highlighted the risks

## Exhibit 2: Recent ICAC investigations involving inappropriate gifts and benefits

### **Operation Jarek**

ICAC investigated allegations that staff from local councils and other public authorities accepted gifts, including gift vouchers from suppliers, as an inducement to continue placing orders with their companies or as a reward for placing orders with the companies. At the time the Jarek report was published in October 2012, seven officials had been subject to disciplinary action including demotion and ten had resigned. The average length of service of these ten officials with their respective agencies was 17 years.

### **Operation Crusader**

The ICAC found that between 2004 and 2012 a University of New England (UNE) procurement officer corruptly solicited and received benefits for himself in return for improperly favouring a number of companies in the awarding of UNE contracts and for approving payment of false invoices submitted by those companies.

### **Operation Tambo**

A civil engineer at TransGrid provided improper assistance to an engineering company tendering for TransGrid work. In return, the civil engineer accepted cash payments of \$40,000 and a ticket to the 2007 Melbourne Grand Prix valued at \$2,500. From 2005 to 2007, the engineering company gained TransGrid contracts worth approximately \$7 million.

Source: The ICAC website 2012

The acceptance of inappropriate gifts is not confined to New South Wales. One example of inappropriate gifts and benefits found to have occurred in Western Australia, Victoria and South Australia was the purchase of excessive amounts of toner cartridges at inflated prices.

## Exhibit 3: Toner cartridge fraud

Other States found gifts were used to encourage excessive spending on toner cartridges

In 2009-10, the Western Australian Corruption and Crime Commission undertook an investigation into the purchase by public officials of excess amounts of toner cartridges at inflated prices in exchange for gifts including digital cameras, GPS navigators, televisions, coffee makers and gift vouchers. The investigation focused on the activities of an umbrella company and six subsidiary companies. It found that \$620,000 worth of toner was purchased over a four year period from these companies, at an additional cost to government of \$415,000 had the same amount had been purchased from an approved supplier.

In 2011, the Victorian Ombudsman reported that nine government bodies had purchased toner cartridges from these same companies, three of which had made a large number of orders and received gifts. These purchases amounted to \$260,937, with one public officer responsible for approximately \$148,000. One officer purchased enough black toner cartridges to supply the government department for 40 years. Toner cartridges expire after 24 months.

In November 2011, the Minister for Finance in South Australia established a Procurement Working Group to coordinate the investigations being undertaken by South Australian agencies regarding excessive purchases of toner cartridges. The report of the working group, tabled in parliament in March 2012, reported that:

- 11 public authorities purchased cartridges from suspect suppliers
- eight public authorities have found evidence of gifts or prepaid purchases
- 43 gifts relating to 27 schools had been identified and cartridges costing \$22,802 were paid for in advance (in contravention of a Treasurer's instruction)
- 52 gifts valued at \$2410 were identified in SA Health, and cartridges costing \$181,779 were paid for in advance.

Source: WA Crime and Corruption Commission; Victorian Ombudsman; SA Parliament websites 2012

### 1.3 Why isn't it straightforward?

Dealing with gifts and benefits is not straightforward. The situation can often be complex given the vastly different operating contexts and risk environments faced by NSW public sector agencies.

While a zero-tolerance policy may be appropriate for some agencies, particularly where the risks are high and the likelihood of receiving gifts are low, for many agencies it may be impractical or unrealistic. For example:

- a nurse receives flowers from a grateful patient as they depart hospital
- a teacher receives a box of chocolates from a student at year end
- coffee and sandwiches are offered during a working lunch
- a foreign delegation offers a cultural memento as a thank you
- a speaker at a conference is given a bottle of wine by the host as they complete their speech.

In some cases it is difficult to define the boundary between developing effective business relationships and accepting personal gifts and benefits. For example:

- a doctor is offered subsidised travel and accommodation by a drug company to attend an international conference
- a senior government officer is invited to a corporate box for a major sporting event
- an engineer is offered a free seat at a corporate table at a seminar they may otherwise have attended at government cost
- a tourism promotion officer is offered free tickets to a tourist attraction.

The following scenarios from training provided by an agency we audited show their awareness that gift decisions are not always black and white, and there is a need to help staff make the right decisions.

#### **Exhibit 4: Selected gift and benefit scenarios from training**

A Sydney Harbour Foreshore Authority tenant whose lease is due to expire approaches the property manager to invite them to a function. The function has been organised by a third party who the tenant is in business with (but not in the Rocks). What should the property manager do?

Lazlo is responsible for procuring a range of services at the Sydney Harbour Foreshore Authority. He has recently joined the Authority after more than ten years in the private sector. Many of the contacts and friends he made at the time work in the area that he is now responsible for supervising. Some of these friends and contacts also work in companies that regularly quote or tender for the work he organises. Christmas is coming up and he has been invited to a few functions including lunches, afternoon drinks, dinners and so on paid for by these companies. He is looking forward to seeing a few of his old mates again. Does Lazlo have a conflict of interest he must report?

Source: Sydney Harbour Foreshore Authority 2012

In all cases, agencies must decide which gifts and benefits can be accepted and which must be declined, and have a transparent process for declaring, recording and handling gifts.

## 1.4 This audit

In order to effectively manage gifts and benefits, each agency needs the strong base of a sound, well communicated policy and register.

The entities we audited were selected because they each had a licensing or regulatory function. The entities were:

- Department of Planning and Infrastructure (DPI)
- Sydney Harbour Foreshore Authority (part of DPI)
- Environment Protection Authority
- Transport for NSW
- WorkCover Authority.

We examined gifts and benefits policies and registers and the way they are communicated and reviewed.

This audit did not seek to assess the extent to which gifts and benefits are being reported in gift registers i.e. whether all gifts are being reported. The indications from surveys and investigations by the ICAC are that not all gifts and benefits are being reported. Sound policies communicated well and comprehensive registers in themselves will not address the issue of those who choose to deliberately hide the receipt of gifts and benefits. They will, however, assist those seeking to do the right thing. They will also remove any claim from those who have done the wrong thing that they were confused or unaware of what they should have done.

To go further, agencies may need to consider strategies such as writing to suppliers or customers and asking whether gifts have been solicited or taken, and data analysis of declaration patterns over time and between like organisational units (e.g. between inspectors in different regions). The conduct of such exercises, however, is a matter for each agency based on their assessed risk around gifts and benefits and their organisational context.

