

Guidelines for Tasmanian Government Businesses

Director and Executive Remuneration

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REMUNERATION GUIDELINES

Introduction

The purpose of these Guidelines is to outline the expectations of the Shareholding Ministers with respect to the remuneration arrangements for Senior Executives of Government businesses. These Guidelines establish better practice principles and approval procedures for:

- setting of Chief Executive Officer (CEO) remuneration and employment arrangements;
- setting of other Senior Executive remuneration and employment arrangements; and
- the disclosure of remuneration packages for Directors and Senior Executives in Tasmanian Government businesses.

These Guidelines are consistent with approaches taken in a number of other jurisdictions, both nationally and internationally, to ensure that executive remuneration is aligned with shareholder and community expectations. They also align with the approach taken through the 2011 amendments to the *Corporations Act 2001* which introduced the “two strikes” rule to ensure that directors of private sector companies are more accountable to their shareholders for the levels of executive remuneration and performance pay.

The setting of Board fees does not form part of these Guidelines.

The individual remuneration packages to be awarded to employees other than Senior Executives are generally matters left to the Board and management.

Application

These Guidelines apply to all Government Business Enterprises (GBEs) and State-owned Companies (SOCs).

Government businesses which are Agencies under the *State Service Act 2000* are exempt from the requirements relating to the setting of CEO and Senior Executive remuneration. However, these businesses are required to meet the disclosure requirements under Part B.

These Guidelines take effect from the day they are issued.

In exceptional circumstances, Cabinet may approve remuneration arrangements and packages outside these Guidelines.

PART A – SETTING EXECUTIVE REMUNERATION

I. Remuneration Principles

The key principle for setting executive remuneration arrangements is embodied in the Australian Securities Exchange Corporate Governance Council’s principle that businesses “should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear”.

Supporting this principle, in the context of Tasmanian Government businesses, remuneration arrangements should be:

- aligned with Shareholding Ministers’ expectations;
- transparent, fair and defensible in the Tasmanian Government business context;
- sufficient to attract, retain and motivate Senior Executives of the quality required but should avoid paying more than is necessary for the purpose; and
- positioned relative to other comparable organisations, especially those in the public sector and in the same or similar industry.

In addition, performance pay should only be offered in exceptional circumstances and where the performance goals are above and beyond the normal expectations of the position. Such incentives must be linked to specific, objective and measurable goals.

2. Government Business Executive Remuneration Advisory Panel

The independent Government Business Executive Remuneration Advisory Panel (Panel) was established in 2013 to ensure that there is appropriate scrutiny, oversight and reporting on executive remuneration in Tasmania’s Government business sector. The objective is to ensure executive remuneration is not excessive and is broadly in line with public sector levels and wage movements. The Panel provides advice to the Government on appropriate levels of remuneration for executives in Government businesses, within the scope of principles set by the Government.

The responsibilities of the three-member Panel, appointed by the Treasurer, include:

- advising Shareholding Ministers on executive remuneration policy for Government businesses;
- representing the Shareholding Ministers in the setting of CEO remuneration; and
- monitoring the implementation of these Guidelines by the Boards of Government businesses.

The Panel is to report to the Treasurer annually and as required on executive remuneration matters. It is also required to provide a report annually to Cabinet, through the Treasurer, on overall compliance with the Guidelines for each financial year.

The Terms of Reference for the Panel are published on the Department of Treasury and Finance website.

Administrative support to the Panel is provided by the Department of Treasury and Finance.

3. Remuneration Policy Particulars

CEO Remuneration

The Board of a SOC is responsible for the selection and appointment of CEOs. Under the *Government Business Enterprises Act 1995*, the Premier is responsible for appointing the CEOs of GBEs, based upon a recommendation from the Portfolio Minister following nomination by the Board.

Remuneration for CEOs of Government businesses is to be in line with these Guidelines and the CEO remuneration bands set by the Panel. The CEO remuneration bands are designed to reflect the principles detailed in these Guidelines and provide for maximum remuneration levels that broadly align with State Government Heads of Agency. The CEO remuneration bands are reviewed annually by the Panel.

In developing the CEO remuneration bands, the Panel considers:

- the legal, regulatory and industrial obligations of the business, labour market conditions and the relative scale of the business;
- the skills, experience and qualifications required of the position;
- remuneration levels paid to Senior Executives in equivalent businesses within the sector or of similar sized businesses in terms of revenue, competition, asset base, total employees, degree of regulation or oversight, degree of risk and complexity of operating environment; and
- shareholder and community expectations of what are fair and defensible levels of remuneration.

