

Transcript

Tuesday 2 July 2013

Integrity Coordinating Group Forum

Speakers

- **Ms Deborah Kennedy**, Facilitator
- **Mr Mal Wauchope**, Public Sector Commissioner and current Chair of the Integrity Coordinating Group
- **Mr Chris Field**, Western Australian Ombudsman
- **Mr Colin Murphy**, Auditor General
- **Mr Neil Douglas**, Acting Corruption and Crime Commissioner
- **Mr Sven Bluemmel**, Information Commissioner

Link to video

The video to which this transcript relates is available on the [Gifts, benefits and hospitality](#) page of the Integrity Coordinating Group's website.

Introduction

MS KENNEDY:

Ladies and gentlemen, good morning. A very warm welcome to the Integrity Coordinating Group's 2013 Perth forum, the fourth 300-plus forum the ICG has held and it is great to see so many of you here today representing local governments, state authorities and indeed universities. My name is Deborah Kennedy and it's a great pleasure to be your facilitator this morning. I take a moment to acknowledge the Noongyar people, the traditional custodians of the land where we meet this morning and pay respect to their elders past and present. Well, ladies and gentlemen, today is about shades of grey. Not necessarily 50 but shades nonetheless, that surround the receiving of gifts, benefits and hospitality in the public sector. It is of course far from black and white and that is what we're going to talk about. We're going to try to answer as many of your questions as possible and who better to do that than the State's Integrity Coordinating Group members who join me on the stage.

I'll introduce our esteemed panel in a moment but by way of background; the ICG was established in 2005 to promote and strengthen integrity within Western Australian public authorities. It works in partnership to assist public authorities without prejudicing their

independent statutory roles. It does so by facilitating the sharing of information about integrity activities and oversight functions, delivering a cohesive message to the sector and building the capacity of public authorities and their employees to demonstrate integrity when making decisions. The ICG holds metropolitan forums such as this one and also develops integrity based products for use by public authorities. Many of you will have already picked up a copy of the new gifts, benefits and hospitality product as you came in. The other product that you'll have is a brochure and that outlines the role of the ICG and each of its member bodies and also contains a biography for each of the members and the hypotheticals that we'll be working through today.

So let me take a moment now to introduce you to the panel and please save your applause until I finish outlining everybody. So joining me first of all on my closest left, Mr Chris Field, the Western Australian Ombudsman, and then we have Mr Colin Murphy, the Auditor General of WA, we have Mr Mal Wauchope, the Public Sector Commissioner and current Chair of the ICG, Acting Corruption and Crime Commissioner, Mr Neil Douglas and the State's Information Commissioner, Mr Sven Bluemmel. Please make the panel welcome.

Today, all of the gentlemen here have invited me to address them by their first names to make it a little easier for me today, as we progress. Well, gentlemen, you've all taken time out of what we know are very busy schedules so as a thank you, we have some gifts for you and Janelle is going to present those. Chris, a new top-of-the range iPad for you, that should help you out; Colin, some Favorites chocolates there for you, as a small token of our gratitude; Mal, we've got some footy tickets to the next Dockers match for you because we know how much you love the Dockers; and Neil, we know you appreciate a fine wine, so please do accept this bottle of Penfolds Grange; meanwhile, Sven, don't read too much into this, two tickets to the ballet for you. Now, Chris, let's start with you. Will you accept your gift today, this wonderful top-of-the-range iPad?

MR FIELD:

Well, Deborah I'm eyeing off the football tickets here and I won't mention Geelong and Fremantle on the weekend, but look I've always been singularly unfussed about iPads, I have to say. If my daughter was here, integrity out the window, she'd be taking it and walking. Look, as a senior public officer and certainly as a leader in an integrity organisation, the value of this gift is such that it simply wouldn't be appropriate for me to accept it. So whilst I appreciate your kind and generous offer, unfortunately, I'm going to have to say no. Thanks Deborah.

MS KENNEDY:

Thank you Chris. Colin, sorry, you seem to be on the losing end of the gifts but nonetheless ...

MR MURPHY:

I was wondering what was going on when I saw Chris' iPad and I ended up with the Favourites.

MS KENNEDY:

Yes, nonetheless a token, simply a token gift, would you consider accepting such an inexpensive gift to say thank you?

MR MURPHY:

Because it is a token, in accordance with our policy I certainly could consider accepting this gift. I'd have to think about whether it's going to influence my audit of activities and I'd say probably not. So this certainly does fit within our guidelines and our policies as something that I absolutely could accept. I'm pretty close to a couple members of my staff so I'm probably going to have to share it with some of my members of my staff, when I get back to work. We'll see how that goes.

MS KENNEDY:

Thank you Colin.

MR MURPHY:

Thanks Deborah.

MS KENNEDY:

Mal, we know how much you love the Dockers and we couldn't resist giving you some tickets to the next game. Although they lost of course at the weekend but tell us, will you be there cheering them on?

MR WAUCHOPE:

Well, in previous years Deb, I probably may not have but I might be interested this year but what I'll do, given the nature of the gift, I will be taking it back to a senior officer in the PSC. We have a process there whereby there's an independent assessment and they'll have a look at the actual, potential and perceived conflicts of interest issues, have a look at my statutory role and any risk of reputation and hopefully, they'll come up with the right answer and I'll be there.

MS KENNEDY:

We'll see if we can organise a corporate box. Neil, that Grange, worth about 800, so, it's not a bad drop, would you consider keeping that?

MR DOUGLAS:

Yes, I wish I could Deborah. Yes, under most registries this would be a token gift. The Commission has a policy as an integrity agency generally not to accept gifts, even token gifts. So it makes it easy in this case to decline but thank you very much for the offer.

MS KENNEDY:

You're welcome and Sven, finally, the two tickets to the ballet. We understand that you're very keen on the arts. Will you consider taking those tickets, receiving?

MR BLUEMMEL:

Well look, despite your get-out-of-jail card of saying, "Don't read anything into this," I'd like to read plenty into this, as clearly being the most cultured member of the ICG but while I would love to go along to the ballet, assuming of course, it's the Western Australian Ballet, I would not be able to accept on this occasion. My gifts policy would allow me to accept token gifts in certain circumstances, subject to the relationships that I may or may not have with the giver and whether there could be an actual, potential or perceived conflict of interest there. So we do on some occasions keep token gifts that can be shared with the office such as, say some chocolates or a lower value bottle of wine for example but this is not of that nature so regardless of the relationship, I wouldn't be able to keep it, unfortunately.

MS KENNEDY:

All right. Well, thank you gentlemen and you'll be glad to know that we're relieving you of all of those gifts, so that you needn't feel in anyway compromised. Well, ladies and gentlemen, you can see already as I said the shades of grey that I'm talking about. Had those gifts been from me personally, they may have been given innocently but of course, they may have been perceived as me trying to gain favour for more speaking engagements such as this one. Had the Duxton Hotel paid for those gifts, they could have been seen to be seeking favour as a venue as well for future events and of course, had they been from the ICG Chair's agency, the Public Sector Commission, you would certainly be wondering why an integrity agency is spending its money on lavish gifts for other public officers, particularly in this current climate of budget cuts.

Your perception of what is going on here is also paramount of course, in these situations. Public officers must do the right thing and of course, be seen to do the right thing and importantly, often perception is nine tenths of the law so one of the hardest things as you can imagine, to manage. A public officer's acceptance and provision of gifts, benefits and hospitality may present as a significant integrity risk. Think about recent and not so recent cases in the media. Extended MP winter breaks with hospitality thrown in, Toner Gate as it became known, the supply of incentives to buy from one toner supply company and more recently, an investigation into the Health Department, where staff were found not to have declared gifts from pharmaceutical companies.

The Western Australian community expects public officers to perform their duties impartially and with integrity and your personal interests mustn't conflict with your public duty so that taxpayer dollars can be seen to be used correctly.

Hypothetical 1

MS KENNEDY:

So let me begin by outlining the first scenario and of course, you are welcome at any time, should you have a question to ask it. This is not an amnesty so to speak, for all of you because it is being recorded and it will be on the internet but should you have a friend of friend who might have done something that you're not too certain was correct, please feel free to see if you can clarify the issue but let me run through the first hypothetical for you.

