

Bribery, corrupt commissions and rewards

Tip sheet for NSW public officials

Gifts or benefits may be offered with the intention of winning favours. A gift or benefit is considered a bribe if it is offered or sought in order to influence a person's behaviour in relation to his/her official duties. This brochure is designed to assist NSW public officials in dealing with offers of bribes, corrupt commissions and rewards. The Independent Commission Against Corruption (ICAC) publication, *Managing gifts and benefits in the public sector*, discusses how to deal with gifts and benefits that fall outside the definition of bribery.

Legal framework

A person who offers a gift or benefit to a public official, or a public official who accepts a gift or benefit, may, under some circumstances, be guilty of an offence under section 249B of the *Crimes Act 1900* (NSW).

Offences under section 249B of the *Crimes Act 1900*

The *Crimes Act 1900* includes wide-ranging offences in relation to the provision of corrupt commissions or rewards. These include:

Receiving or soliciting benefits

- Corruptly soliciting any benefit as an inducement or reward for doing something (or not doing something), or showing (or not showing) favour or disfavour in relation to the person's duties.
- Corruptly receiving any benefit as an inducement or reward for doing something (or not doing something), or showing (or not showing) favour or disfavour in relation to the person's duties.

Offering benefits

- Corruptly offering a person any benefit as an inducement or reward for that person doing something (or not doing something) or showing (or not showing) favour or disfavour in relation to the person's duties.

- Corruptly giving a person any benefit as an inducement or reward for that person doing something (or not doing something), or showing (or not showing) favour or disfavour in relation to the person's duties.

A person cannot rely on the fact that it is customary to offer and receive gifts and benefits in his or her trade, business, profession or calling, as a defence (section 249J of the *Crimes Act 1900*).

The maximum penalty for a conviction under section 249B of the *Crimes Act 1900* is seven years imprisonment.

Corrupt conduct

The ICAC may find that a person has engaged in corrupt conduct by giving or receiving a gift or benefit in relation to the exercise of public official functions. The ICAC can also obtain the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of a person and/or recommend that consideration be given to the person being dismissed and/or disciplined.

Case study

The ICAC investigated the activities of an employee of the NSW Department of Housing who was responsible for the sale of Department properties. Part of his job involved appointing real estate agents to sell those properties for a commission.

The ICAC investigation revealed that the employee had developed a friendship with a real estate agent he had appointed to sell numerous properties and had also accepted gifts and benefits from him, including two holidays at Queensland resorts. Under the Department's Code of Conduct the employee was required to disclose such a friendship to his manager, and decline and/or disclose offers of such gifts and benefits, but he failed to do so.

There was no evidence of any express agreement between the real estate agent and employee to the effect that the holidays were provided in return for the employee showing favouritism towards the real estate agent in relation to his official functions. Nevertheless, the ICAC found that the holidays were offered by the real estate agent, and accepted by the employee, as corrupt inducements or rewards. It made findings of corrupt conduct against both men and referred the matter to the DPP for consideration of prosecutions under section 249B of the Crimes Act.

If you are offered a bribe

If you think you have been offered a bribe, a corrupt inducement or a reward, it is important that you take appropriate action to minimise the possibility of negative consequences.

The following are the steps you should take to protect yourself if you are offered a bribe:

1. Immediately reject the offer

Do not accept the offer, even to use as evidence of a bribe. If you accept the bribe for any reason, the person who offered it could subsequently allege that you were given more than you reported. It might also be argued that you handed in the bribe after accepting it because you feared getting caught or changed your mind about accepting it.

2. Terminate the interaction with the person

If the bribe was offered in relation to some activity you were undertaking for the person or his or her associates, cease that activity immediately.

For example, if a driving examiner is offered a bribe while conducting a test, he or she should terminate the test as soon as the offer is made, rather than continuing the examination as if no offer had been made. Similarly, if an officer is involved in a longer term interaction with a person attempting to make an offer, such as conducting periodic inspections of that person's workplace, then the officer should ask to be reassigned so as to cease any further dealings with that person.

3. Keep a record of the events

It is important to have a clear record of what you believe happened. As soon as possible, make notes about what you saw and heard. As far as possible, state who said what, such as "I said ..." and "He said ...", to ensure clarity and accuracy. Such information may be used later as evidence to support your version of events.

