

## **6.2. GIFTING AND RECEIVING GIFTS OF PUBLIC PROPERTY**

### **1 INTRODUCTION**

1.1 This instruction provides direction relating to the administration and approval process for gifts of public property by Defence officials. This instruction also addresses the receiving of gifts.

1.2 This instruction does not apply where the Commonwealth has acquired the property to use as a gift. Therefore, the giving of mementos, such as trophies, citations, etc, exchanged or presented between individuals, units or other elements of Defence for welfare, camaraderie or hospitality do not require the exercising of the gifting delegation.

### **Legislation, delegations and other references**

1.3 Relevant legislation:

- a. [FMA Act 1997](#) section 41 – Misapplication or improper use of public property.
- b. FMA Act 1997 section 43 – Gifts of Public Property.
- c. FMA Act 1997 section 53 (1)(b) – The Chief Executive may delegate powers.

1.4 Relevant Financial Delegations Schedule:

F6–2 To approve gifts of public property.

### **Penalty**

1.5 The FMA Act provides for a maximum penalty of imprisonment for seven years for an official convicted of the improper use of public property or improper approval to gift public property.

### **Public property definition**

1.6 Public property means:

- a. Property in the custody or under the control of the Commonwealth;
- b. Property in the custody or under the control of any person acting for or on behalf of the Commonwealth in respect of the custody or control of the property; and

- c. Property including that held on trust for, or otherwise for the benefit of, a person other than the Commonwealth.

Public property does not include public money.

### **Gifts for protocol purposes**

1.7 Policy and procedures for the presentation of gifts to meet the needs of protocol are set out in [POLMAN 1](#).

### **Gifting of public property**

1.8 Section 2 – Gifts of Public Property, details the business practices for the disposal of public property.

### **Receiving gifts**

1.9 Gifts received by Commonwealth employees in the course of their duties are to be regarded as Commonwealth property. Refer to section 3 – Receiving Gifts, for detailed business practices on the acceptance and disposal of gifts.

### **Gifting of donations in lieu of bereavement floral tributes**

1.10 Certain deceased persons are eligible for a funeral at departmental expense. [DI\(G\) PERS 20-5](#) – *Funeral, Graves and Associated Matters* provides the authority by which funeral expenses can be incurred and lists floral tributes as part of the cost.

1.11 Requests from next-of-kin to have payment in lieu of floral tributes gifted to a recognised charity are acceptable in these circumstances. The donation to the charity is to be of the same value as the floral tributes that would have otherwise been purchased. [DI\(G\) PERS 20-1](#) – *Provision of Floral and Non-Floral Tributes for Funerals and Memorial Occasions* sets the monetary limit for expenditure on floral tributes.

### **Gifts for public relation purposes**

1.12 Promotional products that form part of a public relations promotional activity do not require consideration by a 'gifting of public property delegate'. Promotional products are not classified as being gifts of public property.

1.13 All promotional proposals should initially be referred to Group Strategic Communications Adviser or the Director, Plans and Liaison for consideration as an appropriate Public Relations/Promotional activity. Standard expenditure delegation approval is required before the promotional products are purchased.

## **Conflict of Interest**

1.14 Civilian and Defence Force members are not to solicit gifts or benefits for themselves or any other person or group, or give the appearance of a conflict of interest with their official duties and responsibilities. Accepting anything that could be interpreted as having been offered to secure some favour or preferential treatment could lead to disciplinary action being taken against the personnel concerned.

1.15 Further details can be found in [Defence CM No 53/98 – Guidance on Conflict of Interest Issues for Defence Personnel](#) and [DI\(G\) PERS 25-6 – Conflict of Interest and Acceptance of Offers of Gifts and Hospitality](#).

## **2 GIFTS OF PUBLIC PROPERTY**

### **Delegations**

2.1 The Defence Chief Executive has the power to approve gifting of public property and has delegated certain Defence officials through Financial Delegations Schedule F6–2.

### **Commonwealth policy**

2.2 The Commonwealth's general policy for the disposal of public property is that the most economical means should prevail, wherever practical.

2.3 The property being disposed of should either be sold at market price in order to maximise the return to the Commonwealth or transferred (with or without payment) to another Commonwealth Agency with a need for such assets.

2.4 A departure from that policy, encompassing disposal by gift, is permitted if the Commonwealth property in question is:

- a. genuinely surplus to the agency's requirements; and
- b. of historical or symbolic significance in relation to the proposed recipient; or
- c. of some special significance to the proposed recipient and there are compelling reasons to justify its gifting to that recipient.

### **Undesirable precedent**

2.5 Where a gift of property is being contemplated, the Defence Chief Executive is to consider whether approval in a particular case would create an onerous or undesirable precedent, for example, situations where it would be difficult in equity for the Commonwealth not to approve other requests for such gifts and lead to significant losses of Commonwealth revenues. Such requests should be declined.

## **Gifts to foreigners**

2.6 Where the recipients of a proposed gift are foreign nationals, foreign organisations or foreign governments, the Department of Foreign Affairs and Trade (DFAT) must be contacted before the gift is approved to seek its views on the appropriateness of the proposed gift. Submissions to DFAT are to be made in accordance with the following:

- a. for gifts made from Australia – through First Assistant Secretary International Policy (FASIP); or
- b. for gifts made from Overseas – through FASIP or the DFAT Embassy, High Commission or consulate General responsible for the country receiving the gift (with a copy to FASIP).