This is called *From little things big things grow*. Tony and Michelle work for a public authority, where their role is to approve applications to highly competitive coffee cart licences in a booming tourist town. When Tony and Michelle started working in the approvals branch five years ago, the manager informed them, sometimes repeat customers provided officers with small gifts like chocolates and champagne as a thank you. The manager assured Tony and Michelle that receiving the gifts was within the requirements of the authority's policies which could be found somewhere in the system. Tony took the manager's statements at face value, didn't read the policies. Michelle sought out the policies and did familiarise herself with them. The manager added it was only coincidental that repeat customers were prioritised over what she called ad-hoc customers.

Five years later, Tony is now the manager, Michelle is the assistant. The gifts provided by the repeat customers have become more generous over the years but Tony and Michelle figured with increasing pressure to process more applications with less staff, they deserve more thanks. Tony's received a great mini iPad and others working at the branch have also accepted generous gifts. John meanwhile, who recently joined the branch, notices that applicants always ask for Tony or Michelle and one day, when neither is available, he helps a person who operates a number of coffee carts and is seeking another approval. John is confused when the person offers him an iPod if he can move his request further up the queue. John checks the authority's policy and decides to report the issue as a conflict. The authority investigates and discovers many gifts have been provided to Michelle and she has recorded them in the gift register. When Michelle is interviewed, she believes she is doing the right thing in accordance with the policy but is unaware it was updated three years ago. She points out that Tony and others have also been receiving gifts.

So that's our first hypothetical. Let's go to you first Mal. Should public authorities have a framework in place to avoid the type of issues that have arisen in this case study?

MR WAUCHOPE:

Excuse me, most definitely. Agencies are required to have a code of conduct and an instruction that I've issued requires that code to address seven areas, one of which deals with conflicts, gifts, benefits and hospitality. So each agency should have a policy that actually deals with that and sets out the arrangements and how those issues are to be managed. Importantly, there also needs to be a framework that has appropriate induction and training in terms of how that code is

to be operated and this essentially starts at the top, so you'd be looking for the leadership of the agency to model this behaviour from the beginning, at the time that person enters the organisation.

MS KENNEDY:

Let's move. Colin, having conducted audits into the receipt of gifts within public authorities, would you say that your findings identify that there's room for improvement in the areas identified in this case study for example?

MR MURPHY:

Absolutely, Deborah. There's a number of issues in the hypothetical that are very familiar territory from what we found in our audits. I mean, the first thing of course is starting with a good policy and then making sure that people are aware of the policy and that's highlighted in the example. The one that concerns me is the fact that Michelle has read the policy and written down, made the entries in the gifts register and believes therefore, everything is okay and the number of people in our audit work who said to us, "We have a policy. We have a gift register and everybody is putting everything in the registry so we are fine aren't we?" That is an excellent start. It is a really good start to have a policy, to have the register and to have people recording but unfortunately, it doesn't end there and particular in this case, the question of discretionary authority, is the recipient going to be influencing decisions that are made later? And of course, in the coffee cart example, they are. So yes there are certainly a lot of parallels from our work in audit and the key lesson for me would be it's not just good enough to make an entry in the register. You then have to work out what's going to happen after that.

MS KENNEDY:

All right. Now, we'll come back to some of the points you've raised but Chris, I'll just ask you, could the administrative process of how approvals are granted be the subject of a complaint to your office in this case?

MR FIELD:

Yeah, they certainly could be Deborah. We can look at the administrative actions of most government authorities, state government, local government and universities and certainly how approvals are granted are one of those things that we can look at under our legislation. We'd also consider where the complaint comes from, someone who's affected by the issues. Here, for example, it could be an unsuccessful coffee cart vendor who actually wants to make that complaint. We could also look at complaints though on the basis that there is actually no person who has brought that to our attention but we are otherwise aware of the issue and that is what we call a no-motion investigation. That would be another way that we could actually look at this issue.

We'd consider whether something was lawful, fair and reasonable. So did these practices comply with the law, legislation, codes, guidelines, subordinate regulation? We'd look at whether

these matters were procedurally fair, that the actual agency applied the laws of procedural fairness, that people were given a fair hearing, they had considered relevant and not irrelevant matters, that processes were transparent and free of bias. We'd look at ultimately whether the decisions here were reasonable. In those cases, we're not substituting our judgment for a decision-maker, we're looking to see whether a decision-maker made a judgment that was reasonably open to them to make. There might be a range of decisions that a decision-maker could make and we're looking to see whether they made one that was reasonably open within that range and if they have then generally speaking, that decision will be okay and at the end of looking at these things we can make recommendations; recommendations about remedies to a complainant, recommendations about changes to administrative processes, things to stop this happening or make it less likely to happen in the future; training, compliance, other matters.

MS KENNEDY:

Thank you. Sven, I'll move to you as the Freedom of Information Commissioner. This case study relates to a public authority, is it the type of authority covered by the Freedom of Information Act?

MR BLUEMMEL:

Look, it almost certainly would be. Most agencies state and local are covered by the FOI Act and information relating to dealings between officers of an agency and the private sector, especially in an approvals or a tendering type process, are often made available under FOI. I had a recent matter before me where once I received the disputed documents into my office and went through them to see whether they were or were not exempt, the very first document was an e-mail from an agency officer to a private sector company with whom they were dealing, which started off by saying, "Thank you for that lovely dinner last night and the extraordinarily generous gift." Now you're not off to a good start when that happens and I think people are often surprised by how much can go out under FOI especially the scenario of say, an unsuccessful tenderer applying for correspondence between an agency and the successful tenderer. The idea that well it's third party, it's commercially confident, therefore you can't have it, is simply not true. In many cases, that has to be given out and you may well have to explain, "Well, why did you accept it?" But of course, if you go through the processes that we've already heard from the panel this morning, chances are, you will have a very good answer to that and you'll be able to say, "Well, here is exactly why I did what I did" and why it was in the public interest to behave that way.

MS KENNEDY:

All right. Now, I'll come to you now Neil. Is this the type of issue that would need to be reported to the CCC and could it relate to misconduct, particularly, perhaps in Tony's case?

MR DOUGLAS:

Yes anyone can report misconduct to the CCC. The principal officer of a notifying authority, agency, generally the CEO is required to report any conduct that that person suspects on reasonable grounds may involve misconduct and in this case, it's pretty clear both Michelle and

Tony have taken advantage of their position to get a benefit and not only for themselves but also for the coffee cart proprietors. So in this case, it's pretty clear there is misconduct. It might even constitute serious misconduct depending on the further circumstances so there would be a requirement to report it.

MS KENNEDY:

Well, gentlemen, anyone can answer this question. You can see how this has happened. They've started as a small company. Thanks, box of chocolates; thanks, bottle of wine; "Thank you for your help you've been great getting my application through." Perhaps given really quite innocently as just a gesture of thanks. Those presents start to become more generous as the economy grows. How does the worker involved, without offending the customer I guess, reject or decline those? What is the process for declining a gift such as that without causing offence? Anyone like to start with that, Mal?

MR WAUCHOPE:

I think it's fairly easy. I mean, it's not part of your job and I think if you set the ground rules early on then the behaviour will follow. I think unfortunately, in many cases, there develops a sense of or a culture of expectation and entitlement. So the people providing the service or looking for the tender, will expect that they'll have to provide some sort of benefit and the people who are making the decisions gain some sort of sense of entitlement that they can't deal with this unless they do get some sort of a benefit. So unfortunately, it sets up the culture fairly early so the idea is to, as I said before, have good ground rules in place and have those well understood; induction, training, revisiting, very important.

MS KENNEDY:

Colin, let's move to one of the points you made and that was that it's all very well writing in your gift registry all the wonderful gifts you got but that doesn't mean you can keep them. So what happens after they have been recorded in the gift registry what should be the process within a company or an organisation to ensure whether those gifts, like yours, can be kept, they're just a token or whether they should be handed back?

