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## Gifts, Benefits and Hospitality Policy and Procedure

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### 1. Purpose

This policy states the VCAA's position on responding to offer(s) of gifts, benefits and/or hospitality. It is underpinned by the integrity and impartiality values and employment principles specified in the *Public Administration Act 2004*, and the *Code of Conduct for Victorian Public Sector Employees* (the Code). It sets out the policy and procedure for accepting, declining and recording offers of gifts, benefits and/or hospitality.

### 2. Scope and Application

The policy applies to all employees, Board members, Committee members, contractors, consultants and any individuals or groups undertaking an activity for or on behalf of the VCAA. It also includes gifts, benefits or hospitality given to members of an employee's immediate family if the donor can be linked to the employee's duties.

This policy applies to every individual working for and in the VCAA irrespective of position or level.

### 3. Principles

The VCAA is committed to and will uphold the principles of public interest, accountability and adopt a risk-based approach.

### 4. Policy Statement

Individuals have a duty to place the public interest above their private interests when carrying out their official functions. They will not accept gifts, benefits or hospitality that could raise actual or perceived bias or preferential treatment. Individuals are not to accept offers from those about whom they are likely to make business decisions.

Individuals are accountable for:

- declaring all non-token offers of gifts, benefits and hospitality
- declining non-token offers of gifts, benefits and hospitality
- seeking approval to accept the offer where an exception applies under this policy
- the responsible provision of gifts, benefits and hospitality.

Individuals with direct reports are accountable for:

- overseeing management of their direct reports' acceptance or refusal of non-token gifts, benefits and hospitality
- modelling good practice
- promoting awareness of the gifts, benefits and hospitality policy and procedure.

The VCAA through this policy and procedure and the VCAA Audit Committee, ensures gifts, benefits and hospitality risks are appropriately assessed and managed. Individuals with direct reports must ensure they are aware of the risks inherent in their team's work and functions and monitor the risks to which their direct reports are exposed.

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## 5. Definitions

*Gifts* are the free or discounted items and any item that would generally be seen by the public as a gift. These include items of high value (such as artwork or jewellery), low value (such as a flowers) or consumables (such as a box of chocolates).

*Benefits* include preferential treatment, privileged access, favours or other advantage offered to an individual. They may include invitations to sporting, cultural or social events, access to discounts and loyalty programs or promises of a new job. The value of benefits may be difficult to quantify in dollars, but as they may be valued by the intended recipient they may be used to influence behaviour.

*Business Associate* is an external individual or entity which the VCAA has, or plans to establish, some form of business relationship, or who may seek commercial or other advantage by offering gifts, benefits and/or hospitality.

*Hospitality* is the friendly reception and entertainment of guests. Hospitality may range from light refreshments at a business meeting to restaurant meals and sponsored travel and accommodation.

*Conflict of Interest* may be actual, potential or perceived. An *actual* conflict of interest is where there is a real conflict between an employee's public duties and private interests. A *potential* conflict of interest is where an employee has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken immediately to mitigate that future risk. A *perceived* conflict of interest is where the public or a third party could form the view that an employee's private interests could improperly influence their decisions or actions, now or in the future.

*Legitimate Business Benefit* is a gift, benefit and/or hospitality accepted or provided for a business purpose, in that it furthers the conduct of official business or other legitimate goals of the VCAA public sector or State.

*Reportable gifts* are those that are recorded, typically on a gift declaration form and on a gift register. At a minimum, reportable gifts include accepted gifts, benefits and hospitality that exceed a nominal value.

*Value* refers to the value in Australian dollars of the gift, benefit and/or hospitality offer.

*Public Official* has the same meaning as under section 4 of the *Public Administration Act 2004*. This includes public sector employees, statutory office holders and directors of public entities.

*Token Offer* is an offer of a gift, benefit and/or hospitality that is offered as a courtesy or is of inconsequential or trivial value to both the person making the offer and the individual. Whilst the primary determinant of a token offer is that it would not be reasonably perceived within or outside the VCAA as influencing an individual or raising an actual, potential or perceived conflict of interest, it cannot be worth more than \$50 (Australian) (including cumulative offers from the same source over any continuous 12 month period).

*Non-token Offer* is an offer of a gift, benefit or hospitality that is, or may be perceived to be by the recipient, the person making the offer or by the wider community, of more than inconsequential value. All offers worth more than \$50 (Australian) are non-token offers and must be recorded on the VCAA's Gift Register.

*Gift Register* is the VCAA's record of all declarable gifts, benefits and/or hospitality. It records the date an offer was made and by whom, the nature of the offer, its estimated value, the raising of any actual, potential or perceived conflicts of interest or reputational risks and how the offer was managed. For accepted offers, it details the business reason for acceptance and the officer approving the acceptance.

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## 6. Management of a Token Offer

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

While the primary determinant of a token offer is that it would not be reasonably perceived within or outside the VCAA as influencing an individual and raising an actual, potential or perceived conflict of interest, it cannot be worth more than \$50 (Australian).

If token offers are made often by the same person or organisation, the cumulative value of the offers, or the perception that they may influence the recipient, may result in the offers becoming non-token.