Clear policies assist those who wish to do the right thing and limit excuses for those who don't

## 2. Key findings

The five case study entities examined for this report illustrated a range of approaches to gift and benefit policies and registers. These are analysed in the following chapter. Our overall assessment is summarised below.

### 2.1 Do entities have comprehensive, well communicated gifts and benefits policies?

We found that all five entities had gifts and benefits policies that addressed some but not all of the attributes of a sound policy. All five prohibit the soliciting of personal gifts and require gifts and benefits accepted that are above nominal value be recorded in the gifts and benefits register.

All five entities have communicated their gifts and benefits policies to staff and external stakeholders, although in each case we identified opportunities to better communicate their policies.

The scope for improvement varied between agencies. Opportunities for improvement included requiring offers of gifts and benefits that are declined to be declared/recorded and establishing a nominal/token value for gifts and benefits.

All five entities are currently reviewing their gifts and benefits policy having regard to our findings.

All five entities had some but not all attributes of a sound policy

## 2.2 Do entities effectively record the details of gifts and benefits and make appropriate decisions in relation to their acceptance, or otherwise, and treatment?

All five entities had registers in place for recording the details regarding each gift and benefit declared. All five recorded details of the person or organisation offering the gift, a description of the gift and its estimated value. Four agencies recorded a decision against each gift.

Given that not all gift situations are black and white, it is important that registers illustrate the context regarding each declared gift and benefit to ensure that an appropriate decision can be made by a more senior officer.

Some registers had more complete information than others. But none included sufficient information to be sure that the decisions regarding the treatment of each gift and benefit were appropriate. Key information missing included the reason for the offer, the relationship between giver and recipient, and commentary on whether there would be any real or perceived conflict of interest. Three of the registers identified a decision-maker in relation to each declared gift. However, only one register explicitly identified a senior officer responsible for making such decisions.

### Recommendation

All five entities review their policies and registers and make the recommended improvements. Recommendations specific to each entity are contained in the detailed findings section of this report.

As discussed above, the gift registers did not contain sufficient information for us to draw a conclusion on whether or not policies were followed and appropriate decisions made.

However, we identified some gifts and benefits which were accepted and recorded but which by their nature warrant further review by the agencies concerned.

### Exhibit 5: Gifts warranting further review

We identified some gifts that warranted further review by the entities. These included:

- tickets to a Sydney Cricket Ground suite for a cricket match
- basket with wine and Christmas ornaments
- guest room at upmarket hotel with breakfast included
- tickets to the theatre (three instances)
- two bottles of upmarket whisky and two cartons of beer
- orchid valued at \$220 displayed at reception
- boxed bottle of wine and wine related implements.

Source: Audited entities, 2012

## 2.3 What guidance is available to agencies?

Currently there are no clear State-wide rules to guide agencies and inform external stakeholders. Official guidance on gifts and benefits for agencies is limited. The following extract from the model code of conduct within the Public Service Commission's Personnel Handbook is the main source of guidance on gifts and benefits management available to NSW agencies. It states:

Employees should not accept a gift or benefit that is intended to, or likely to, cause them to act in a partial manner in the course of their duties. Principal officers may approve the acceptance of token gifts or benefits under certain circumstances provided that there is no possibility that the recipient might be, or might appear to be, compromised in the process.

No register included sufficient information

Limited official guidance for agencies on gifts and benefits

No further information is provided to assist agencies to determine what these “certain circumstances” for accepting a gift may be. Also, it is difficult to imagine a real-life situation where there is **no possibility** that a gift-recipient might appear to be compromised.

A clear set of minimum standards that cannot be misinterpreted would help agencies ensure their own policies and registers are sound and communicate a definitive position on gifts and benefits. It would reduce:

- the risk of confusion among staff, particularly those who move between agencies
- the potential for confusion among those from outside government who deal with government employees, particularly those dealing with employees from more than one agency
- the ability to rationalise the acceptance of gifts or to use confusion as a defence
- the cost for individual agencies in researching and developing their own policies and procedures.

The approach of allowing agencies to develop their own policies and procedures but identifying minimum standards to be followed by all agencies is consistent with the views of the St James Ethics Centre on Codes of Conduct. This was outlined in its NSW Public Sector Ethics Stocktake prepared for the Public Service Commissioner and released in September 2012:

Although we do not recommend requiring common codes of ethics and conduct across the public sector, we do think it would be extremely valuable for the PSC to develop a model code of ethics and new model code of conduct which could be adopted or developed by individual clusters and agencies. This could include the identification of some minimum mandatory inclusions and other requirements to be followed by all public sector codes.

### Recommendation

The Public Service Commission develop a set of minimum standards for gift and benefit policies and registers which are to be followed by all NSW public sector agencies.

In the course of our audit, we identified a number of important attributes which contribute to:

- a sound gifts and benefits policy
- effective communication of that policy to staff and stakeholders
- a comprehensive gifts and benefits register.

These are outlined in Appendix 2. The Public Service Commissioner should consider these in setting minimum standards recommended above.

A ‘Gift Decision’ flowchart is set out in Appendix 3, which agencies and managers may find of assistance in defining control procedures and responsibilities.

# Detailed findings

## 3. Department of Planning and Infrastructure

### 3.1 Department of Planning and Infrastructure's gifts and benefits policy

#### The Department of Planning and Infrastructure's policy and procedures

The Department of Planning and Infrastructure (DPI) has a code of conduct and ethics (dated 1 July 2011), which prohibits the acceptance of gifts apart from ceremonial items and hospitality from representatives of other public sector agencies or at government related functions. DPI's code requires offers of bribes to be reported immediately, prohibits soliciting of personal gifts and requires that gifts suspected as being for influence be declined.

DPI also has a draft gifts and benefits policy which is yet to be implemented. The draft policy provides guidance on hospitality and allows the acceptance of token gifts that are 'offered in a business situation to a public official representing the department.' DPI indicated that it is reconsidering its draft policy.

#### Recommendation

DPI improve its code of conduct in relation to gifts and benefits by:

- requiring hospitality that extends beyond courtesy to be declined
- requiring offers of gifts and benefits that are declined to be declared/recorded
- prohibiting the acceptance of gift vouchers, shares and other monetary equivalents
- establishing a nominal/token value for gifts and benefits
- requiring a nominal/token value to apply to cumulative gifts and benefits
- requiring gifts to family members to be declined
- requiring prizes obtained during work related functions to be treated as gifts
- prohibiting the acceptance of bonus gifts for agency purchases
- providing guidance on the disposal of gifts deemed to be unacceptable.