MR MURPHY:

Look, there should be an approval process. Somebody who's separate to the person who received the gift should be examining the circumstances and having a look at whether there is a consequence, the nature of the gift, the size, you know, the value, those sorts of things and in these circumstances they would identify that there's a discretionary authority, that the person receiving the gift is in a position to make a decision and look, I think those, there are circumstances where it can be quite awkward and difficult to hand back a gift but if you're explaining to somebody that this is a government procurement process, it needs to be seen to be beyond reproach and in those circumstances no gift of any sort is acceptable. So I think an independent person separate to the recipient, having a look at that process and making a

decision using the criteria that were outlined in the material that we have, would come to the conclusion that you need to reject the gifts.

MS KENNEDY:

So the gifts have been logged, how, should the gift immediately be reported to your superior or are they sort of to be kept in the cupboard waiting for a superior at the end of the month to go through and decide which gifts you can keep?

MR MURPHY:

Look, I think it needs to be immediate. It does need to be a very quick process and quite often the gift can actually be returned before you get to that recording process, if the circumstances warrant it.

MS KENNEDY:

Neil, say it's Christmas and you're handed a gift which, a traditional time of gift-giving, and you're handed a gift and it's Christmas time. Does that change it in any way?

MR DOUGLAS:

All circumstances arriving at a gift need to be considered, particularly in those agencies that have or allow acceptance of token gifts in certain circumstances. So the circumstances need to be taken into account but Christmas by itself wouldn't impact on the question of whether or not it's proper to accept the gift or not, or if it is accepted, then what's done about it in terms of recording, disclosing it and so on. So that fact by itself isn't going to be significant.

MS KENNEDY:

So it really would depend on what's surrounding. Chris, in terms of a Christmas gift, you're in a situation where you're perhaps at a function and someone hands you a gift and says, "Merry Christmas," like we've done today I guess, except it wouldn't probably be an iPad, how would you feel about accepting it at the time of Christmas giving or gift-giving?

MR FIELD:

I certainly don't think the Christmas aspect of it would necessarily change it, it may potentially make it worse, in a sense that it might appear entirely gratuitous. But look, the reality is, gifts will always depend on the circumstances, will depend on the organisation's relationship with the person proposing to give the gift, it will depend on the circumstances in which, the context to which decisions need to be made about those organisations and certainly, the more that your decisions could be perceived to be influenced by that gift, the less and less appropriate it will be to receive it. Fundamentally at the end of the day, public servants are here to serve the public interest and generally speaking, not exclusively there are all sorts of good reasons why people might want to be involved in benefits and hospitalities, stakeholder relationships and others but it's certainly true to at least some extent, there's no such thing as a free lunch and businesses

coming to approach a public servant with a suggestion of a gift may be looking for something, they may be looking for the private interest to be put ahead of the public interest and that's something we have to be always completely vigilant about.

MS KENNEDY:

Mal, looking back to when these two first started, back to our hypothetical, first started at this authority, just as junior people, where did they go wrong in the first place relating to all of this?

MR WAUCHOPE:

I think it starts with people coming into the organisation, as I indicated before, the lack of a proper induction process and lack of training around this. We've developed in the public sector a program called *Accountable and ethical decision-making* and every agency is supposed to run that out to their staff. That actually deals with the essential issues around these types of dilemmas. Particularly, the sorts of skills, the sorts of issues you need to take into account when making judgments. I think right from the beginning as I said, it's modeled at the top, so if the leadership in the organisation didn't see that as important, it didn't translate down the organisation and it just gets handed on and that becomes the culture. So I think it starts right at the top.

MS KENNEDY:

And leadership is an issue. Sven, how important is leadership in terms of modeling ethical behavior within an authority?

MR BLUEMMEL:

Look, I think it's probably the single most important factor. Nothing destroys morale more than management and leadership asking their staff to do one thing and then not doing it themselves and I think that's like a cancer, when that starts, it's disaster. So I think you have to model those behaviors really, really well. And the point that was made earlier about how do you do it, to politely refuse a gift in certain circumstances? Well, I think it's actually easier to refuse the first time than the tenth time, so I think bearing that in mind. But I think having that leadership, not just make sure that everyone knows what's expected but modeling that every step of the way is an absolute non-negotiable. That's got to be done.

Questions from the audience

MS KENNEDY:

Absolutely, don't we have any questions from the audience? Would anybody like to pose a question?

Audience – MALE:

One key point in this case is Michelle was receiving gifts for five years, three years after the policy was changed and got no feedback from the rest of the agency. Surely the key feature here is that the gift registry should be scrutinised by the agency and feedback provided. In addition, if somebody is giving a gift a number of times to a staff member that private person can be contacted and said, "Please don't do that again." Could you comment on that please?

MS KENNEDY:

All right. We'll ask Colin to comment on that. Thank you.

MR MURPHY:

Look, that's an absolutely excellent point. When you ask people in agencies "Do you they have a gift register?" And as I said, they proudly say they do and then if you ask them why they have a gift register, the answer is very, very obvious. It's to satisfy by me and Sven, actually for all of us, and parliamentary questions, and the newspaper. So there's a whole lot of reasons why they have a gift register but they missed the fundamental one, which is really to help the organisation to manage their gifts and benefits and how they do it. So John's point is absolutely right. You don't just have the register there. It should be somebody's role in the organisation to regularly scrutinise and review that register and see what's going on. Detect any patterns. Where are the gifts being offered and given? Where are they being received? What's happening across the organisation? And to provide that feedback and if that had been happening then you don't get processes going for five years undetected.

MS KENNEDY:

Otherwise, it becomes like a bridal registry, doesn't it? It's like, "Look what we've got." All right, now our second question.

Audience – MALE:

A question probably related to schools more than anything else and related to the second stage of gift-giving. So if Colin's box of chocolates is spread amongst 50 staff, that doesn't seem like a bad thing but if you try to spread Neil Douglas' bottle of Grange at about \$12 a sip or a lick in this case, how are you placed then, can you ameliorate the gift to justify it at a second stage?

MS KENNEDY:

Another good question. Who would like to tackle that one? Everyone's looking at you, Mal. Sven, would you like to? Did you say?

MR BLUEMMEL:

Yeah. Look, I'm happy to start off. The, again, that maybe a factor but ultimately, I think it's the relationship between the organisation and the giver and whether there is something there that can be an actual, potential or perceived conflict of interest. How the gift is then ultimately distributed? Look, it may be a factor, and say in the case of my organisation, small token gifts, as

I said, under our policy can be accepted, provided there is no potential for those conflicts that I mentioned but even so, our policy is only to accept those gifts where they can actually be shared and enjoyed by the staff of the office. Now that's just a decision that we've made but again, if someone gave us a carton of Grange and we got a bottle each because we're only a very small office, obviously, I would not even dream about accepting that because it's still the relationship between my office and the giver of the gift and what that means and the fact that it might then get distributed to me, is not really enough to fundamentally change the problem.

MR FIELD:

Regardless of how it's being dispersed it would be pretty hard to imagine the circumstances where accepting a bottle of Grange would ever be acceptable simply given its value and it's also status and it's what it represents, but a box of chocolates in the Department of Education would be incredibly typical. Think of every classroom around the state and we certainly, I don't think we necessarily suggest that receiving a box of chocolates was an inappropriate thing to do for example for a teacher but certainly in relation to things like Grange, it's both the non-token value but also the nature of the gift that really, you would think it's coming with some form of string attached when you've got something like that.

MS KENNEDY:

Mal, sorry?

MR WAUCHOPE:

I can. I've actually had that experience in the past, where very valuable gifts were presented to protocol officers in the Department of Premier and Cabinet by departing dignitaries at the airport. They had no choice other than to accept it. It would have been a breach of protocol not to, and one case was very expensive French perfume. At the end of the day, it wasn't something the department could use and, even those who go to the ballet, and it was something I ended up approving the particular protocol officer keeping.

MS KENNEDY:

Did he enjoy it?

MR WAUCHOPE:

Well, yes and there was no relationship in terms of perception and influencing decisions etcetera. So you can get unusual circumstances and I think in places like schools and hospitals, sometimes the gratitude of some of the clients is such that they will make a gift and I think it's appropriate to accept it.

MS KENNEDY:

When it's a dignitary, it's a gift to the state often or a gift to the Premier of the state or that sort of thing I suppose.

MR WAUCHOPE:

On occasions, yes.

MS KENNEDY:

Yes. Colin just wanted to add?

