



# Gifts and hospitality policy

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## Introduction

1. The Australian Competition and Consumer Commission (comprising the Chair, Deputy Chairs and Commissioners) makes decisions under the *Competition and Consumer Act 2010*. ACCC staff support the Commission in carrying out its duties. For the purposes of this policy, Commissioners and staff are referred to as “ACCC officials”.
2. This policy provides guidance to ACCC officials to understand their responsibilities in relation to their conduct when they are offered gifts, hospitality or benefits from sources external to the Commonwealth in the course of performing their roles. It helps identify the situations where these responsibilities arise and the steps that need to be taken in response.
3. The legislative basis for these obligations includes the *Public Service Act 1999*, the *Public Governance, Performance and Accountability Act 2013* and the *Criminal Code Act 1995*.

## Context

4. The following are key considerations to be balanced when considering the acceptance of gifts, hospitality and benefits offered to ACCC officials:
  - (a) **Conflict of interest.** ACCC officials should not accept any gifts, hospitality or benefits that give rise to an actual or perceived conflict of interest. A conflict may arise because acceptance (either in a particular instance or cumulatively) may influence, or be perceived to influence, the actions or decisions of ACCC officials. The ACCC’s integrity as an independent regulator must remain beyond reproach.
  - (b) **Engagement.** In order to conduct its work effectively, the ACCC frequently engages with stakeholders domestically and internationally, including at locations other than ACCC offices and other than during working hours. Stakeholders include representatives from the private sector, the community sector, consumers and individuals.
  - (c) **Transparency.** If agency policy and practice in relation to gifts, hospitality and benefits is not generally visible to the public, it is easier for negative assumptions or representations to be made which may impact the agency’s reputation. Accordingly, the ACCC publishes this policy and a quarterly register of gifts, hospitality and benefits that have been accepted by Commissioners. The register of gifts, hospitality and benefits that have been accepted by ACCC staff is published bi-annually.
  - (d) **Clarity and consistency.** It is important that the ACCC’s approach is clear and is implemented consistently. This policy provides guidance on some of the most common scenarios faced by ACCC officials as well as some less common scenarios.

## Principles

5. An ACCC official should not accept any gift, hospitality or benefit if it would result in an actual conflict of interest.
6. An ACCC official should only accept a gift, hospitality or benefit, when there may be a perceived conflict of interest, when it would benefit the ACCC in carrying out its roles, duties and/or functions.

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7. A conflict may arise because acceptance (either in a particular instance or cumulatively) may influence, or be perceived to influence, the actions or decisions of ACCC officials.
8. Any gift, hospitality or benefit offered to a partner or family member of an ACCC official is to be treated as being offered to the ACCC official if the gift, hospitality or benefit arises from the ACCC official's position as an official of the ACCC.

## Process when considering a prospective gift, hospitality or benefit

9. When considering accepting a gift, hospitality or benefit, an ACCC official should:
  - (a) Assess the offer to determine whether it gives rise to any actual or perceived conflict of interest.
  - (b) If there is no actual conflict of interest and the offer of a gift, hospitality or benefit would provide a benefit to the ACCC in carrying out its roles, duties and/or functions:
    - a Commissioner may accept
    - a staff member should seek approval from their supervising SES officer to accept
  - (c) If a Commissioner or a supervising SES officer (in relation to a staff member) has any reservations about whether there is any potential conflict or sufficient benefit to warrant the acceptance of the offer, they should consult the COO prior to acceptance.
  - (d) The ACCC Chair and Commissioners should declare the acceptance of any gift, hospitality or benefit into their own register to be published quarterly.
  - (e) ACCC staff should declare the acceptance of any gifts, hospitality or benefit valued at \$50 or more into the ACCC Gifts and Hospitality Register "gifts register", which will be published bi-annually.
  - (f) An ACCC official should follow the above process as soon as practicable following an offer or receipt of the gift, benefit or hospitality.
10. The details to be entered into the gifts register include:
  - name of ACCC official who accepted the gift, hospitality or benefit
  - date that the gift, hospitality or benefit was received and date declared/recorded in the register
  - (for an ACCC staff member) the name of SES who approved acceptance;
  - description of the gift, hospitality or benefit;
  - from whom it was received;
  - the nature of the occasion and the context for acceptance;
  - if it is a gift or benefit, who used or retained the gift or benefit; and
  - the estimated value of the gift, hospitality or benefit, if known.
11. Often the value of the hospitality, gift or benefit provided is not known. For a gift, the official should provide a reasonable estimate of the value of the item if practicable. For hospitality, 'N/A' should be recorded against the value in the register.