#### Communicating the Department of Planning and Infrastructure's policy

DPI has an annual communication plan for its employee code of conduct, which includes the treatment of gifts and benefits. DPI advised that it provides training in the treatment of gifts and benefits as part of its employee induction program. It also runs an annual workshop, facilitated by university academics, titled "ethics in planning" which is available to all staff.

Staff are required to complete an annual code of conduct declaration to acknowledge that they are aware of the requirements. DPI advised that 80 per cent of staff had completed the code of conduct and ethics annual online declaration by 30 January 2013. DPI also advised that it will be launching an online human resources portal in March 2013 on its intranet. The portal will be designed to raise awareness of policies, help ensure both staff and management are aware of their obligations in regard to the policies and expectations of the department, and to ensure the required processes are implemented to minimise risk of non-compliance.

DPI provides limited guidance to staff on the treatment of gifts and benefits. It has a draft policy under consideration which we anticipate will provide additional guidance.

DPI has not produced a statement of business ethics. However, its code of conduct and ethics can be found on its website.

DPI requires gifts suspected of being for influence to be declined



The code states that breaches may be grounds for disciplinary action in accordance with the provisions of the *NSW Public Sector Employment and Management Act 2002* and that breaches may also be punishable under the law.

### Recommendation

DPI improve the way it communicates its gifts and benefits policy by:

- ensuring all staff receive formal training and are involved in regular team sessions covering the code of conduct and gifts and benefits policy
- providing regular mentions of the gifts and benefits policy in a monthly newsletter including special reminders around Easter, Christmas and other holidays
- advising all external stakeholders including developers, current suppliers and service providers of the requirements of its code of conduct
- further clarifying the consequences of breaching the code, which may include suspension, loss of employment, loss of entitlements and even prosecution. Examples from recent ICAC inquiries may be useful.

## 3.2 The Department of Planning and Infrastructure's gifts and benefits register

### The information in the Department of Planning and Infrastructure's register

DPI's register contains details of the person or organisation offering the gift, a description and estimated value for the gift and the name of the person offered the gift. The register also contains a decision against each gift and identifies the decision-maker. DPI has prepared a declaration form for gifts and benefits for reporting purposes which illustrates the information requirements for the register.

### Recommendation

DPI improve its gifts and benefits register by:

- recording the relationship of the gift-giver to the recipient, the disclosure of any conflict of interest and the reason for the offer
- conducting reviews to gauge compliance with the policy and procedures, including assessing whether all staff and stakeholders are aware of the policy and all relevant gifts and benefits are being reported.

### The Department of Planning and Infrastructure's decisions in relation to their acceptance and treatment of gifts and benefits

The register does not contain the relationship between the giver and the recipient, the disclosure of any conflict of interest, nor the reason the gift had been provided. Without this information it is not possible to conclude that all the decisions were appropriate.

DPI's gift register records a decision against each gift

DPI's register does not contain sufficient information to conclude whether all decisions were appropriate

## 4. Sydney Harbour Foreshore Authority (SHFA)

### 4.1 SHFA's gifts and benefits policy

#### Sydney Harbour Foreshore Authority's policy and procedures

The Sydney Harbour Foreshore Authority (SHFA) has a code of conduct for employees (dated July 2010), which includes a section on gifts, favours and hospitality. According to the code, staff may accept modest gifts, tokens of appreciation and benefits. SHFA indicated that its code is currently being reviewed in its entirety, including the section dealing with gifts and benefits.

The code:

- prohibits the soliciting of personal gifts, requires gifts suspected of being for influence and hospitality that extends beyond courtesy to be declined
- requires offers of bribes to be reported immediately
- prohibits the acceptance of gifts of money, although it does not mention the prohibition of accepting gift vouchers (as monetary equivalents)
- requires all gifts and benefits accepted to be recorded in the gift register, regardless of value
- sets a maximum nominal value of \$100 for gifts and benefits that can be accepted by employees. The general manager's approval must be obtained to accept a gift or benefit over that value.
- provides guidance on the disposal of gifts deemed to be unacceptable.

#### Recommendation

SHFA improve its code of conduct in relation to gifts and benefits by:

- specifying that gifts offered to public officers who exercise discretionary authority in relation to the gift-offerer/ gift-giver are to be declined
- prohibiting the acceptance of gift vouchers and other monetary equivalents
- revisiting the token/nominal value to ensure it is not excessive
- requiring a nominal/token value to apply to cumulative gifts and benefits
- requiring offers of gifts and benefits that are declined to be declared/recorded
- prohibiting the acceptance of bonus gifts for agency purchases
- requiring gifts to family members be declined
- requiring prizes obtained during work related functions to be treated as gifts
- providing additional guidance on the treatment of gifts that are deemed to be unacceptable.

#### Communicating Sydney Harbour Foreshore Authority's gifts and benefits policy

There is no formal communication plan regarding the code of conduct, although information on the code is included in the induction package for all new staff, and the code is regularly referenced in the 'New Horizons' staff newsletter.

Reminders are included in the newsletters on the need to declare Easter and Christmas gifts on the register. One of the recent newsletters contains a reminder of the need to comply with the code of conduct as well as a link to the code. Another discusses the code and the need to read and accept it. Two other newsletters discuss the compulsory training in the code which was being presented to business units across the organisation.

SHFA has a statement of business ethics which states that suppliers should not provide (and Authority staff are not permitted to accept) gifts and benefits other than of a token nature.

SHFA includes reminders in newsletters about declaring Easter and Christmas gifts

SHFA advises that all tender and contract documents require contractors to comply with the statement of business ethics. In relation to lessees, SHFA also advises it is currently preparing a 'welcome pack' for tenants which is in the late stages of development and will include a copy of the statement of business ethics.

Fraud awareness refresher training is available via SHFA's intranet, which contains a few scenarios relating to gifts and benefits. A decision making guide is included in the code of conduct to assist staff on decisions relating to gifts and benefits.

SHFA's code of conduct states that breaches could lead to disciplinary actions including dismissal.