## **Determining the value of the gift**

2.7 A submission to approve a gift of public property cannot be prepared before obtaining a reasonable estimate of the value of the proposed property to be gifted.

2.8 The reasonable estimate or value of public property to be gifted is:

- a. if the item is an accountable and reportable asset – the net book value of the item recorded in the asset register at the end of the month prior to the submission of the request to the delegate;
- b. if the item is an inventory item – the carrying value of the item in the inventory record in accordance with the 'Inventory Valuation' section of chapter 2 (Asset Management) of Part 3 of the DRB 48 – Accounting Policy Manual, at the end of the month prior to the submission of the request to the delegate;
- c. if the item is neither of the above, but its value is recorded in another record – the value recorded in that record; or
- d. if the item is none of the above – an estimated sales value.

2.9 For the purpose of exercising delegations the limit of the delegate is applied to the value of each item in a request or submission. An item is:

- a. an individual accountable and reportable asset recorded in the asset register;
- b. for items in an inventory – the total number of a single line item or stock code that is to be gifted in the one transaction; or
- c. if the item is neither of the above – an individual item.

## Exclusions

2.10 Gifts of land are not permitted.

2.11 Only the Finance Minister can approve the gifting of military firearms.

2.12 It is prohibited to gift Public Money.

## Obtaining approval/preparing a submission

2.13 To obtain approval for the gifting of public property/stores, a submission that addresses the following points is to be forwarded to the relevant delegate:

- a. details of the proposed gift and the recipient;
- b. all relevant policy issues contained in this instruction including advice on how this proposal fits within the policy guidelines;
- c. advice on the value of the property proposed for gifting; and
- d. detail of any perceived benefit to the Commonwealth in making such a gift.

## 3 RECEIVING GIFTS

3.1 Gifts received by Commonwealth employees in the course of their duties are regarded as Commonwealth property and are retained, disposed of or taken on charge by the appropriate Group Assets Officer in an appropriate register immediately on receipt. Gifts proposed for retention for display purposes may be issued to the office of the recipient, subject to the approval of an ADF Unit Commanding Officer or an official of EL2/O-6 level or higher.

3.2 Policy on the receipt of gifts is contained in [DI\(G\) PERS 25-6](#) – *Conflict of Interest and Acceptance of Offers of Gifts and Hospitality and the APS Values and Code of Conduct in Practice*.

3.3 Gifts may not normally be retained for the personal benefit of the recipient.

### Conflict of interest and ethical behaviour

3.4 Personnel must exercise care to ensure that their actions in receiving gifts or benefits do not lead to a perception of undue influence, conflict of interest, preferential treatment or an unfair competitive advantage. DI(G) PERS 25-6 – *Conflict of Interest and Acceptance of Offers of Gifts and Hospitality* highlights examples of compromising gifts.

### Receipt of a gift

3.5 Personnel who receive gifts to the value of more than \$200 (received from a private source) or \$500 (received from an official source) in the course of their duties, either in reciprocation or otherwise, are to advise the Group Head/ADHQ Executive Head, or an official authorised in writing by the Group Head:

- a. the name and appointment of the official receiving the gift;
- b. the circumstances in which the gift was received;
- c. whether a reciprocal gift was made;
- d. details of the gift received, including its estimated value; and
- e. the disposal action taken or proposed.

### Retention of a gift for personal use

3.6 If an officer wishes to retain a gift for personal use, an application is to be forwarded to the Group Head/ADHQ Executive Head, or an official authorised in writing by the Group Head/ADHQ Executive Head, through organisational channels, seeking agreement for personal retention of the gift. Agreement may be given to:

- a. **retention of the gift at no cost**, provided the value of the item is less than \$200 (received from a private source) or \$500 (received from an official source);
- b. **purchase of the gift** at the difference between the value of the item and \$200 (received from a private source) or \$500 (received from an official source) where the value exceeds \$200/\$500. For example, if a gift from a private source is valued at \$250, the officer must pay \$50 to purchase the gift.

3.7 Money owed to the Commonwealth is to be receipted in accordance with Defence policy.

### Value of gifts received

3.8 Gifts received overseas or in Australia from overseas sources are to be valued at their overseas value, free of duty and tax.

3.9 Gifts received in Australia from Australian sources are to be valued at their current Australian value, ie including GST.

3.10 Where a gift is to be retained by the department and there are no ready details of the estimated value the Business Manager is to make or obtain a best estimate of the value. A best estimate may be based on the value of a similar or identical item already valued.

3.11 Where recipients are unsure of the value of a gift they wish to purchase, and the gift is estimated to have a value in excess of \$200/\$500, the recipient is to make the arrangements and payment for its valuation.

3.12 Special cases falling outside of these guidelines will be considered on their merits.

### **Disposal of a gift**

3.13 Where a gift is to be disposed of by other than purchase by the recipient, disposal action must be in accordance with the rules applicable for the disposal of any other public property. (See [CEI 6.1 – Asset Management](#)).

### **Customs importation**

3.14 Personnel who receive gifts in the course of their duties overseas are personally responsible for conforming with customs importation procedures at the port or airport of arrival.