Individuals may accept token offers of gifts, benefits and/or hospitality without approval or declaring the offer on the VCAA's Gift Register.

Individuals are to refuse all offers (excluding token hospitality such as sandwiches) made by a current or prospective supplier made during a procurement or tender process by a person or organisation involved in the process.

## 7. Requirements for Refusing Non-token Offers

Individuals are to refuse non-token offers:

- that are likely to influence them, or be perceived to influence them, in the course of their duties or raise an actual, potential or perceived conflict of interest
- by a person or organisation about which they will likely make a decision. (This also applies to processes involving grants, sponsorship, regulation, enforcement or licensing.)
- likely to be a bribe or inducement to make a decision or act in a particular way
- that extend to their relatives or friends
- with no legitimate business benefit
- of money, or used in a similar way to money, or something converted to money
- where, in relation to hospitality and events, the VCAA will already be sufficiently represented to meet its business needs
- where acceptance could be perceived as endorsement of a product or service, or acceptance would unfairly advantage the sponsor in future procurement decisions
- made by a person or organisation with a primary purpose to lobby Ministers, Members of Parliament or public sector agencies and
- made in secret.

## 8. Bribe or Inducement

If an individual considers they have been offered a bribe or inducement, the offer must be reported to the VCAA Chief Executive Officer. Any criminal or corrupt conduct will be reported to Victoria Police or the Independent Broad-based Anti-corruption Commission Victoria (IBAC).

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## 9. Requirements for Accepting Non-token Offers

There may be some exceptions where there is a legitimate business reason for accepting a non-token offer. All accepted non-token offers must be approved in writing by the individual's Executive Director and in the case of an Executive Director, the VCAA Chief Executive Officer, recorded in the VCAA's Gift Register. It must also be consistent with the requirement that it does not raise an actual, potential or perceived conflict of interest or have the potential to bring the individual, the VCAA or the public sector into disrepute and there is a legitimate business reason for acceptance, it is offered in the course of the individual's official duties, relates to the individual's responsibilities and has a benefit to the VCAA, public sector or the State.

Individuals may be offered a gift or hospitality where there is no opportunity to seek written approval from their Executive Director before accepting. For example, they may be offered a wrapped gift that they later identify as being a non-token gift. In these cases, the individual must seek approval from their Executive Director within five business days.

## 10. Recording non-token offers of gifts, benefits and hospitality

All non-token offers, whether accepted or declined, must be recorded in the VCAA's Gift Register. The business reason for accepting the non-token offer must be recorded in the register and provide sufficient detail to link the acceptance to the individual's work functions and benefit to the VCAA, public sector or State.

## 11. Reporting

The VCAA's Audit Committee will receive a report annually on the administration and quality control of the gifts, benefits and hospitality policy and procedure and VCAA's Gift Register. The report will include the VCAA's gifts, benefits and hospitality potential risks (including multiple offers from the same source and offers from business associates), risk mitigation measures and any proposed improvements.

## 12. Ownership of gifts offered to individuals

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

## 13. Requirements for providing Gifts, Benefits and Hospitality

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

When deciding whether to provide gifts, benefits or hospitality or the type of gift, benefit or hospitality to provide, individuals must ensure any gift, benefit or hospitality is provided for a business reason in that it furthers the conduct of official business or other legitimate VCAA goals, or promotes and supports government policy objectives and priorities; and that any costs are proportionate to the benefits obtained for the State, and would be considered reasonable in terms of community expectations and does not raise an actual, potential or perceived conflict of interest.

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## 14. Containing Costs

Individuals should contain costs involved in the provision of gifts, benefits and/or hospitality wherever possible.

## 15. Related Legislation, Policies and Procedures

- VCAA's Conflict of Interest policy
- Public Administration Act 2004
- Code of Conduct for Victorian Public Sector Employees 2015
- Code of Conduct for Directors of Victorian Public Entities 2016
- Victorian Public Sector Commission's (VPSC) Gifts, Benefits and Hospitality Policy Framework.

## 16. Consequences of Breaching the Policy

A breach of this policy may constitute:

- a breach of the *Code of Conduct for the Victorian Public Sector*, and
- misconduct under the *Public Administration Act 2004* which includes breaches of the binding Code of Conduct for Victorian Public Sector Employees.

Disciplinary action consistent with the relevant industrial instrument and legislation, including dismissal, may be taken where an individual fails to adhere to this policy. This includes where an individual fails to avoid wherever possible or identify, declare and manage a conflict of interest related to gifts, benefits and hospitality.

In some circumstances, accepting a gift or benefit may constitute a breach of the secret commissions provisions (sections 175-179) of the *Crimes Act 1958*. This is an indictable offence that attracts a maximum penalty of 10 years imprisonment. Division 9A of the *Crimes Act 1958* also provides that common law bribery attracts a maximum penalty of ten year's imprisonment.

The VCAA will communicate its policy on the offering and provision of gifts, benefits and hospitality to contractors, consultants and other business associates. Those identified as acting inconsistently with this policy may be subject to contract re-negotiation, including termination.

## 17. Further Information

Individuals who are unsure about the acceptance of a gift, benefit or hospitality, or the application of this policy, should ask their Executive Director for advice.

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