

Prom Night Events does not condone commissions – for very good reasons.

In an honest market place, every business is competing to sell their product to a consumer group. The honest ways to sell a product include; making a better product, selling it at a good price, adding extra features to it, clever marketing and advertising.

All of these kinds of activities are legal, honest and correct. The products should compete on value only.

Unfortunately, every market place can sometimes see the emergence of DIS-honest operators who will do anything, legal and illegal, to get the edge on their competitors. The sorts of things they might do include false or misleading advertising, deceptive behaviour in pricing, defaming the reputation of their competitors and, worst of all, paying of secret commissions. All of these activities are **illegal** and punishable by law under various legislative acts however, let's talk about Secret Commissions here.

What is a secret commission?

The interpretation is simple. In order for a commission to be secret, it simply has to be paid (or just offered) to one of the key players in any negotiation while one or more of the other players aren't told about it.

In respect of school formals, an example would be where an agency or provider of services relating to the organisation of the event offers any kind of commission to a student who is seeking the best deal for his or her year group. In this case there are three players, 1/ The service provider, 2/ The student talking to the service provider and 3/ The year group.

In this case, if the service provider offers the student a commission to influence the year in any way towards buying from them instead of someone else in the market, without full disclosure to the year group of the details of the commission being paid, then the service provider has committed a crime. If the student asks for or accepts such offer of a commission under these circumstances, then that person too has committed a crime.

The courts have determined that in examples like the one described above, the criminal offence has been committed because the person representing their year group were trusted by that group to seek out and bring back as many options as possible so that they could fairly and objectively weigh up the value of each offering based on things like features and pricing. The moment a reward is injected into this scenario, then the objectivity of what's being reported to the year group has been compromised and they can't honestly make their decision knowing all the facts. The student would have agreed to "depart from a duty", meaning that they're being paid to keep quiet about potentially better products.

In terms that most people understand, this kind of action is described as a "Kick Back" a "Deal Sweetener" or an "Under The Table Gratuity". Essentially, no matter what it's called, it's a **bribe** and these kinds of activities are illegal under both Part 4A of NSW Crimes Act 1900, and under section 52 of the Trade Practices Act.

If you are being offered any kind of commission, money, gift, free service, favour or any other form of inducement from any company offering services to your year group, who ever is offering you that is a criminal. If you agree to take it, you're a criminal too. When you get caught, you'll face a potential 7 years in prison AND all the businesses that stood to lose money from the crime can sue you.

The law in NSW

Part 4A of the NSW *Crimes Act* 1900 prohibits the following conduct:

1. Receiving or soliciting, as an agent, an inducement or reward for doing or not doing something in relation to the affairs of their principal.
2. Corruptly giving or offering an agent an inducement or reward for doing or not doing something in relation to the affairs of the agent's principal.
3. Use of misleading documents or statements by agents with the intent of defrauding their principals.
4. Corrupt inducements to a person for giving advice to a third party which induces them to enter into a contract or appoint the person who gives the inducement to any office.

Penalties for infringement include fines as well as imprisonment for up to 7 years for individuals that are involved.

Be careful! A formal is a product worth thousands, and in many cases tens of thousands of dollars. You should be very aware of the integrity and honesty of the company with whom you place this trust. If secret commissions are being offered – You can take that as a snapshot of the people you're dealing with.

Disclaimer: Prom Night Events is not offering legal advice. We merely report an interpretation of legislation as it may apply to our own industry and activities. Concerned readers should always seek independent legal advice on any matters that concern them or their activities.