MR MURPHY:

Look, I think my colleagues are absolutely right in terms of the first thing is accepting, but there are other ways of disposing of a gift other than giving it to the staff. Certainly, Vinnies and many charities are happy to take things that are given. We've certainly had the circumstance of one item of running a raffle within the office and then the winner would get it, the proceeds would go to charity. So there are lots of other alternatives to disposing of something after you've made that first crucial decision about whether you are going to take it or not.

MS KENNEDY:

We've got time for one more question on this hypothetical. If there is one, yes, the lady at the front, just wait for the microphone. Thank you.

Audience – FEMALE:

Curious about culture. Some cultures gift-giving is actually part of the process, part of doing business. It's got nothing to do with, maybe I shouldn't say that last bit about receiving favour. A gracious way if you would, gentlemen for handling these sorts of situations?

MR DOUGLAS:

I think the easiest way is when the agency has a policy because it's easy to say, "Under our policy, this is what we do." So then it doesn't get personalised in terms of that particular giver or the person receiving it and if that's followed consistently, that's an easy way to deal with that situation and we all need to deal with those from time to time but I think the comment that was made earlier, the first time is always harder than the subsequent times. Once that pattern is established then that becomes the practice of the organisation, then that becomes less of a problem in applying it day-to-day.

MR BLUEMMEL:

If you're in a process where you think that that is likely to arise. So at some point you're hosting someone for a visit or whatever it might be and you think there is that danger that culturally there may be those sensitivities, it may be appropriate even when the thing is being set up that you address it at that point. So you address it in advance if, as part of the protocol to say, "Look, you know, here are the expectations and please note that under our policy, we're unable to accept any gifts or if you wish to show your appreciation then you know, feel free to make a donation to charity," or some such thing, addressing it in advance. Of course, that's not always possible,

quite often you're put on the spot but if it is something fairly large and something that's being planned, that might be an option to just take the sting out of it at that embarrassing moment.

MS KENNEDY:

And just, Chris?

MR FIELD:

Look, I think it's an excellent question. There are times, both now, when we celebrate an outstanding multi-cultural community, there are differences within our own community about gift-giving but also many of us are involved in international, particularly in this state where we have such a close relationship with Asia, quite properly and more broadly, so there can be cultural differences between countries for example about gift-giving. I think then it will always depend on the circumstances. It could be like for example, Mal indicated that it is actually appropriate to retain the gift, it may be circumstances where it's appropriate to receive the gift but once you return to Australia or once you return to your office to declare it then a raffle donated to the Princess Margaret Hospital, which will depend on the circumstances of what the gift was. Sometimes it will be appropriate however to, because of the nature of the gift to give a signal as politely as absolutely possible to say, "Look, this is something because of my role, because of the nature of what I do that I'm unable to accept although I very much appreciate the offer you've given me." So it will depend on the circumstances but certainly since I've been involved in the International Ombudsman Community more recently, gift-giving is certainly a part of that. Mostly they are token, absolutely token gifts but you do have to turn your mind to those sorts of cultural sensitivities. So it's an appropriate question to ask.

MS KENNEDY:

Just when you mentioned the raffle Colin, it made me think, would you have to ensure that the tickets were to the value of the gift?

MR MURPHY:

Really, as I've said you make the decision upfront about the acceptance of the gift and then it's just a matter of the disposition.

Hypothetical 2

MS KENNEDY:

Well, let's move on to our second hypothetical. The Australian Public Leaders Network, its annual conference is convened in a different location every year and is usually attended by more than 150 senior public officers from around the country. This year, the conference will be held in Melbourne from Monday to Friday in the week leading up to the AFL grand final. How's that for timing? One of the conference sponsors has offered seats in their corporate box and weekend accommodation for those who are presenting at the conference and their partners as a thank

you. This sponsor also has a number of events, which conference attendees can access for free. These events include dinner on Friday night and a champagne breakfast on the Sunday. Both provide the opportunity to rub shoulders with players from various clubs. Tickets to these events would normally cost in excess of \$150. The corporate executive of one Western Australian public authority has a number of officers who'll be speaking at the conference.

Some of these officers are thinking about staying on for the corporate box and additional accommodation offer with their partners arriving on the Friday. A number of other members of the corporate executive who aren't speaking are thinking about purchasing their own tickets to the grand final and taking the weekend as well. They are also thinking about taking advantage of the sponsor's free events. Three members of the corporate executive have decided to ditch Friday's conference day which focuses on ethical leadership to attend the sponsor's 'parade of teams' event in the city, after all you don't get to do that very often. So this is perhaps a scenario of which we can relate on a number of levels. I'll start my questions. I'll start with the Auditor General first, Colin hospitality isn't a tangible thing that you get to keep so should it be recorded anywhere, if you do indeed accept hospitality?

MR MURPHY:

Absolutely, hospitality, it is a benefit. It has a value. Those items do need to be recorded in a gifts register. Public servants particularly need to be careful around the perceptions around hospitality both in receiving and giving, so there's no question about that.

MS KENNEDY:

All right. Now, Mal, the public authority has no connection to the sponsor who is offering the corporate box, the accommodation and invitations to the events so there isn't really anything wrong with members of the corporate executive tacking on the weekend of course, is there and bringing their partners along to enjoy the grand final and events?

MR WAUCHOPE:

Look, I think this is really largely about perception and I think the problem starts with, in fact, that they had this conference in the lead up to the grand final, much better to have had it in Canberra in the middle of July and I think the perception might have been quite different. In terms of that particular case, I mean the perception is, are they there to do business for the community or the community's interest or are they there to have a good time? And I think one of the tests you would run is well, how would this look on the front page of The West tomorrow if it was to be revealed? So yeah.

MS KENNEDY:

All right. Now, Neil, what issues does this type of scenario raise from the CCC's perspective?

MR DOUGLAS:

All the same issues that arise in relation to gifts, what are the policies and how they apply? In this instance, although there may not be immediately a link between the person giving the gifts and individuals accepting them, you don't know what is just around the corner and that's always one of the difficulties in gifts. It's about fundamentally conflicts of interest or perceived conflicts of interest so that's an issue that needs to be taken into account as well. One of the issues with token gifts, which was mentioned, the question was asked earlier, there's difficulties in setting a dollar value both pragmatically and philosophically. Setting a dollar value tends to focus on it being okay if it falls within the dollar value but it may still be a conflict of interest. So sometimes that hides the real issue and setting a dollar value isn't always the best way to determine whether it's a conflict.

So in all these instances, and perceptions another big issue, a lot of people have difficulty appreciating that if they're not actually influenced then there's no issue. This is very much an area about perceptions and it's one area where courts have been particularly astute in this area, perceptions are as important as the actuality. So in issues like bias, whether or not a person is actually influenced has the same issue and the same consequences as if the person is potentially perceived, reasonably, to be influenced. So again, it's not an area that has many analogies both in public policy and the law but it's one where perceptions are as important as anything else and we're talking about reasonable perceptions here. We're not talking about perceptions that the fringes may have. It's really looking at the issue and seeing whether or not a person who understands the issues would see that someone may potentially be influenced in their decision-making or whatever their dealings with that particular organisation is.

MS KENNEDY:

Chris, let me move to you. The product that we're going to receive today outlines the importance of good record-keeping supporting transparency. Generally speaking, how much of the information that gets recorded is accessible and who can access it?

MR FIELD:

Well, certainly record-keeping is absolutely fundamental, there's no question about that. We need for the purposes of accountability to be able to see what's happened and so one of the things that can happen when an agency like mine looks at an issue like this, an incident like this is the records may simply not be available and that in itself then will be something that would have to be reflected upon, when we're actually making our findings and our views. So keeping good records of these matters, recording the hospitality, making sure that that is up to date, is a critical aspect of accountability. So accountability frameworks are both, thinking about what you're receiving but also making sure there are proper records. I can only emphasise very strongly both Neil and Mal's point that from my experience in the Ombudsman's office, most of the conflict of interest issues are not about the actual conflicts, ones that seem absolutely obvious on the face of it but people struggling a little bit more with perceptions of conflict of interest and the point that the courts and accountability agencies treat perceptions and actual conflicts as effectively the same is a critical point and it's about reasonable perceptions of course

not unreasonable. So it's about reasonable perceptions that could affect current decision making or decision making that you may reasonably be thought to make in the future or as Mal's made the point in this case, there will be some receipt of hospitality that even if you don't have a decision-making capacity now, even if you don't reasonably foresee one in the future, it may simply seem like the hospitality is so inappropriate, so excessive that as a public officer and a public agency, it's something that you should reject regardless of your relationship with the agency.