### Recommendation

SHFA improve the way it communicates its gifts and benefits policy by:

- ensuring all staff receive regular formal training in the code of conduct and gifts and benefits
- reminding all lessees, current suppliers and service providers of the requirements of the statement of business ethics
- further clarifying the consequences of breaching the code, which may include suspension, loss of employment, loss of entitlements and even prosecution. Examples from recent ICAC inquiries may be useful.

## 4.2 SHFA's gifts and benefits register

### The information in Sydney Harbour Foreshore Authority's register

SHFA's register contains details of the person or organisation offering the gift, a description and estimated value for the gift and the name of the person offered the gift. SHFA's code of conduct and some newsletters inform staff of the register, its location and what circumstances information should be recorded in it.

### Recommendation:

SHFA improve its gifts and benefits register by:

- recording the reason for the gift, the relationship of the gift-giver to the recipient and the disclosure of any conflict of interest
- recording a decision for each gift and identifying a decision-maker
- providing additional guidance on the information required to record a gift or benefit
- conducting reviews to gauge compliance with the policy and procedures, including assessing whether all staff and stakeholders are aware of the policy and all relevant gifts and benefits are being reported.

### Sydney Harbour Foreshore Authority's decisions regarding the treatment of gifts and benefits

The register does not contain decisions, the authorising officer, the relationship between the giver and the recipient, nor the reason the gift has been provided. Without this information it is not possible to conclude that all the decisions were appropriate.

The SHFA's register does not contain sufficient information to conclude whether all decisions were appropriate

## 5. Environment Protection Authority

### 5.1 Environment Protection Authority's gifts and benefits policy

#### Environment Protection Authority's policy and procedures

The Environment Protection Authority (EPA) has a gifts and benefits policy and guidelines (dated July 2007) and a code of conduct. EPA indicated that it is reviewing its policy.

The current policy:

- prohibits the soliciting of personal gifts, requires offers of bribes to be reported immediately and hospitality extending beyond courtesy be declined
- requires gifts and benefits accepted above nominal value be recorded in the gift register
- sets a nominal gift value at \$30 and requires cumulative gifts to be recorded
- prohibits acceptance of gifts of money and gifts suspected of being for influence
- requires gifts to family members to be declined and prizes obtained during work related functions to be treated as gifts
- discusses gifts of influence and the need to exercise special care when involved in regulatory activities
- does not allow the acceptance of bonus gifts for agency purchases above the nominal value but allows them below this value
- provides guidance on the disposal of gifts deemed to be unacceptable.

#### Recommendation:

EPA improve its gifts and benefits policy and guidelines by:

- prohibiting the acceptance of gift vouchers, shares and other monetary equivalents
- requiring all offers of gifts and benefits that are greater than the maximum value be declared/recorded whether they are accepted or declined
- prohibiting the acceptance of bonus gifts for agency purchases of any value for personal use.

#### Communicating Environment Protection Authority's policy

The EPA does not have a communication strategy in place for its code of conduct and gifts and benefits policy but intranet links are provided to the code and policy.

At the time of the audit, the induction course included a brief overview of the code of conduct but no reference was made to the gifts and benefits policy. The agency advises that a new Introduction to the EPA course and course materials now include training on the gifts and benefits policy. An 'Introduction to the EPA' package, which will be provided to all new employees and contractors, will include the code of conduct and the gifts and benefits policy. The agency also advises that it has run several workshops on the code of conduct which included a discussion on gifts. A number of EPA staff have also attended ICAC Corruption Prevention workshops for senior managers in the last two years.

The EPA's statement of business ethics outlines the policy. It states that in general staff are not to accept gifts, benefits, travel or hospitality offered to them. It also provides examples of what constitutes a token gift. It indicates gifts designed to influence will be destroyed or passed on to charity.

EPA sets a nominal gift value at \$30

The EPA proposes to implement a communication strategy that highlights the gifts and benefits policy and the need to declare gifts and benefits.

### Recommendation

EPA improve the way it communicates its gifts and benefits policy by:

- ensuring all staff receive regular formal training in the code of conduct and gifts and benefits
- providing special reminders on gifts and benefits to staff around Easter, Christmas and other holidays
- advising all licence holders, current suppliers and service providers of the requirements of the statement of business ethics
- highlighting the consequences of breaching the code, which may include suspension, loss of employment, loss of entitlements and even prosecution. Examples from recent ICAC inquiries may be useful.

## 5.2 Environment Protection Authority's gifts and benefits register

### Information recorded in Environment Protection Authority's register

The EPA's register contains details of the person or organisation who offered the gift, a description and estimated value for the gift, the name of the person offered the gift and the reason the gift had been offered. It also usually mentioned any potential conflict of interest. The register contained a decision regarding each gift and identified the decision-maker.

The policy and guidelines contain information on the location of the gift register and the process for reporting gifts.

### Recommendation

EPA improve its gifts and benefits register by:

- explicitly requiring the recording of the relationship of the gift-giver to the recipient, the reason for the gift and the disclosure of any potential conflict of interest
- providing additional guidance on the information required to adequately record a gift or benefit
- conducting reviews to gauge compliance with the policy and procedures, including assessing whether all staff are aware of the policy and all relevant gifts and benefits are being reported.

### Environment Protection Authority's decisions in relation to their acceptance and treatment of gifts and benefits

The register did not always contain an explanation of the relationship between the gift-giver and the recipient. Without this information it is not possible to conclude that all the decisions were appropriate.

EPA's register does not contain sufficient information to conclude whether all decisions were appropriate

## 6. Transport for NSW

### 6.1 Transport for NSW's gifts and benefits policy

#### Transport for NSW's policy and procedures

Transport for NSW (TfNSW) has a code of conduct dated 29 June 2011. It also has a conflicts of interest policy dated 29 June 2012. Both the code and the policy discuss gifts and benefits, however, they appear to deliver a conflicting message.

The code of conduct allows the acceptance of gifts of token value that are reasonable and don't conflict with probity principles. Non-token gifts may only be accepted with a manager's written consent. Gifts must not be accepted on behalf of TfNSW unless a manager has agreed in advance to the acceptance.

The conflicts of interest policy states that staff must not accept gifts and benefits in relation to their work. Gifts, such as ceremonial gifts, awards or gifts from community groups, may be accepted on behalf of TfNSW.