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## Guidance: what to accept, what to decline and what to declare

### Hospitality – accept, decline or pay?

12. In order to conduct its work effectively, the ACCC frequently engages with stakeholders, domestically and internationally, including at locations other than ACCC offices and sometimes outside working hours. Stakeholders include representatives of the private sector, the community sector, consumers and individuals. Often during this engagement the ACCC official may be offered hospitality in the form of food and beverages.
13. When determining whether to attend an event with hospitality, ACCC officials should consider the following factors:
  - (a) whether the purpose of attendance is directly related to the ACCC's roles, duties and/or functions and holds value to the ACCC
  - (b) whether the ACCC is speaking or otherwise benefits from representation
  - (c) whether a range of stakeholders will be in attendance.
14. Factors that may weigh against an ACCC official's attendance at an event with hospitality include:
  - (a) where the purpose of attendance is only indirectly related to the ACCC's business
  - (b) where there will be limited attendees
  - (c) where the event is sponsored by a private entity
  - (d) where the location could be considered inappropriate.
15. The following guidance outlines circumstances in which it is okay to accept hospitality, circumstances where more careful consideration is required of the factors outlined above before acceptance, and the circumstances in which it is not okay to accept the hospitality being offered.



### Circumstances when it is okay to accept hospitality

16. The following situations are not regarded as hospitality (for the purposes of this policy) as it is included in the cost of the service being provided, so these may be accepted and not declared:
  - Catering at conferences and seminars (morning tea/lunch/afternoon tea) that is included in the price that the ACCC has paid for attendance. Dinner, if it has been covered in the conference/seminar fee.
  - Provision of hospitality (morning tea/lunch/afternoon tea) at seminars and training courses hosted by our panel law firms and consultancies which are provided as part of our contractual arrangements.
17. When an ACCC official participates in an external event for official purposes, for example as a speaker or to represent the ACCC, and hospitality is provided, this hospitality will on most occasions be considered incidental to the purpose of the engagement. If the value of the hospitality being offered is \$50 or over then it needs to be declared in the gifts register.

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For example:

- The in-house hospitality provided by a law firm at a boardroom lunch where a Commissioner is speaking to a broad group of stakeholders on current ACCC priorities.
- A Commissioner attending an industry dinner following an industry forum.
- Working lunches provided by panel law firms or consultancies when working on a matter at their premises.
- Hospitality offered as part of a professional association event, which the ACCC official is attending as a member (e.g. Law Society or CPA).
- Hospitality provided by overseas or international agencies, often from staff with different cultural backgrounds, and where refusal may cause offence.
- Christmas or seasonal drinks/events hosted by business and consumer stakeholder bodies and by law and consulting firms on ACCC panels.



## **Circumstances when more consideration is required before accepting the hospitality offered**

18. When the hospitality being offered could be viewed as excessive or disproportionate to the purpose of the stakeholder engagement opportunity, the ACCC official should give consideration to the potential for conflict and the perception issues associated with acceptance.
19. The following are examples of situations where acceptance should be considered in light of the factors outlined above (para 13 and 14). If the ACCC official considers that attendance would benefit the ACCC in carrying out its roles, duties and/or functions, the official should attend and declare the hospitality in the gifts register. The ACCC official may also consider it is more appropriate to pay for their own attendance.

For example:

- Hospitality not offered to all conference attendees, such as: drinks hosted separately by law firms attending the main conference; select dinner invites from other conference attendees (law firms, consultancies, overseas visitors, other agencies).
- Networking functions, such as alumni events, drinks hosted by barristers at their chambers, and breakfast, lunch, dinner, drinks or seminar events hosted by corporate suppliers or potential suppliers to the ACCC particularly where coinciding with procurement processes.
- Celebration meals offered to ACCC staff at the conclusion of a matter at a restaurant, by law firms, consultancies, or experts engaged by the ACCC.
- Business or industry events held at restaurant, hotel or special event venues.
- An invitation to an exclusive or private dinner at a high-end restaurant.
- Attendance at a corporate sponsored table at an event.



### Circumstances when it is not okay to accept the hospitality

20. ACCC officials should not accept hospitality in circumstances in which a conflict may arise because acceptance may influence, or be perceived to influence, the actions or decisions of ACCC officials. The ACCC's integrity as an independent regulator must remain beyond reproach.

For example:

An invitation to an ACCC official to attend a private dinner at a high-end restaurant paid for by a private sector entity with a limited number of stakeholders present. And where attendance is considered to provide no recognisable benefit to the ACCC in carrying out its roles, duties and/or functions.