The classification of each business within the CEO remuneration band framework is based on the complexity and size of the business and the environment in which the business operates. Classifications are reviewed every three years by the Panel.

Any adjustments to the CEO remuneration bands or classifications within the framework are to be approved by the Treasurer.

Senior Executive Remuneration

Remuneration for all senior executives of Government businesses is linked to the CEO remuneration bands on the basis of the following thresholds:

- the remuneration of a Senior Executive is to be no more than 80 per cent of the total remuneration package of the CEO, or the top level of the approved remuneration band, where the CEO's remuneration is outside of the approved band; and
- the average total remuneration package of all Senior Executives, excluding the CEO, is to be no more than 70 per cent of the CEO's total remuneration package.

Compliance with the Guidelines

The Board of a Government business, or its Remuneration Committee, is required to ensure that remuneration packages for all Senior Executives, including performance-based incentives where considered appropriate, are consistent with these Guidelines. This includes complying with the disclosure requirements in Part B of these Guidelines.

All contracts and Instruments for the appointment or reappointment of a CEO must be reviewed by the Panel and Crown Law prior to being finalised and formally offered to the candidate.

The proposed remuneration packages for a CEO must be endorsed by the Panel prior to a position being advertised or a reappointment contract (in the case of SOCs) or Instrument of Appointment (Instrument) (in the case of GBEs) being offered.

It is noted that in some circumstances a position may need to be filled at short notice. In these circumstances a business should contact Treasury as soon as possible to ensure the Panel can support the business to meet its timeframes.

Where a business considers it necessary to offer a remuneration package to a CEO or Senior Executive that is outside the CEO remuneration band, or is inconsistent with the conditions or thresholds provided for within these Guidelines, an exception to these Guidelines must first be sought. Exceptions must be approved by Cabinet prior to the position being advertised or a contract or Instrument being offered.

Remuneration packages for all CEOs must fall within the approved remuneration bands for the business unless approved by Cabinet.

Remuneration Increases

The Board can approve an increase in the remuneration for the CEO without the need to apply for an exception or to consult with the Panel if:

- it is consistent with the agreed terms of appointment for the CEO; and
- the increase in remuneration will result in total remuneration still remaining within the relevant approved CEO remuneration band.

Senior Executive remuneration can be increased without the need for to apply for an exception to the Guidelines so long as it does not result in a breach of the relevant thresholds detailed in these Guidelines.

In cases where an exception has been granted by Cabinet for the total remuneration package proposed for a CEO or Senior Executive to exceed the relevant CEO remuneration band or threshold set by these Guidelines, no increases in remuneration are permitted until such time as the total remuneration package falls within the recommended CEO remuneration bands and thresholds set by these Guidelines, i.e remuneration must be frozen until the total remuneration package complies with the Guideline, unless an increase has been specifically approved by Cabinet.

Conflicts of Interest

The Board is accountable for addressing any potential conflict of interest whereby an Executive Director or Senior Executive is involved in setting the remuneration for other Executives that may indirectly affect their own (for example, through setting a benchmark or because of relativities). No individual Senior Executive should be involved in deciding his or her own remuneration.

4. Key Contractual Terms

All Government business senior executive contracts/Instruments should:

- include clear duties and responsibilities and performance objectives, including parameters for annual performance review;
- the basis for calculating performance pay where relevant;
- include remuneration and other benefits such as a vehicle;
- require conflict of interest declarations and ongoing disclosures;
- not contain non-disclosure or confidentiality clauses;
- provide for mediation, arbitration or other alternatives to court or formal tribunal proceedings in the event of a dispute; not include any payment as part of the appointee's consideration for accepting the position; and
- contain clear termination provisions, consistent with the model contract/Instrument prepared by Crown Law.

CEO contracts/Instruments must prescribe a set term of not less than three but no more than five years, with no automatic extension rights following the end of this period. Other executive contracts may be open-ended, subject to the inclusion of clear termination provisions.

In relation to termination provisions, contracts/Instruments should contain clear procedures including:

- notice provisions for the termination of service prior to the contracted period required by both the employer and the employee; and

- details of the notice periods and payments in lieu of notice required by the employer and employee, differentiating between no-fault terminations and terminations at cause.

A model contract/Instrument, including a model termination clause, is published on the Department of Treasury and Finance website. Any variations to the substance of the provisions should have strong justification in terms of balancing the need to attract the best candidate with the expectations of the shareholders and the community for Government businesses.