TfNSW advises that with the formation of its Human Resources policy function, one of its immediate priorities is to undertake a review of all policies and procedures. The purpose of this review is to refine all policies to ensure consistency and incorporate robust frameworks and evaluation measures. TfNSW indicated that the conflicts of interest policy will be one of the first policies to be reviewed as part of this process and will incorporate the Audit Office findings as part of this review.

The code of conduct:

- prohibits the soliciting of personal gifts, requires offers of bribes to be reported and gifts suspected of being for influence be declined
- prohibits the acceptance of gifts of money, although it does not mention the prohibition of accepting gift vouchers (as monetary equivalents)
- prohibits the acceptance of hospitality that is greater than token (nominal) value
- requires gifts and benefits accepted that are above nominal value to be recorded in the gift register and specifies a nominal value of \$15
- requires consideration of cumulative gifts but does not require a nominal value to apply to them.

#### Recommendation

TfNSW improve its code of conduct in relation to gifts and benefits by:

- prohibiting the acceptance of gift vouchers, shares and other monetary equivalents
- requiring offers of gifts and benefits that are declined to be declared/recorded
- requiring a nominal/token value to apply to cumulative gifts and benefits
- requiring gifts to family members to be declined and prizes obtained during work related functions to be treated as gifts
- prohibiting the acceptance of bonus gifts for agency purchases for personal benefit
- providing guidance on the disposal of gifts deemed to be unacceptable.

TfNSW has a statement of business ethics which covers gifts and benefits

## Communicating Transport for NSW's policy

Transport for NSW is developing a communication and implementation strategy for its code of conduct including gifts and benefits.

On 4 September 2012 the message from the Director General posted on the intranet highlighted the importance of the code of conduct and the statement of business ethics. Further, an email dated 31 October 2012 was sent to all staff highlighting the conflicts of interest policy and the code of conduct.

The code of conduct, which incorporates the guidance on gifts and benefits, is available to staff on the intranet. TfNSW stated that all employees are expected to read the code prior to commencing with TfNSW and complete the declaration on the website. Since TfNSW's establishment on 1 November 2011, 599 of the 1081 employees have completed induction training with the code of conduct as a component.<sup>2</sup>

TfNSW also advises that it has conducted briefing sessions covering organisational values with senior managers and their teams across the organisation.

TfNSW has produced a statement of business ethics which states that it expects staff to decline personal gifts, benefits, travel or hospitality offered during the course of their work. All such offers are to be formally reported and recorded in a publicly accessible register. As part of the procurement process for all public tenders, the statement of business ethics is sent with the terms and conditions package provided to potential providers/ contractors. TfNSW advised that the Director General issued a letter to all suppliers regarding TfNSW's Statement of Business Ethics in August 2012. The letter highlighted that the statement contains TfNSW's position on the offering of gifts to its staff. A copy of the statement was enclosed, and the suppliers were also advised they could locate a copy on the agency's website.

## Recommendation

TfNSW improve the way it communicates its gifts and benefits policy by:

- ensuring the code of conduct and the conflict of interest policy are consistent in their treatment of gifts and benefits
- ensuring all staff receive regular formal training in the code of conduct and gifts and benefits
- highlighting the consequences of breaching the code, which may include suspension, loss of employment, loss of entitlements and even prosecution. Examples from recent ICAC inquiries may be useful.

## 6.2 Transport for NSW's gifts and benefits register

### Information recorded in Transport for NSW's register

Transport for NSW's register contains details of the person or organisation offering the gift, a description and estimated value for the gift, the name of the person offered the gift.

The register also contains the reason the gift has been offered and a decision is recorded against each gift with the name of the decision-maker.

The code and policy contain information on the location of the gift register and the process for reporting gifts. The policy also contains a declaration form outlining information to be recorded in the register.

<sup>2</sup> As at 31 October 2012

## Recommendation

TfNSW improve its gifts and benefits register by:

- recording the date of the offer and identifying the decision-maker
- recording the relationship of the gift giver to the recipient and the disclosure of any conflict of interest
- conducting reviews to gauge compliance with the policy and procedures, including assessing whether all staff and stakeholders are aware of the policy and all relevant gifts and benefits are being reported. We found an example where one staff member was sponsored by a private company to attend a lunchtime industry seminar in October 2012 but this was not declared in TfNSW's gift register.

### **Transport for NSW's decisions in relation to their acceptance and treatment of gifts and benefits**

The register does not contain an explanation of the relationship between the giver and the recipient and the disclosure of any conflict of interest. Without this information it is not possible to conclude whether all the decisions were appropriate.

TfNSW's register does not contain sufficient information to conclude whether all decisions were appropriate



## 7. WorkCover Authority

### 7.1 WorkCover Authority's gifts and benefits policy

#### WorkCover's policy and procedures

The WorkCover Authority (WorkCover) has gifts and benefits guidelines dated May 2007 and a code of conduct dated May 2006. WorkCover Authority advised that it is updating its gifts and benefits guidelines.

The current guidelines:

- prohibit the soliciting of personal gifts and the acceptance of gifts of money
- require offers of bribes be reported
- require hospitality that extends beyond courtesy be declined
- require gifts and benefits accepted be recorded
- prohibit the acceptance of bonus gifts for agency purchases for personal benefit
- require a nominal/token value to apply to cumulative gifts but does not specify a token value
- require prizes received at work functions be treated as gifts
- provide useful examples of what constitutes a token gift.

#### Recommendation

WorkCover improve its gifts and benefits guidelines by:

- requiring gifts suspected of being for influence to be declined
- requiring all gifts offered to public officers who exercise discretionary authority in relation to the gift-offerer/gift-giver be declined
- setting a nominal gift value (as a guide for what value gift or benefit may be acceptable)
- requiring gifts to family members to be declined
- providing guidance on the disposal of gifts deemed to be unacceptable.

#### Communicating the WorkCover Authority's policy

WorkCover has an information strategy in place titled 'Keeping you informed'. It advises that, over the last 12 months, 'Keeping You Informed' bulletins have been issued to all staff on gifts and benefits, secondary employment, flex time and a number of other topics which referenced the Code of Conduct. Access to the code of conduct and gifts and benefits guidelines are provided to staff via the WorkCover intranet. The agency's gifts and benefits guidelines contain useful guidance on the types of gifts and hospitality that can be accepted.