### Joint ACCC/external conferences and seminars

21. Several major conferences and events are joint projects between the ACCC and a third party. Hospitality is sometimes offered in conjunction with these events that is not necessarily included in the official conference or event program. While the same considerations outlined above should be considered by ACCC officials wanting to attend any such event, the following guidance applies to these specific occasions:
- (a) The Ruby Hutchison lecture is a joint project between the ACCC and Choice. Following the lecture, at the same venue drinks and canapés are served to all attendees as part of the event. The hospitality is funded by both the ACCC and Choice. In light of the purpose of the event and its joint funding arrangement, no declaration on the ACCC gifts register is required by ACCC officials.
  - (b) The Bannerman lecture is a joint project between the ACCC and the Business Law Section of the Law Council of Australia (BLS). The BLS includes a broad representation of law firms. As part of the event the BLS provides the venue and the ACCC funds drinks and canapés. Following the lecture, the BLS hosts a dinner to thank the guest speaker. A selection of Bannerman attendees is invited, including ACCC Commissioners and a small number of senior ACCC staff. Attendance at the Bannerman lecture dinner is acceptable but declaration is required on the ACCC gifts register.
  - (c) The ACCC & AER Regulatory Conference is jointly presented by the agencies. The UniSA Competition Law and Economics Workshop is jointly presented by the ACCC and the University of South Australia. For both events, dinner is included as part of the conference package and no declaration is required. However, offers to attend any side events such as drinks events sponsored by other firms such as law firms would require separate consideration as external hospitality and require declaration if valued at/or over \$50.

### Gifts and benefits

22. ACCC officials should generally seek to avoid accepting gifts. One option is to request no gift when accepting a speaking or other engagement, recognising this is not always practicable especially where a speaker is part of a panel of speakers. If it is not practicable to decline a gift when it is offered, then an ACCC official could consider whether it is appropriate to return the gift.
23. There are some situations where it is appropriate to accept a gift or benefit. This includes when refusal of the gift could cause offence, such as when the giver is from a different cultural background.

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24. When a gift is accepted by an ACCC official it should generally be provided to the social club (if consumable) to be raffled or awarded as a prize at social events, or the agency (if not). If this is not practicable and the gift is valued at over \$50, the gift should be declared and delegate approval under s.66 of the PGPA Act will need to be obtained for the individual to retain the gift as it is considered 'relevant property' owned by the Commonwealth, not the ACCC officer.



25. The following is a list of gift/benefit categories which all ACCC officials are to refuse:
- Tickets to sports and arts events or movies
  - Offers of cash, shares, store vouchers or similar benefits (including cash discounts off travel or restaurant charges)
  - Any offer of a gift or benefit that is made in connection with a tender or purchasing process
  - Any gift from ACCC suppliers, such as printers, stationery providers, landlords, property or fit-out agents or suppliers
  - Gifts or benefits that involve nightclub, bar or casino attendance
  - Gifts or benefits outside the scope of any relevant ACCC policies that involve travel, resort or hotel accommodation other than with the express prior agreement of the delegate<sup>1</sup>
  - Any prize that is offered as a result of a competition, door prize or lottery-style promotion (and an ACCC official should not provide their business card for the purposes of door prizes or similar).
26. ACCC officials may generally accept complimentary airline lounge and Chairman's lounge memberships, provided the membership is declared on the ACCC gifts register. ACCC officials are required to comply with the ACCC travel policy by choosing the best fare of the day unless specific considerations apply.
27. Any offers in relation to paid speaking arrangements for ACCC officers should refer to the ACCC's website 'Speaking Invitations' at <https://www.accc.gov.au/media/speaking-invitations>.

## Benefits – conferences and seminars

28. ACCC officials are invited to present at and attend conferences and seminars of many different kinds, run by universities, private training providers, law firms, consultancies and others. These events are located both in Australia and overseas. These events may be free to all attendees, or complimentary attendance/s may be offered (such as for speaker participation). There will frequently be a hospitality component to the events. To be clear, this only encompasses events where the ACCC is not paying to attend, or otherwise attending events offered for free pursuant to contractual arrangements (e.g. panel law firm CLEs).
29. In considering whether to accept these invitations the value of the engagement involved should be considered along with the risk of potential conflict. Factors in support of acceptance include where the conference or seminar is directly relevant to

<sup>1</sup> An example of a policy that permits the provision of travel and accommodation to be paid is the ACCC International Travel Guidelines which recognise that it is beneficial for the ACCC if expenses involved in providing an ACCC official to participate in conferences are reimbursed or paid. Such expenses, if within the scope of the International Travel Guidelines and approved by the Delegate, should also be declared as part of this policy.



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the ACCC's work, where the ACCC is speaking, and where there is a broad range of attendees. Factors that weigh against attendance include where the purpose of attendance is only indirectly related to the ACCC's work, if there will be limited attendees, private sponsorship of the event is not aligned with the ACCC's independence or if attendance costs would otherwise be substantial. The level of venue and catering should be considered to determine whether it is appropriate to the level of engagement involved. Where questions remain as to appropriateness, ACCC officials may choose to attend but pay rather than accept complimentary registration.

30. When attendance is accepted in these situations and valued over \$50 it is to be recorded on the ACCC gifts register.
31. ACCC attendance at international conferences and associated travel and accommodation is to be assessed as outlined and with approval also being obtained in line with the International Travel Guidelines.

**For more guidance contact the Corporate Law Unit.**