In particular, the required notice periods and payments in lieu of notice may be shorter or longer according to the specific circumstances of the Government business and the CEO or senior executive. Cabinet approval, through the Panel, is required for any termination provisions not consistent with the model contract/Instrument.

5. CEO Appointment Process

The Panel has a role in ensuring compliance with these Guidelines. It therefore has a key role in the appointment process for CEOs.

Summaries of the appointment processes for CEOs of GBEs and SOCs are published on the Department of Treasury and Finance website.

For GBEs, this process includes the requirements for review and endorsement of the proposed remuneration package by the Panel and consideration of the draft Instrument by Crown Law before it can be signed by the Premier.

For SOCs, this process includes the requirements for review and endorsement of the proposed remuneration package by the Panel, review of the draft contract by Crown Law and noting of proposed appointments by Cabinet prior to any public announcement being made.

It is important that Government businesses allow appropriate time for consideration of contracts and Instruments by the Panel, Crown Law and Cabinet, where necessary.

6. Criteria for Performance Payments

In limited circumstances, performance payments may be an appropriate incentive mechanism for individual Senior Executives or the executive team. In the context of Tasmanian Government businesses, performance payments may be appropriate where:

- the business operates in a competitive market;
- performance is beyond normal expectations;
- the business is operating in a non-regulated environment; and/or
- the business or sector is undergoing significant structural change.

While it is up to the Board to determine whether the offer and payment of performance incentives is appropriate, the relationship between remuneration and individual performance and how it is aligned to the creation of value should be clearly articulated to the Shareholding Ministers in the annual remuneration report for each executive that is eligible to receive a performance payment.

If performance pay is considered appropriate, the Board is responsible for the setting of performance targets for each executive in writing in advance of the period for which the performance payment relates. The Board is accountable for monitoring performance against these targets.

Any performance based targets, both short and long term, and the method of assessment is to be clearly articulated in a Board approved remuneration policy and is to be based on objective criteria. Goals and indicators should be directly measurable at an individual performance level, and should be specific, observable, measurable, difficult to manipulate and aligned with the objectives of the Shareholding Ministers (including the Shareholding Ministers' risk/return position).

For Government businesses, performance targets should include measures for accountability in financial management, relationships with key stakeholders, human resource practices and productivity improvements.

Performance based payments must be non-recurrent and are a stand-alone payment that does not form part of the base salary of the Senior Executive. Performance based payments are not considered an appropriate mechanism to reward performance for meeting the requirements expected for that position. If a performance based payment mechanism is to be used by a Government business it should be to incentivise performance beyond what is expected of the position and should therefore only be paid when performance exceeds agreed stretch targets.

Performance payments for each individual are to be capped at no greater than 15 per cent of that individual's base salary. Additionally, the total remuneration package of an individual should not exceed the relevant CEO band or threshold for Senior Executives after the inclusion of potential performance payments.

Prior Cabinet approval is required if any of the thresholds are likely to be exceeded due to a performance payment.

7. CEO Performance Appraisal

Boards must ensure that an appraisal of the performance of the CEO is conducted in respect of each financial year. The review is to be completed no later than 90 days after the end of the financial year in respect of which it is conducted. An appraisal should consider both organisational and individual performance against a set of evaluation criteria, including measurable goals. Where relevant, the Board should determine whether performance merits the payment of agreed performance incentives.

In the case of an officer approaching the end of their term of appointment and who is to be considered for reappointment, an appraisal is to be conducted at a minimum of six months prior to the expiration of their employment agreement. This information is then to be considered by the Board as an important input into their reappointment deliberations.

A copy of the CEO performance review must be provided to the Shareholding Ministers each year within 14 days of completion.

8. Reappointment of a CEO

Where a Board decides, in the case of a SOC, or recommends to the Portfolio Minister, in the case of a GBE, to extend a CEO's term or re-appoint the incumbent CEO, for the purposes of these Guidelines the Board will need to follow the same process as a new appointment, and fully comply with the Guidelines or follow the same process to seek an exception to the Guidelines. Any approved exception to the Guidelines by Cabinet does not apply to any future appointments, including re-appointments.

9. Exceptions to these Guidelines

In exceptional circumstances, Cabinet approval may be granted for an exception to the requirements set out in these Guidelines.

To seek an exception to the Guidelines, a business case must be submitted to the Treasurer, using the business case template designed for this purpose. The template is available from the Department of Treasury and Finance website. All business cases will be referred to the Panel for advice. The Panel will make a recommendation to the Treasurer, who will consider and may progress for Cabinet to consider.

An exception cannot be granted retrospectively and the burden for demonstrating exceptional circumstances that justify an exception to the Guidelines sits with the business.