WorkCover indicated that it provides training on gifts and benefits including formal training on the code of conduct and informal discussions with areas that have been identified as needing additional training. It estimates that, between both these methods, around 20 to 25 per cent of staff have undergone training in the past two years. It advised that a more formal training regime is to be introduced soon with a new code of conduct, with mandatory online training to be completed by all employees every two years.

WorkCover also advised that a copy of the Statement of Business Ethics document was sent to more than 1,000 organisations on its active vendor database in April 2007. When registering new vendors, a package of forms is sent out to organisations as part of the process. These forms include a copy of the Statement of Business Ethics. The new vendor is required to return a signed vendor registration form stating that they have read the Statement of Business Ethics and will comply with its requirements. WorkCover indicated that it would review and resend the Statement of Business Ethics to all active vendors on its vendor database by March 2013.

WorkCover regularly reminds staff of its gifts and benefits policy

WorkCover indicated that it requires companies to acknowledge the requirements of its statement of business ethics when they respond to its request for quotation or request for tenders.

The code of conduct states that breaches of the code are to be dealt with under Premier's Department guidelines for dealing with misconduct. WorkCover advises that further clarification of the consequences has been included in the revised code.

### Recommendation

WorkCover improve the way it communicates its gifts and benefits policy by:

- ensuring all staff receive regular formal training in the code of conduct and gifts and benefits
- reviewing and resending its statement of business ethics to all active vendors on its vendor database
- clarifying the consequences of breaching the code, which may include suspension, loss of employment, loss of entitlements and even prosecution. Examples from recent ICAC inquiries may be useful.

## 7.2 WorkCover Authority's gifts and benefits register

### Information recorded in WorkCover Authority's register

WorkCover's register contains details of the person or organisation offering the gift, a description and estimated value for the gift, the name of the person offered the gift, and records a decision against each gift

The guidelines and code of conduct contain information on the register, where it is held and under what circumstances information should be recorded in it.

### Recommendation

WorkCover improve its gifts and benefits register by:

- ensuring it identifies the decision-maker regarding the treatment of each gift or benefit
- ensuring it records the relationship of the gift-giver to the recipient, the reason the gift has been offered and the disclosure of any conflict of interest
- providing additional guidance on the information required to adequately record a gift or benefit
- conducting reviews to gauge compliance with the policy and procedures, including assessing whether all staff and stakeholders are aware of the policy and all relevant gifts and benefits are being reported.

WorkCover advises that it is revising its policy and register to ensure it:

- identifies the decision-maker regarding the treatment of each gift or benefit.
- records the relationship of the gift-giver to the recipient, the reason the gift has been offered and the disclosure of any conflict of interest.

WorkCover also advises that regular reviews to gauge compliance with the policy and procedures, especially regarding whether all gifts and benefits are being reported, will be implemented by March 2013.

### WorkCover Authority's decisions in relation to their acceptance and treatment of gifts and benefits

The register does not record the relationship between the giver and the recipient, the disclosure of any conflict of interest and the reason the gift had been provided. Without this information it is not possible to conclude that all the decisions were appropriate.

WorkCover's register does not contain sufficient information to conclude whether all decisions were appropriate

# Appendices

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## Appendix 1: About the audit

### Objective

To determine whether selected agencies are effectively managing gifts and benefits provided to individuals by external parties.

### Audit criteria

1. Agencies have sound, well communicated gift and benefit policies.
  - 1.1. Each agency has a sound gifts and benefits policy and procedures (covering all staff).
  - 1.2. Each agency's gifts and benefits policy is well communicated.
2. Agencies effectively record the details of gifts and benefits and make appropriate decisions in relation to their acceptance and treatment.
  - 2.1. Each agency maintains a register containing details of each gift and benefit and the decision associated with each.
  - 2.2. Each agency can demonstrate they make appropriate decisions in relation to the acceptance and treatment of gifts and benefits.

The audit criteria were discussed with nominated representatives of the each agency.

We identified a set of better practice elements based on:

- publications from the ICAC and anti-corruption agencies in other jurisdictions
- discussions with the ICAC, the Public Service Commission and each agency we audited.

We used these elements to assess each agency's performance against the criteria and sub criteria.

### Scope

This audit focused on the management of gifts and benefits in four key regulatory/licensing agencies. The agencies are:

- Department of Planning and Infrastructure (including the Sydney Harbour Foreshore Authority)
- Environment Protection Authority
- Transport for NSW
- WorkCover Authority.

Where possible, we covered the five years to September 2012. This was not possible in all cases, given restructuring that has occurred over this period.

The audit did not seek to assess the extent to which gifts and benefits received by staff were declared.

The audit is a series of five case studies and is not a general assessment of the management of gifts and benefits across the sector.

The NSW Public Service Commission was also an auditee given our findings and recommendation around sector-wide guidance and minimum standards. The Commission is responsible for promoting and maintaining 'the highest levels of integrity, impartiality, accountability and leadership across the public sector'.

### **Audit selection**

We use a strategic approach to selecting performance audits which balances our performance audit program to reflect issues of interest to Parliament and the community. Details of our approach to selecting topics and our forward program are available on our website.

### **Audit methodology**

Our performance audit methodology is designed to satisfy the Australian assurance engagement standard on performance auditing (ASAE 3500), and to reflect current thinking on performance auditing practices. Our processes have also been designed to comply with the auditing requirements specified in the *Public Finance and Audit Act 1983*.

### **Acknowledgements**

We gratefully acknowledge the co-operation and assistance provided by all five entities audited.

### **Audit team**

This audit was carried out by Rod Longford and Neil Avery. Sean Crumlin provided direction and quality assurance.

### **Audit cost**

Including staff costs, printing costs and overheads, the estimated cost of the audit is \$173,511.

## Appendix 2: Attributes of a sound policy and procedures for the management of gifts and benefits

### Overview

For the management of gifts and benefits to be effective:

- staff should be provided with guidance covering the circumstances they are likely to face
- a supervisor or other senior officer should consider and approve gift and benefit decisions
- gift and benefit decisions and the supporting reasons should be recorded clearly and comprehensively
- a risk-based approach to education and enforcement should be adopted.