MS KENNEDY:

Sven, what about this, "You know, well, I mean, I've spoken for three days at this conference, I'll just take the Friday off and go and watch the team's parade through the center of Melbourne there," how appropriate or not is that?

MR BLUEMMEL:

Well, it reminds me many years ago when I first started off in legal practice, there was a very entrepreneurial conference that was put on I think a couple of times in Aspen, Colorado for Australian lawyers in the peak of the ski season and of course, the idea was, here's your tax-deductible trip to Aspen and so brazen I think was it that because the lifts open at nine, I think all of the conference sessions were from 7 until 9 in the morning and then I think there was another optional and very poorly attended session after the lifts closed but look, perceptions like that are extremely important and I think the issue that was raised earlier about the value, the token value of the gift and so on, I'm always very wary of any approach or policy that basically absolves individuals of having to apply their minds to a problem.

So having a policy that says, "Well, I can tick this box and this box and this box and therefore, I'm okay because I've ticked three boxes." I think if you're ever in that situation, alarm bells should be ringing because what a much better and more meaningful approach is something that requires you and perhaps, others who may have to approve or be consulted to apply their minds to it, to say, "I can't just tick this off because it's under \$50" or, "Yes, I've worked so very hard and I've attended this conference and the flight was the red eye special and it was really horrible and I've really suffered here, so I deserve it." That to me is another alarm bell. If you're ever saying to yourself, "I deserve this, I've earned this," then I think you just need to be taking a really hard look at the situation and discuss it with someone else who can look at it from the outside because chances are if you're saying that you're justifying something that you probably shouldn't be doing.

MS KENNEDY:

And another issue Mal, I guess is it might be \$55 in one shop, you might be able to find it at a discount store for \$49.95.

MR WAUCHOPE:

Exactly. I mean when I was head of DPC, we had similar problems with, dare I say, with ministers where there was a policy of a value of being around \$300 which could be accepted and a number of evaluations that came in about 295 and that is always the problem. It's really around the context as much as the value but the point I would add in this particular case is that by actually paying to go to a conference or actually using taxpayer's time to go to the conference and then not turn up at the conference is effectively a misuse of public resources and probably notifiable to the CCC in the circumstances.

Questions from the audience

MS KENNEDY:

Do we have any questions from the floor?

Audience – FEMALE:

I wanted to ask about the people who wanted to stay and buy their own tickets for the final. What do you think about that? They're using their own money but they are extending the travel that's being paid for by their workplace.

MR WAUCHOPE:

Again, I think it comes down to perception. I think it's not unusual for people when they go away on business, sometimes to tack on a little extra time at the end for personal business but it's again, a matter perception, if it looks like you've actually organised to go on work to have a holiday then that becomes a problem. So again, that's also a question of whether you're using your particular position to obtain a benefit for yourself? My advice would be if in doubt, don't do it.

MS KENNEDY:

Anybody else, want to comment on that particular question? Yes, Sven?

MR BLUEMMEL:

I think another one on that is if you can get over the hurdle that Mal just put there about whether there could be a negative perception. If you then are saying, "Well, I'm doing it at my own cost," make sure you cover all the costs. I mean if the flight back two days later is an extra \$400 then you've really got to pay for that on top of it as well because that's an extra taxpayers' expense than the cheaper flight that would have been the most appropriate one otherwise. So all of those things have to be considered but ultimately you should only get into those sort of discussions, once you have decided that there would be no inappropriate perception.

Audience – MALE:

Hypothetical three-day conference put on by a professional organisation and that professional organisation has negotiated the lunch would be on by Vendor A on one day, Vendor B, second

day, Vendor C on the third day and tea and coffee is put on by a fourth vendor. As a delegate paying my own way, am I entitled to have any of the lunches and any of the morning teas?

MR BLUEMMEL:

I'm happy to start off, I think it would initially again depend obviously on the perception. If you're looking at the situation where the lunch is clearly an integral part of the conference and in this case, I think you're even saying that you're attending at your own personal cost, is that right? I think that would be another factor to take into account to say, well, you've chosen to go to this in your individual capacity, perhaps for your own career development, your own professional personal development, whatever it might be. I think that would be a strong factor to say that that could be appropriate. Just a couple of things to be careful about, let's say if Vendor B, you know you're next week going to be on a panel that's going to be evaluating their bid, well then I would actually personally make a point of just staying away from that lunch for example, noting that down very, very carefully.

It's an unusual situation you've posited there, especially, given that you've paid for it yourself but if you're later going to be in a situation where you're going to be making decisions about that, you just have to be careful but again, that situation of Vendors A, B and C sponsoring the lunch and the dinner and so on, is fairly typical as conference organisers try to basically get people to share the risk of putting on what can be quite an expensive sort of event but I think those little traps, you've just got to watch out for. So if you're going to be very clearly making a decision about potentially one of those vendors, I think out of an abundance of caution, I would then just make a point of staying away from that lunch and recording that appropriately.

MS KENNEDY:

Did anyone else want to comment on that one?

MR FIELD:

It's always, it's a terrific example of one that's based on circumstances, paying for it yourself would tend to mitigate against concerns but if you are still there as a public officer, you must be keeping that in mind. It really would depend on, sometimes it depends on what the lunch is, if it's foie gras and lobster and caviar you might be somewhat more concerned but if you're looking in weeks later, making a decision as the decision-maker or part of a decision-making team, where you have influence in that process on someone who's providing lunch as Sven said that would then change the metric of the way you have to consider it. These things are really about, you have a series of sort of metrics in front of you, make a consideration, make a balanced judgment and bring good judgment to it; seek advice, talk to your manager, look at your policies, think about the front page of the West test.

In my office, we generally tend to do this. Once we've thought about it a bit too much in the sense that it has a lot of permutations and we're sort of adding \$400 on for the trip on return home. The answer is simple, just don't do it. Okay, once you have to explain it a bit too much to yourself, think about explaining it to anyone else and the answer is just don't do it. It's not worth

the risk to yourself. It's not worth the risk to the public sector. We have an extraordinarily well, high reputation public sector in the state. Not worth the risk of that sector to do it either.

MS KENNEDY:

Now, we had another couple of questions. Yes, please the gentleman at the back?

Audience – MALE:

Thank you. Conflict of interest being the mine field that it is on its own. We have agonised in reviewing our code of conduct, this is local government's perspective, on the question of whether gift-taking should be banned altogether. What, that's in the local government's perspective, what would be the pitfalls or the barriers to doing just that, being mindful of all the problems that you have, when you allow it, as we have been hearing today and well-worn cliché, by Chris that there is no such thing, as a free lunch?

MS KENNEDY:

Who would like to address that first, Colin, yes?

MR MURPHY:

Look, certainly one of the earlier audits we did in the space, it was pretty easy to rule almost every instance, as being contrary to policy because Department of Health, actually have a policy that said don't accept any gifts ever. So that meant if you're in the hospital and you left some chocolates or flowers for the nursing staff who looked after you, that was contrary to policy, which is clearly not appropriate and that's the risk that you do run. If you have a policy of no gifts ever, you're putting every employee into conflict with the policy immediately ...

MS KENNEDY:

Even at Christmas or ...

MR MURPHY:

Exactly those sorts of things. The key message really is about exercising judgment and you don't get people to exercise judgment by having black and white conditions like that.

MS KENNEDY:

Anybody else like to comment, yes, Mal?

MR WAUCHOPE:

Yeah. I support Colin's view there. I think it's very much about exercising judgment and as I said before, having an appropriate training regime around people being able to apply the right kind of judgment, it's not black and white and you'll always have a circumstance where for whatever reason a gift may be appropriately accepted. I know the local government rules are slightly

different. There's some stuff written into your legislation but I think it comes down to judgment and perception.

