

Gifts of government property

Summary:

This direction makes provision for and with respect to the circumstances in which a person handling government resources can make a gift of government property, for the purposes of section 5.6(1)(c) of the *Government Sector Finance Act 2018*.

The direction also makes provision for the records that are to be kept in respect of gifts of government property made by or on behalf of a GSF agency.

Commencement: This direction commences on Monday, 17 February 2020.

Application:

This direction applies to all GSF agencies and to persons handling government resources.

Objects

The objects of this direction are:

1. to specify, for the purposes of section 5.6(1)(c) of the *Government Sector Finance Act 2018*, circumstances in which a person handling government resources may make a gift of government property;
2. to ensure that such gifts of government property are made in accordance with specified values and associated principles; and
3. to require the accountable authority for a GSF agency to maintain records of gifts made for or on behalf of the agency.

Interpretation

In this direction:

accountable authority for a GSF agency has the same meaning as in section 2.7(2) of the *Government Sector Finance Act 2018*.

a **conflict of interest** exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties. Four elements are to be considered when determining whether a conflict of interest exists

1. Whether the official has a personal interest
2. Whether the official has a public duty
3. Whether there is a connection between the personal interest and the public duty
4. Whether a reasonable person could perceive that the personal interest might be favoured.

Audit and Risk Committee (ARC) - is a committee established in accordance with *TPP15-03 Internal Audit and Risk Management Policy for the General Government Sector* to monitor, review and provide advice about the agency's governance processes, risk management and internal control frameworks and external accountability obligations.

fair value means the price that would be received if an asset were sold or paid if a liability were transferred in an orderly transaction between market participants at the measurement date,

determined in accordance with the Accounting Standard AASB 13: Fair Value Measurement and TPP 14-01 Accounting Policy: Valuation of Physical Non-Current Assets at Fair Value.

gift has the same meaning as in section 5.6(2) of the *Government Sector Finance Act 2018*.

government property has the same meaning as in section 1.4 of the *Government Sector Finance Act 2018*.

GSF agency has the same meaning as in section 2.4 of the *Government Sector Finance Act 2018*.

low value asset means any asset or group of assets below a total fair value of \$500 [market value estimate]

person handling government resources has the same meaning as in section 1.4 of the *Government Sector Finance Act 2018*.

surplus, in relation to an asset, means an asset that is not essential for the operation of an agency

uneconomical, in relation to the sale of an asset, refers to a situation where cost of disposing of the asset (including the opportunity cost) is greater than the likely net sale proceeds if any, of an arm's length disposal of the asset.

Direction

1. Permissible gifting – section 5.6(1)(c) of the *Government Sector Finance Act 2018*

(1) For the purposes of section 5.6(1)(c) of the *Government Sector Finance Act 2018*, a person handling government resources is authorised to make a gift of government property if the person is reasonably satisfied that the property:

- (a) is genuinely surplus to the GSF agency's requirements,
- (b) cannot be transferred, with or without payment, to another GSF agency which requires or can use the property, and
- (c) a sale at fair value would be uneconomical,

and meets at least one of the following:

- (i) holds historical or symbolic significance for the proposed recipient, or
- (ii) holds some other special significance for the proposed recipient, and there are compelling reasons to justify gifting the government property to that recipient, or
- (iii) is a low value asset, and the gifting supports the achievement of a NSW Government policy objective.

(2) This clause does not authorise a person to make a gift of firearms, or other property which could cause harm to persons or property.

(3) For the avoidance of doubt, this clause does not affect the operation of section 5.6(1)(a), (b) or (d) of the *Government Sector Finance Act 2018*.

2. Values and associated principles – gifts made under clause (1)

When considering whether to make a gift of government property under clause (1) of this direction, a person handling government resources is to take into account the following values and associated principles:

Value	Associated Principles
Accountability	The person handling government resources must take reasonable care so that the officer's use of government resources or related money is efficient, effective and prudent.
Integrity	When making a gift of government property a person handling government resources must:

	<ul style="list-style-type: none"> • place the public interest over private interest, and • should not use the officer's position (or information acquired in the exercise of the functions of that position) improperly for financial or personal gain
Transparency	<p>When making a gift of government property the person handling government resources must:</p> <ul style="list-style-type: none"> • ensure that any conflicts of interest are avoided or effectively managed, • disclose in accordance with the relevant GSF agency's policies the, conflict of interest, and • create full and accurate records of the transaction and associated decision-making processes.

3. Disclosure and recording of gifts of government property

- (1) The accountable authority for a GSF agency is required to maintain a **written register** of gifts of government property that a person handling government resources has made for or on behalf of the agency.
- (2) At a minimum, the following details are to be recorded in the written register for each gift of government property:
 - (a) a description of the gift,
 - (b) an estimated value,
 - (c) to whom and when the government property was gifted,
 - (d) the source of authority for making the gift,
 - (e) the details including position and name of the person handling government resources who made the gift, and
 - (f) the reasons for making the gift.
- (3) The accountable authority for the GSF agency is required to review and certify the written register at least once per year. The register is to be submitted to the agency's Audit and Risk Committee for review at least once per year.
- (4) If a GSF agency has not made any gifts the accountable authority for the GSF agency must attest to this in writing at least once per year. The attestation is to be submitted to the agency's Audit and Risk Committee for review at least once per year.
- (5) The details which subclause (2) requires be kept in respect of a particular gift of government property are to remain in the GSF agency's written register for a period of 5 years from the date of the gift.
- (6) The accountable authority is to cause a current copy of the GSF agency's written register to be published on the agency's website.
- (7) For the avoidance of doubt, the obligations set out in this clause are additional to any obligations arising under the *State Records Act 1998*.

4. Records and data

Gifted items which contain records or data (e.g. computer) should be reviewed to ensure that all government records and data are removed prior to the item being gifted.

This direction is made under sections 3.1 and 5.6 of the *Government Sector Finance Act 2018 (NSW)*.

End date or review date for this Direction: This direction is to be reviewed by November 2024.

Related Documents:

- Independent Commission Against Corruption, NSW: Managing Conflicts of Interest in the NSW Public Sector.
- State Records Act 1998 No 17 <https://www.legislation.nsw.gov.au/inforce/0af9a3e2-72ac-ef57-83b5-9bd797f62f37/1998-17.pdf>
- Accounting Standard - AASB 13: Fair Value Measurement
- TPP 14-01: Accounting Policy – Valuation of Physical Non-Current Assets at Fair Value

(Legislative) References:

Sections 3.1 and 5.2 of the *Government Sector Finance Act 2018* (NSW)

The Hon. Dominic Perrottet

Treasurer

Date:

NSW Treasury website: **www.treasury.nsw.gov.au**