### **Each agency should have a sound gifts and benefits policy and procedures covering all staff.**

Attributes include:

- ✓ offers of bribes to be reported immediately
- ✓ soliciting of personal gifts is prohibited
- ✓ gifts suspected as being for influence to be declined
- ✓ hospitality that extends beyond courtesy to be declined
- ✓ all gifts offered to public officers who exercise discretionary authority in relation to the gift-offerer/gift-giver to be declined
- ✓ accepting gifts of money is prohibited (including monetary equivalents such as gift vouchers)
- ✓ a nominal gift and benefit value is established
- ✓ nominal value applies to cumulative gifts and benefits
- ✓ all offers of gifts and benefits that are declined because they generate a perceived conflict of interest or are above nominal value to be recorded in a register
- ✓ gifts and benefits to family members to be prohibited
- ✓ prizes at external functions, courses, etc. to be treated as gifts
- ✓ bonus gifts for agency purchases are agency property and not to be retained for personal benefit
- ✓ unacceptable gifts to remain the property of the agency, returned or donated to charity
- ✓ regular review of the policy's appropriateness and operation.

### **Each agency should effectively communicate their gifts and benefits policy to staff and stakeholders.**

Attributes include:

- ✓ a communication strategy that promotes the agency position on gifts and benefits, and identifies key audiences, activities and resources (including a contact person who can provide advice)
- ✓ a statement of business ethics, outlining the gifts and benefits policy, which has been communicated to contractors and relevant third parties
- ✓ staff are advised of, and provided access to, the policy
- ✓ supervisors discuss and explain the policy with staff
- ✓ managers are given guidance to assist them in coming to a decision in relation to gifts and benefits
- ✓ induction training and regular refresher training that includes coverage of the policy
- ✓ regular review of the effectiveness of communication.

**Each agency should maintain a register containing details of gifts and benefits and the decision associated with each.**

Attributes include:

- ✓ for each gift or benefit offer (i.e. both accepted and declined) the register includes the:
  - date of the offer
  - details of the person and/or organisation offering the gift
  - relationship of the gift-giver to the recipient
  - disclosure of any conflict of interest
  - reason for the offer (as assessed by the recipient)
  - description of the gift
  - estimated value
  - name (and verification) of the person who was offered the gift
  - decision regarding what should happen with the gift and reasons for that decision
  - approval of a senior officer.
- ✓ staff are advised of the register, where it is held and under what circumstances information should be recorded in it
- ✓ straightforward and simple procedures (preferably electronic) for staff to declare gifts and provide all the information required for recording in the register
- ✓ decisions contained in each register are in accordance with agency policy and sound practice
- ✓ regular review of staff knowledge of the register and compliance with recording requirements.

**Sources of information used to compile these attributes**

**Primary sources**

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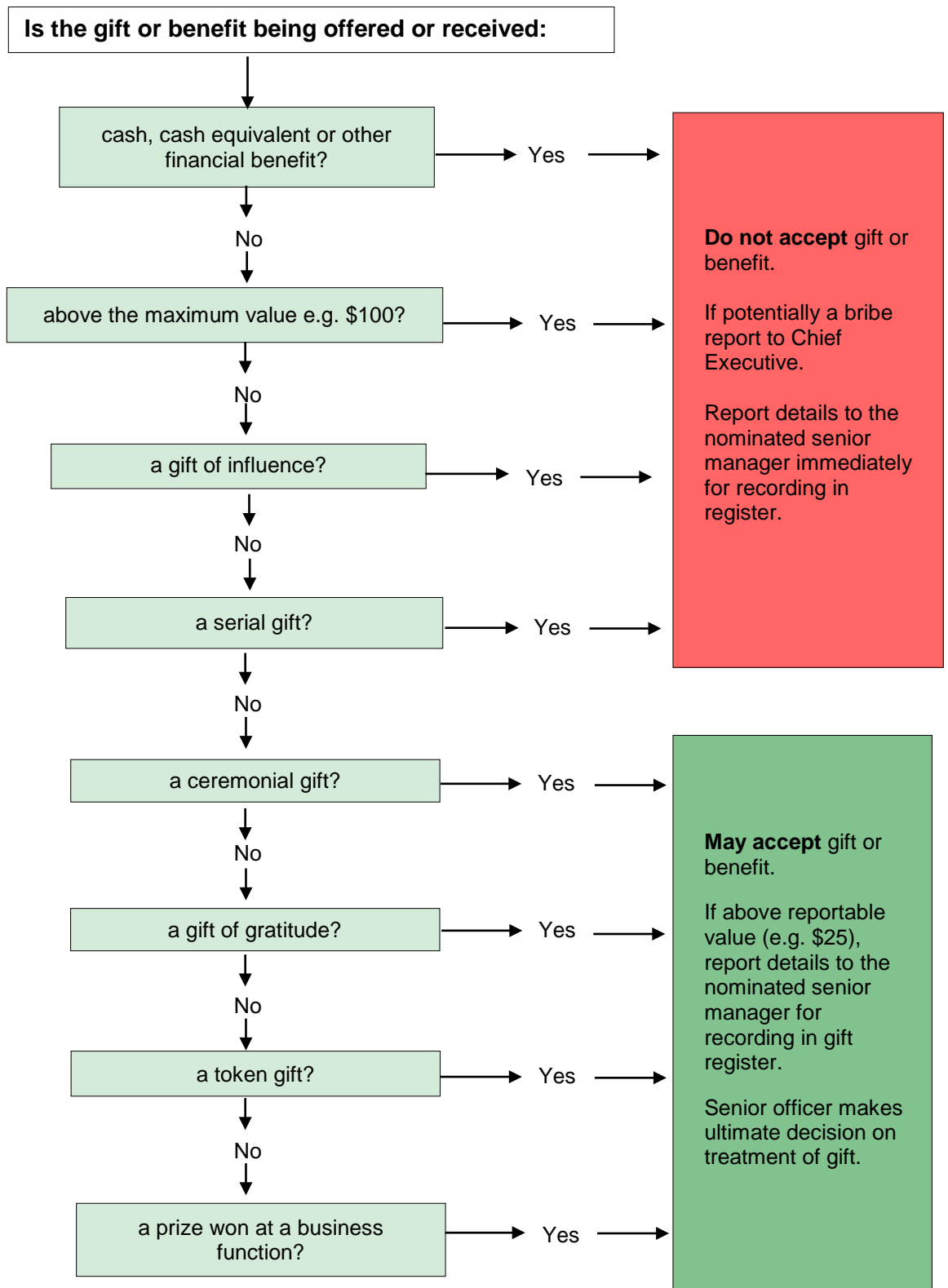
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P Fava, To give or not to give: Drafting gifts and entertainment policies, Ethisphere: Anti-Corruption Resource Centre, 7 September 2011, New York, viewed 14 March 2013, <<http://anticorruption.ethisphere.com/to-give-or-not-to-give-drafting-gifts-and-entertainment-policies>>.