PART B – DISCLOSURE

1. Disclosure to Shareholding Ministers

Following the end of each financial year, Government businesses are to disclose the remuneration details for each person that has held, or acted, as a Director or Senior Executive of the business during the financial year reporting period to the Department of Treasury and Finance and the Government Business Executive Remuneration Advisory Panel, as the advisors to the Shareholding Ministers.

Disclosure must be consistent with the template approved by Treasury and available from the Auditor-General's website.

Disclosure of this information must be made by the business no later than 30 calendar days after the end of the financial year to which the information relates.

2. Disclosure in Financial Statements

Government businesses are required to disclose Director and Executive Remuneration in the notes to the Financial Statements, consistent with the template approved by Treasury and available from the Auditor-General's website.

A statement of compliance with the *Guidelines for Tasmanian Government Businesses – Director and Executive Remuneration*, as well as cases where Cabinet has granted an exception to the requirements in these Guidelines, must be included in the Directors' Report or equivalent section of the Annual Report. For example:

- “We have complied with the *Guidelines for Tasmanian Government Businesses – Director and Executive Remuneration*.”

or

- “We have complied with the *Guidelines for Tasmanian Government Businesses – Director and Executive Remuneration*, with the exception of the requirement that no senior executive receives a remuneration package of exceeding 80 per cent of the CEO’s remuneration package. This exception was approved by the Government in October 2017.”

Where compliance has not been achieved, the statement should clearly explain the reasons for non-compliance. For example:

- “We have complied with the *Guidelines for Tasmanian Government Businesses – Director and Executive Remuneration*, with one exception. Total payments to the COO exceeded 80 per cent of the CEO’s remuneration package due to the appointment of a new CEO during the year at the base of the remuneration band.”

The disclosure arrangements are designed to be consistent with the framework applying to disclosing entities under the Section 300A of the *Corporations Act 2001*, which requires a disclosing entity to include specific information relating to remuneration of key management personnel.

The Directors’ Report should further include the following information about Directors:

- the number of Board and committee meetings attended by Directors;
- Directors’ original date of appointment;
- the commencement date of Directors’ current terms; and
- the expiry date of Directors’ current terms.

A model Directors Report is provided on the Department of Treasury and Finance website to provide an example of the presentation of Director term dates. However, businesses may choose to present the information in an alternative format, so long as it provides the required information.

APPENDIX 1

Definitions

- Base Salary means the base remuneration payment paid to the individual that is the fixed, annual cash salary.
- Directors are persons appointed to the Board of a Government business either by Shareholding Ministers, or Executive Council, as appropriate.
- Fringe Benefits means the reportable fringe benefits amount (e.g. the grossed-up value of the amount on the employee's payment summary).
- Other Benefits means all other forms of employment allowances (excludes reimbursements such as travel, accommodation or meals), payments in lieu of leave, and any other compensation paid and payable. These benefits are included in the Total Remuneration Package for the purpose of assessing compliance with the Guidelines.
- Other Long-term Employee Benefits means annual and long service leave movements and other forms of long-term benefits such as sabbatical leave, jubilee or other long-service benefits and long-term disability benefits. These benefits are not included in Total Remuneration Package for the purposes of assessing compliance with the Guidelines.
- Other Non-Monetary Benefits means non-monetary benefits such as housing, subsidised goods or services, club memberships, entertainment and hospitality allowances. These benefits are not included in the Total Remuneration Package for the purpose of assessing compliance with the Guidelines, but are included in Short-term employee benefits for the purpose of reporting the aggregated compensation to key management personnel.
- Performance Payments (or Short Term Incentive Payments) means any arrangement providing payment that depends on achieving certain performance goals within a specified period, whether performance is measured by reference to the financial performance of the business or any other performance measure.
- Senior Executives means those persons in, or acting in for a period of more than one month, roles having authority and responsibility for planning, directing and controlling the activities of a Government business, either directly or indirectly. Generally Senior Executives will include those executives identified in the Annual Report of the business. In the context of these Guidelines, Senior Executive includes the CEO.
- Superannuation means the business' contribution to the superannuation fund of the individual.
- Total Remuneration Package includes base salary, incentive payments, superannuation, vehicle benefits and other benefits. For the purposes of assessing compliance with remuneration guidelines, other long-term employee benefits,

other non-monetary benefits and termination benefits are not included in Total Remuneration Package.

- Vehicle means the total cost to the business of providing and maintaining a vehicle, calculated in accordance with the reporting template approved by Treasury and available from the Auditor-General's website.



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