4. Inform your supervisor

Inform your supervisor of the incident, including all relevant details, as soon as possible and confirm with your supervisor what action he or she will take. If your supervisor is involved in the incident, then report it to an appropriate senior officer.

5. Consider contacting the ICAC directly

The ICAC can receive complaints about corrupt conduct directly from any person. If you wish you may contact the ICAC yourself to report the incident by telephone on (02) 8281 5999 or freecall 1800 463 909 (for callers outside metropolitan Sydney).

6. Check your agency's policy in relation to bribes

An initial check of your agency's policy in relation to bribes may provide you with specific instructions as to what to do in these circumstances. Any policy guidance additional to that listed here should be followed.

7. Make a formal report

Prepare a formal report for your agency. Include:

- the date, time and place of the incident
- the circumstances of the offer (what it involved and what you think it was intended to persuade you to do)
- who offered it and their contact details (if known)
- what you said or did
- any other relevant details
- your signature and the date.

The report should be provided to your supervisor and you should keep a copy for your records.

8. Discuss future relations

Discuss with your supervisor (or appropriate senior officer) exactly how future relations with the person who offered the bribe should be conducted.

9. Confirm what action your supervisor takes

Your duty is to inform your supervisor about the incident. Your supervisor's duty is to inform his or her line manager. You should confirm with your supervisor that this has been done. If it has not, you should do this yourself. Alternatively, you can report the incident directly to the ICAC.

Your agency's responsibilities

Inform the ICAC and the police

The chief executive officer (CEO) of your organisation has an obligation under the *Independent Commission Against Corruption Act 1988* (the ICAC Act), to inform the ICAC about any matter that he or she suspects on reasonable grounds concerns or may concern corrupt conduct. This would include reporting incidents that the CEO believes constitute bribery.

Additionally, the CEO should inform the police. Failing to inform the police that a bribe has been offered may, of itself, amount to an offence in that a serious offence has been concealed.

What happens next

All complaints and reports received are carefully considered by the ICAC.

The ICAC may approach the situation in a number of ways, such as conducting a formal investigation, requesting the agency to investigate the incident, providing advice to the agency regarding corruption prevention or referring the matter to another agency.

The ICAC can provide evidence to the DPP for the purpose of the DPP giving consideration to the prosecution of individuals for specific offences.

Additional information

Additional information about bribery, corrupt commissions or rewards can be obtained from:

- ICAC website, www.icac.nsw.gov.au
- Crime and Misconduct Commission (CMC) Queensland website, www.cmc.qld.gov.au

- *Report on an investigation into relationship between certain Strathfield Councillors and developers*, ICAC, June 2005
- *Report on an investigation into corrupt conduct of an officer at the Department of Housing's Miller office and other persons*, ICAC, January 2008
- *Report on an investigation into allegations of bribery relating to Wollongong City Council*, ICAC, December 2007
- *Public sector agencies fact sheet number 07: Gifts*, NSW Ombudsman, 2004.

Legislation

- *Independent Commission Against Corruption Act 1988* (NSW)
- *Crimes Act 1900* (NSW).

All current NSW legislation is posted at www.legislation.nsw.gov.au

Further advice

The ICAC has an advice service which can be used to obtain corruption prevention information about specific circumstances that may involve bribery, corrupt commissions or rewards.

Telephone: (02) 8281 5999, 1800 463 909 (toll free for callers from outside Sydney) or (02) 8281 5773 (for hearing-impaired callers only).

Note:

This publication provides readers with advice, guidance and/or recommendations regarding issues related to the offer of bribes.

The advice relates to what the ICAC considers at the time of publication to be best practice in relation to these issues. It does not constitute legal advice and failure to implement the advice, guidance and recommendations contained herein would not necessarily constitute corrupt conduct, which is defined in the ICAC Act.



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ICAC tip sheet series

Tip sheets provide readily accessible and practical advice on managing and/or preventing particular types of corrupt conduct. More detailed advice can generally be found in an ICAC guideline publication on the relevant topic. The ICAC's investigation reports also provide useful corruption prevention advice that is often widely applicable across the NSW public sector. To access the full range of ICAC publications go to www.icac.nsw.gov.au and follow the links.