MS KENNEDY:

Yes, Neil?

MR DOUGLAS:

This matter can get complex and there are certainly strong reasons, that the panelists have talked about, about having some sort of provision for acceptance of token gifts or gifts in other circumstances but as an individual, of course, because the policy says you're entitled to accept gifts in certain circumstances, it doesn't mean you need to do it. As an individual, the simple approach is simply not to do it and have a practice of not accepting. It avoids a lot of life's complications by having that as a policy and the more you look into this area, the more circumstances dictate what's appropriate and what's not and I know from local government sphere the laws involved in this, regulations, the Act and policies are very complex, when you're looking at electoral gifts and gifts that are within the range of notifiable gifts, prohibited gifts and when you look at circumstances where you need to take into account what, the gifts that have been accepted within a six month period, not just a particular gift, it gets very complex and for an individual, as I say often the simpler way is just to take the easy route and not accept any gifts at all.

MS KENNEDY:

And Chris, did you want to make a comment?

MR FIELD:

Yeah, look I don't agree with prohibition. There has been some examples in history where prohibition hasn't worked too well, including provision itself but I do think this is a proper case for appropriate regulation, indeed the regulation we have, ongoing vigilance from management, ongoing vigilance and about cultures and training and certainly, it is a matter where we ought to err on the side of caution, I think that is always a good starting point but I do think generally speaking, there will be times when gifts, either because they're tokens, and circumstances, education, health would be too, would be many others, appropriate stakeholder relationships, cultural relationships where some form of gift or hospitality may be appropriate. As I say it's always a case by case circumstantial matter and it's within an overall judgment and regulatory framework because as I say if we approach it with caution, I do think it can be one that doesn't require prohibition.

MS KENNEDY:

Now we had a fourth, was there another question on that particular? Yes please, the gentleman here. I'll just wait for the microphone. Is there one at the back? Sorry, yes the lady in the pink and then the gentleman in the middle, if we can get a microphone to him.

Audience – FEMALE:

Supposing, as a reasonably low level officer, I went to this conference and attended all five days and on the last day a door prize was drawn, everyone who had attended the conference's name was put into the bucket. Supposedly, I won the door prize and wow, it's a flat-screen television, just what I need for my flat. Can I accept it? It's a door prize. They're clearly not targeting me.

MS KENNEDY:

You don't know how close you came to almost being part of that scenario. Who would like to? Who would like to answer that? Mal?

MR FIELD:

I've got an iPad by the way if you like.

MR WAUCHOPE:

I was going to say how sad for you. Look that comes up quite often but the easiest way again, is simply, don't enter into the door prize or if you're somehow entered without your knowledge, you don't accept it. It's just too hard to handle.

MS KENNEDY:

All right. Anybody else Colin, yes?

MR MURPHY:

I think conceptually the way to recognise it is it's not your gift. I mean you have, the public have paid for your attendance at the particular function that you're at.

MS KENNEDY:

It's a bit like what one would have thought, a raffle in the office. I mean it's not your gift but you've won it. Is it not the same thing?

MR FIELD:

No. The raffle in the office is paid for out of the employees' after tax salaries. So here's a situation, where the public has paid for that registration, the public's paid for your time in being there and my feeling under those circumstances, you've got one or two options, don't enter the door prize in the first place is what I would do and I go to a lots of conferences and there's the thing at the front to put your business card in. I never put my business card in. So that solves that problem but if you were to win the door prize then I'd expect that to be donated to the Children's Hospital or something like that at the end or just not accepted. We certainly for one of our employees would say, there's no circumstances in which you can accept that.

MS KENNEDY:

Did anyone else want to comment on that question before we move to our final one for this hypothetical? All right. Yes, please?

Audience – MALE:

It's really the issue of when agencies or local authorities provide financial support or sponsorship for events and then attach conditions like ten free tickets to be provided as part of the sponsorship and then they're distributed around the councillors for instance. In some cases, it might be to attract a major musical event to your local community and the condition maybe that ten free tickets \$40 each which is less than the \$50 but because of the demand for tickets, people are offering \$100 or \$200 on the internet to secure tickets to that event. What's your view about attaching conditions to promotional events? Especially in the run up to elections for instance if a condition is imposed that the presence of the mayor and councillors is to be recognised and the mayor is to be given the opportunity to give a five-minute speech. Do you have any advice to offer? Because increasingly we seem to be attaching to the sponsorship conditions which are really about promoting the agency or promoting individuals within the agency and it worries me that they really are in the category of not being appropriate.

MS KENNEDY:

Who would like to tackle that one first of all? Yes, Neil?

MR DOUGLAS:

There are some issues in sponsorship anyway for as far as the responsibility of the organisation to promote or jointly promote the venture or whatever is being organised. So sometimes there's good commercial reasons to have that sort of provision. There are difficulties and legal difficulties. In local government for example there's a real legal issue as to whether or not an elected member can take advantage of that whereas the employee can. So there are those legal issues on the side about whether or not it's legally possible. On the broader area, again, it comes down to particular circumstances about that particular sponsorship arrangement and whether it's appropriate for members of the organisation or employees or elected members to attend and in what capacity, if it's part of the role of the organisation which is going to benefit the organisation then there may well be good justification for it. If it's seen as being simply entertainment on the side then again, the same sort of issues that we've talked about in relation to gifts at conferences come into play. So there's no single answer to all these issues and I think that's becoming evident the more we look at particular fact situations but the importance of these forums is to indicate what are the relevant factors to be taken to account? What we should be looking at? And fundamentally, it's about a potential conflict of interest and the perception which affects integrity of the organisation and so on.

MS KENNEDY:

Chris?

MR FIELD:

I think it's a good question and it's a tough question. The way I would think about it is what comes first? Is there a decision about an event that is evidence based, it's gone through a range of regulatory processes, it's gone through a range of thinking about it? Is it, on a cost benefit basis in the public interest? And then those sort of other matters are just commercial arrangements as part of that process. It might be otherwise within the bounds of what we're talking about for who might accept it, otherwise perfectly legal. It's where matters go the other way around where those gifts and those inducements come first and they're really about trumping. This is not a great idea. This is clearly not beneficial to the community, it clearly couldn't pass the cost benefit test if we ran it through but the inducements are making people think that that's the reason it should go ahead. So it's blinding you to the public interest of the proposal. So I think sometimes it depends on where those two things sit as to whether it's appropriate to receive.

Hypothetical 3**MS KENNEDY:**

So we'll move on now to our third and final hypothetical this morning. The City Youth Board manages the Youth Development Trust Fund. The board's enabling legislation states the board is to manage the allocation of the funding for the construction of community and youth centers and to deliver youth programs. The board's latest project is the development of five new drop-in centers across Perth to provide entertainment for the city's youth in safe, supervised venues. Construction is nearly finished and the board has advertised a tender for the management of the centers. A number of not for profit and private sector organisations have tendered for the contract and those that were competitive were invited to make a presentation to the board, detailing their tender. Upon completion of their presentation, some of those tendering offered small gifts, a box of chocolates and some bottles of inexpensive wine. So that is our third scenario. Now let me start with Mal, a few token gifts being offered, any issues here at all?

MR WAUCHOPE:

Look, I think the problem with anything happening during the course of a procurement process would be a problem. Again, it gets back to perception, they maybe minor but I think people's view of it would be that it'd be inappropriate. So again, they shouldn't be accepted in that circumstance.

MS KENNEDY:

All right. I'll ask Sven, would other tenderers be able to access information regarding what gifts were offered and accepted during a tender process?

MR BLUEMMEL:

Look, potentially, yes. Certainly, as I said earlier, under the Freedom of Information Act, often it is entirely possible for an unsuccessful tenderer to obtain information relating to the successful tenderers dealing with a public authority. Beyond that though, I'd say that a lot of the information dealing with procurement processes and the like, shouldn't even have to wait for FOI to be made available. It should be out there proactively outside the FOI process and of course in this state, through procurement reform over the last few years, a lot of it is. So a lot of information like that has to be proactively published but even the detail for example, if an unsuccessful tenderer asked for extracts of the organisation's gifts register showing gifts made by the successful tender or indeed any other tenders in this process, would almost certainly succeed.