### Appendix 3: Possible decision flow chart for gifts and benefits



**Note:**

- A gift is an item of value (e.g. gift voucher, entertainment, hospitality, travel, commodity, property etc.) which one person or organisation presents to another.
- A benefit is a non-tangible item of value (e.g. a new job or promotion, preferential treatment or access to confidential information etc.).



# Performance auditing

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## What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of a government agency or consider particular issues which affect the whole public sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in the *Public Finance and Audit Act 1983*.

## Why do we conduct performance audits?

Performance audits provide independent assurance to parliament and the public.

Through their recommendations, performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also focus on assisting accountability processes by holding managers to account for agency performance.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, the public, agencies and Audit Office research.

## What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing. They can take up to nine months to complete, depending on the audit's scope.

During the planning phase the audit team develops an understanding of agency activities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the agency or program activities are assessed. Criteria may be based on best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork the audit team meets with agency management to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with agency management to check that facts presented in the

draft report are accurate and that recommendations are practical and appropriate.

A final report is then provided to the CEO for comment. The relevant minister and the Treasurer are also provided with a copy of the final report. The report tabled in Parliament includes a response from the CEO on the report's conclusion and recommendations. In multiple agency performance audits there may be responses from more than one agency or from a nominated coordinating agency.

## Do we check to see if recommendations have been implemented?

Following the tabling of the report in parliament, agencies are requested to advise the Audit Office on action taken, or proposed, against each of the report's recommendations. It is usual for agency audit committees to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee (PAC) to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report is tabled. These reports are available on the parliamentary website.

## Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

Internal quality control review of each audit ensures compliance with Australian assurance standards. Periodic review by other Audit Offices tests our activities against best practice.

The PAC is also responsible for overseeing the performance of the Audit Office and conducts a review of our operations every four years. The review's report is tabled in parliament and available on its website.

## Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

## Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au) or contact us on 9275 7100

## Performance audit reports

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
228	Department of Planning and Infrastructure Environment Protection Authority Transport for NSW WorkCover Authority	<i>Managing gifts and benefits</i>	27 March 2013
227	NSW Police Force	<i>Managing drug exhibits and other high profile goods</i>	28 February 2013
226	Department of Education and Communities	<i>Impact of the raised school leaving age</i>	1 November 2012
225	Department of Premier and Cabinet Division of Local Government	<i>Monitoring Local Government</i>	26 September 2012
224	Department of Education and Communities	<i>Improving the literacy of Aboriginal students in NSW public schools</i>	8 August 2012
223	Rail Corporation NSW Roads and Maritime Services	<i>Managing overtime</i>	20 June 2012
222	Department of Education and Communities	<i>Physical activity in government primary schools</i>	13 June 2012
221	Community Relations Commission For a multicultural NSW Department of Premier and Cabinet	<i>Settling humanitarian entrants in NSW: services to permanent residents who come to NSW through the humanitarian migration stream</i>	23 May 2012
220	Department of Finance and Services NSW Ministry of Health NSW Police Force	<i>Managing IT Services Contracts</i>	1 February 2012
219	NSW Health	<i>Visiting Medical Officers and Staff Specialists</i>	14 December 2011
218	Department of Family and Community Services Department of Attorney General and Justice Ministry of Health NSW Police Force	<i>Responding to Domestic and Family Violence</i>	8 November 2011
217	Roads and Traffic Authority	<i>Improving Road Safety: Young Drivers</i>	19 October 2011
216	Department of Premier and Cabinet Department of Finance and Services	<i>Prequalification Scheme: Performance and Management Services</i>	25 September 2011
215	Roads and Traffic Authority	<i>Improving Road Safety: Speed Cameras</i>	27 July 2011
214	Barangaroo Delivery Authority Department of Transport NSW Treasury	<i>Government Expenditure and Transport Planning in relation to implementing Barangaroo</i>	15 June 2011
213	Aboriginal Affairs NSW Department of Premier and Cabinet	<i>Two Ways Together - NSW Aboriginal Affairs Plan</i>	18 May 2011
212	Office of Environment and Heritage WorkCover NSW	<i>Transport of Dangerous Goods</i>	10 May 2011
211	NSW Police Force NSW Health	<i>The Effectiveness of Cautioning for Minor Cannabis Offences</i>	7 April 2011

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
210	NSW Health	<i>Mental Health Workforce</i>	16 December 2010
209	Department of Premier and Cabinet	<i>Sick leave</i>	8 December 2010
208	Department of Industry and Investment	<i>Coal Mining Royalties</i>	30 November 2010
207	Whole of Government electronic information security	<i>Electronic Information Security</i>	20 October 2010
206	NSW Health NSW Ambulance Service	<i>Helicopter Emergency Medical Service Contract</i>	22 September 2010
205	Department of Environment, Climate Change and Water	<i>Protecting the Environment: Pollution Incidents</i>	15 September 2010
204	Corrective Services NSW	<i>Home Detention</i>	8 September 2010
203	Australian Museum	<i>Knowing the Collections</i>	1 September 2010
202	Industry & Investment NSW Homebush Motor Racing Authority Events NSW	<i>Government Investment in V8 Supercar Races at Sydney Olympic Park</i>	23 June 2010
201	Department of Premier and Cabinet	<i>Severance Payments to Special Temporary Employees</i>	16 June 2010
200	Department of Human Services - Ageing, Disability and Home Care	<i>Access to Overnight Centre-Based Disability Respite</i>	5 May 2010
199	Department of Premier and Cabinet NSW Treasury WorkCover NSW	<i>Injury Management in the NSW Public Sector</i>	31 March 2010
198	NSW Transport and Infrastructure	<i>Improving the performance of Metropolitan Bus Services</i>	10 March 2010
197	Roads and Traffic Authority of NSW	<i>Improving Road Safety: School Zones</i>	25 February 2010
196	NSW Commission for Children and Young People	<i>Working with Children Check</i>	24 February 2010
195	NSW Police Force NSW Department of Health	<i>Managing Forensic Analysis – Fingerprints and DNA</i>	10 February 2010

### Performance audits on our website

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au).

## Our vision

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