MS KENNEDY:

All right. Now, let me ask Neil. Do perceptions really matter and should these token gifts be declined? We're talking, you know a cheap box of chocolates, bottle of wine and to just say, "Look, thanks for hearing us," basically.

MR DOUGLAS:

Well, in principal, the answer is pretty simple and it's been mentioned, that they have to be declined. It's human nature that when competitors compete for a particular tender, it's never their fault about why they didn't do it, it's someone else's fault. So they're looking for reasons why the successful tenderer was awarded and even a token gift may be seen as that's won of the deal. This is all about fairness and the perception of fairness and we have to be absolutely rigorous in ensuring, and this is not just a public sector, the private sector as well. You have to be really rigorous in ensuring the ground rules are set and followed in a way that's seen to be fair and that's why the acceptance of any gift whatever the size is just not on.

MS KENNEDY:

In this circumstance. Chris, from the Ombudsman's perspective could the acceptance of gifts during a tender process undermine the process and of course, the final decision?

MR FIELD:

Yeah. Look, it certainly could for all the reasons that the other panelists have said. Here whilst the gifts are broadly token gifts, they could certainly create a perception, particularly amongst the tenderers, who didn't provide gifts if they're ultimately unsuccessful in the tender, that this process wasn't a fair process. It wasn't a process where there wasn't a bias, a conflict of interest that applied in relation of the way the tender was resolved but even if ultimately, the tender was given to a person who hadn't proffered a gift, the perception of the process may well ultimately render the final decision problematic in any event. So stress again perceptions are fundamentally important and the processes that we embark upon in relation to these sorts of matters can be as important as the actual outcome, which is really no good outcome without a good process and that process has to have both perception and actuality being correct.

MS KENNEDY:

Colin even if they wisely accept, decide not to accept the gift, should the offer of the gift be noted somewhere in a register?

MR MURPHY:

Look, I think in those circumstances it would be a very good thing to do, particularly around a procurement. Very important as everybody said to have the procurement seen as fair and balanced and beyond reproach and not influenced by gifts. As a public officer involved in that process, if I was offered a gift I'd be very, very keen to record the fact that I had been offered a gift and that I declined it. I think that is good practice.

MS KENNEDY:

Well, as it turns out after the tendering process, the successful company sends an expensive 'thanks for picking us' gift and that basket is valued at \$300 and it's sent to each board member. So each board member gets a \$300 basket. Now, tendering's complete, you've chosen who you want and they're just saying, "Look, thanks." Any conflict in accepting the gift now? Let's start with Mal.

MR WAUCHOPE:

Look, I think it's as big a problem if not a bigger problem because given the value of the gift, the fact that it's coming from the successful tenderer could certainly look like a reward for services given or indeed buying-off future contracts. So even if that isn't the reason for doing it, it's unfortunate but it's very difficult to manage that perception. So again, it should be declined and in the circumstances, I would argue that like Colin, I would record the fact that these had been offered to all the panel members.

MS KENNEDY:

Yes. Anyone else want to make a comment on that particular scenario?

MR FIELD:

I mean these things go to the fundamentals about rule of law, our democracy and our confidence in government. If you're going to take money from taxpayers and then give that to other people by a tender, an entirely appropriate situation to do, it must be done with absolute probity. It must be done with absolute transparency. It's one of those processes that you can't cut corners on. Whenever we do procurement in my office, I can simply say we look at every T and every I and cross and dot accordingly because it's just one of those processes that has to be done absolutely perfectly and it really is a good rule to apply in these circumstances that basket of goods should go very much straight back very, very quickly.

MS KENNEDY:

All right. Neil, yes?

MR DOUGLAS:

Yeah, as both Mal and Chris have said, that the particular decision is over so far as the tender is concerned but it may be seen as a reward but this is another example, where we need to have a look at the ongoing relationship of what might happen in the future and of course, here, you've got a successful contractor, that contract now needs to be managed over the term of the contract and the board is going to be involved in that management. So this is a clear case where it's obvious that potential decisions being made over the whole term of the contract for which that gift would be seen as influencing or potentially influencing the decisions. So it's one that can't be accepted and perhaps even a token gift in those circumstances would be inappropriate as well.

MS KENNEDY:

I might just Yes?

MR MURPHY:

We've talked about shades of grey and we've talked about the difficulty in returning gifts. I think in procurement circumstances those two issues are somewhat simpler because I think all of the people are involved in a procurement process, making a bid, they're usually quite happy to hear that government's not going to accept any gifts from anybody no matter how big they are. So your bid is going to be considered on its merits. If you can't afford an expensive gift, it doesn't matter because it's not going to influence the process. So I do think procurement processes make it easier for people to just say, "Look under these circumstances, no gifts, no tokens, no nothing."

MS KENNEDY:

Nothing.

Questions from the audience

MS KENNEDY:

Let me just open that up to the floor. Do we have any questions on that particular scenario or indeed any of the issues that we've spoken about today? Yes, please one, two. Get another microphone to the gentleman in the front as well.

Audience – MALE:

A lot of the scenarios, a lot of the discussion has talked about gifts and gift-giving which essentially are a personal benefit to the recipient but in cases, some of them have been partially alluded to, in fact the gift, whilst it's given to someone, is actually being given to the institution. Working in hospitals, where donations are an important part of our life and certainly we're all deductible gift recipients and we're receiving things. Sometimes you can get the case of

companies, that it's not actually at a tender time, it might be halfway through, a year or two into a tender, which might not go for another year, who might then make a significant donation to a hospital or where there is something being given to an individual but it's being given to the individual on behalf of or for the individual to accept on behalf of the organisation. I wonder if you'd like to just comment on that difference between an individual and the organisation and gift receiving as essentially in hospitals that is happening all the time.

MS KENNEDY:

Valid points and who would like to begin on that? Yes, Neil.

MR DOUGLAS:

The principles are similar even in those circumstances. For example, and you can see how it might arise where a donation, a large donation, is given to an agency and then if that, the giver then puts in a tender later for work. Now, it can be managed more appropriately I think, for agencies than it can for individuals. In that particular example, the agency may well, in terms of managing a tender process, give it to someone entirely independent and that way, there's an arm's length, it's seen to be an arm's length issue. It's very important of course it's all transparent. So the donation and the tender process, which we've said is, really it needs to be beyond reproach. So those issues can be managed. It's, I think it's easier in many ways for the organisation to manage it but the organisation still has to be wary of its own reputation in the same way as an individual does. So similar sorts of issues arise in relation to conflicts and perhaps different ways to manage it but it can be done.

MR FIELD:

Certainly wouldn't want a situation ever, where the sorts of regulatory considerations that you would give to gifts and benefits and hospitality, would ever apply to genuine philanthropic giving. I mean that's a fundamental part of our culture. You see lots of examples in this state of very generous giving to parts and medical and health institutions and that's critically important but that's giving without any expectation of return. The most you might get is your name on a building or something like that. You certainly wouldn't expect anything beyond that. That still would be distinguished from giving where for example, you might be involved in a tender process even though you're not actually giving it to an individual, it's given to an institution so I think you must separate the concept of genuine philanthropic giving which is about no expectation of return. It's just the right thing to do to give that money as opposed to something where I might ultimately still get some form of benefit or some form of potential advantage in a later of process.

MS KENNEDY:

Mal, yes?

MR WAUCHOPE:

The public interest test has to be applied here and this is the difference between something being received individually and something that's going to the organisation, particularly a hospital. So I think you would need to be able to demonstrate that it's in the public interest to accept that and to also manage the downside, the risks of accepting it, particularly when you're talking about procurement. I think it's more complex but it gets back to the point that we've been talking about earlier today, that is the need to have a decent framework for managing that and having people sufficiently skilled to make the right sorts of judgments.

MS KENNEDY:

Let me move to the second question that we had from ... Yes, please?

Audience – MALE:

My question is probably to Colin, perhaps to Mal and it's to do with frequent flyer points. That's an area that we've struggled with a lot, now I'm just wondering, I'm aware of a couple of jurisdictions that I understand that have travel contracts that preclude public servants receiving frequent flyer points, in the commonwealth and New South Wales. Is there any reason why we can't do that or if we can't do it, should we include frequent flyer points on our gift register?

MS KENNEDY:

Colin?

MR MURPHY:

The principles on frequent flyer points are a lot easier than the pragmatics. The principles are very, very simply that if you've earned frequent flyer points in your capacity as a public servant with a flight paid for by the taxpayers then those points belong to the taxpayer. If you've earned those points in your own right with your credit card or your flights or anything that you've done then they're completely yours. It's easy to say, very hard to do because distinguishing these days which points are which, it involves a bit mathematical gymnastics to actually do it but that's actually what's required under our current system so that yes, if you've earned frequent flyer points in your capacity as a public servant in travel that's been paid for by taxpayers then you should seek opportunities to use it either for a free flight or whatever you can, as a public benefit so that it goes back to the state who has ultimately paid for it. The only issue, it's easy to talk about that in contextual terms. I do appreciate the absolute difficulty in applying that and when you think about it, it's absolutely in the airline's interest to make it as difficult as they possibly can for us to do what you're talking about.

MS KENNEDY:

Mal?

MR WAUCHOPE:

Just a very quick one then. John we had a go at this during the 1990's about trying to negotiate an arrangement with the airlines with the minister at the time. It got so far and essentially as Colin indicated; it wasn't in the airline's interest so they wanted to continue the arrangements. We put public servants on their honour to make sure that they observe the policy. I can't guarantee that's always the case.

Forum conclusion

MS KENNEDY:

Well, time unfortunately is the enemy this morning and has beaten us so I'll have to now say thank you for the questions from the floor. I do hope that you have enjoyed this morning's conundrums as much as we have. We've tried to present it in a light way. We've had some very funny video clips and it's a great pleasure now to invite the ICG Chair and Public Sector Commissioner, Mal Wauchope to the lectern to close today's session and officially launch the ICG 2013 product. Please make Mal welcome.

MR WAUCHOPE:

Thanks Deborah and I had to watch whether I was treading on Colin's feet there. I think it's fair to say that we've had a very lively and interesting session this morning. Most of what we've been discussing today you'll find in the product that you've already got. That guide has been designed to assist authorities to understand and identify the risks concerned with the offer, acceptance and provision of gifts, benefits and hospitalities. It also contemplates how authorities can manage those risks and promote good decision-making through sound processes and policies and particularly transparent record-keeping, communication and review activities. We wouldn't be public servants if we didn't come up with a particular gimmick around this and we've come up with what we refer to as the five Rs, you'll note that each fact sheet relates to one of these Rs. They are risks and reputation, requirements, raising awareness, recording and review and much of the discussion was around that today.

It's a good practice guide for managing gifts, benefits and hospitality but it's not a definitive policy or framework. I think one of the key messages that comes from today is that there is no one size that fits all to successfully managing this issue. It's not straightforward. It does require good policies. It does require good processes and above all, it requires good judgment. Each individual situation can be complex given the different operating context of each authority, particularly across the public sector, local government and the universities. All the different levels of risks that are involved and we've touched on this, that while a blanket 'no acceptance' approach may be suitable for some authorities or even parts of an authority, where they're dealing with procurement, it may be impractical for others so it's up to the CEO to actually work out what policy and practice works best in their context. Any framework, policy or process developed must be fit for purpose and comprehensive. Fact sheet two gives an overview of how authorities can go about establishing a position on managing gifts benefits and hospitality.

One of the things I would ask you to do is to go back to your organisations and review your conflicts of interest and your gifts and benefits policy and consider whether it still fits your requirements. Any policy position established must also be communicated to your employees and that's the point I've been repeating today. There's absolutely no point having a policy if your employees do not know about it. Fact sheet number three covers this. Over many years in the government, I've heard people say, "I simply didn't know about it," when they are trying to justify decision or action. This isn't good enough. While it's important for your employees to be aware of how they can appropriately manage this issue, it's becoming increasingly important that we educate our suppliers and contractors about this as well.

As we move towards more partnership arrangements with the non-government sector, which is an environment which is very different from the context in which we operate in, it's important to point out that what is acceptable and what is not to avoid issues arising in the first place. If a gift is to be accepted, it's vital that a transparent record of that gift is kept. You must ensure that enough of the right information about conflicts of interest and gifts, benefits and hospitality are recorded both for internal and external use. Also consider offers of gifts that are not accepted, need to be recorded. We've had brief discussion about that. Fact sheet number four, provides you with some assistance. It's a matter of horses for courses as far as I'm concerned.

No good system or a cycle works without feedback, review and continuous improvement. You've heard us speaking about this throughout the morning. Fact sheet number three will give you some practical guides. What appears in your gifts, benefits and hospitality register overtime can be an early warning signal to a possible integrity risk you may not have considered so I encourage you to see this process as an opportunity to detect issues and keep your authority ahead of the game. From my perspective, the biggest risk lies with reputation to the individual agency and the officer concerned. In my experience it takes a long time to establish a reputation and a bad decision or action to destroy it in an instant. What other people think is one of the hardest things to manage and I think that came through loud and clear today as well. Ensuring that any decisions made around the offer, acceptance and provisions of gifts, benefits and hospitality are transparent and capable of review, is realistically the only way to deal with it. You've heard about the West test today. How would you feel if this appears in the front page of the West? Can you defend your decisions and actions with confidence or with concern? I often find that we're not the best judges of our own situation when presented with an ethical dilemma. I subscribe to the theory, and I think you've heard it from my colleagues today, that if in doubt, leave out. Just don't accept the gift. Always talk it through with a colleague or a manager and your agency processes should always provide for this, particularly in independent assessment.

The final point I'd like to make regarding this topic and the product is that CEO's can't transfer their decision-making responsibility on these matters. Neither myself, nor my colleagues here will accept responsibility; it's up to the CEO of the agency concerned. It's up to you to design and implement a policy or a procedure that suits your organisation and takes into account your business context and enforce it as necessary. It must be defensible. We trust that the guidelines we provided today will help you to achieve this. We commend them to you.

Today's forum is the fourth major forum of 300-plus people that the ICG has had in its history. We support public authorities by building the capacity of their employees to demonstrate integrity when making decisions. I think we have achieved a lot in a relatively short period of time. As you know we were established in 2005 to promote and strengthen integrity in Western Australian public authorities. This financial year, I have been the chair of the ICG and the position rotates on an annual basis. It will be my pleasure to hand it over to Sven in August. This year, we held an inaugural regional forum in Geraldton in May and we had 53 public sector and local government employees join us for similar session as we've had today. I thought this was a very highly rewarding experience and I daresay that regional visits will be on the card again, budget's pending. In the last three months, we've also launched our new look website. Hopefully, it's up on the screen behind me. When you get back to your office, I encourage you to download additional copies of the new gifts, benefits and hospitality product for your staff. I encourage you to link to our conflicts of interest, integrity and decision-making and gifts, benefits and hospitality products from your intranet. Our products provide guidance and practical tools for managing interest and making ethical decisions.

In addition, I, together with my colleague the Auditor General and the Corruption and Crime Commission will be speaking at this year's Australian Public Sector Anti-Corruption Conference in Sydney and our presence there will certainly have an ICG flavour. So in conclusion, I would like to thank Deborah in particular for her work this morning in guiding us through the hypotheticals and keeping the session on time. Deborah's done a lot of work with the public sector in recent years and I back her understanding of the public sector against most of the people in the public sector. I'd like also to thank my fellow colleagues from the ICG for their attendance today and their enthusiasm for the work we have undertaken over the last 12 months. I'd also like to thank you for attending today. I know it's time out of your very busy schedule. I hope that you can take some of the key points we've covered today back to your authorities and share with your colleagues.

On the final note, can I thank the PSC Events Management Team for putting this event on today? A lot of effort went into it and some of them have been here since 6.00 am this morning. So with that I would like to wish you a good morning and thank you very much.

MS KENNEDY:

Thank you Mal and may I ask you ladies and gentlemen to put your hands together again for our panel Sven, Neil, Mal, Colin and Chris and thank them for their time with us this morning. It's been a great pleasure to facilitate this forum and as Mal has mentioned, please do collect your copy of the new product from the tables outside or on your way out the door and we assure you this is a gift, you can keep. Thank you very much and enjoy the rest of your day.