

Guidelines for Tasmanian Government
Businesses

Director and Executive Remuneration

Revised June 2021



Guidelines for Tasmanian Government Businesses - Director and Executive Remuneration

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INTRODUCTION

The purpose of these Guidelines is to:

- outline the expectations of the Shareholding Ministers with respect to the remuneration and employment arrangements for Chief Executive Officers (CEOs) and other senior executives of Tasmanian Government businesses; and
- establish appropriate scrutiny, oversight, reporting and disclosure of senior executive and director remuneration in Tasmania's Government business sector.

The Guidelines are consistent with the expectation that there should be appropriate accountability and transparency in relation to senior executive remuneration policies and practices for publicly listed companies and public sector entities and to ensure that executive remuneration is aligned with shareholder and community expectations.

The setting of Government business board fees and remuneration packages for employees, other than senior executives, is not covered by these Guidelines.

APPLICATION

The Guidelines apply to all Tasmanian 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 setting executives' remuneration. However, these businesses must still meet other relevant requirements including CEO performance and appraisal, as well as the disclosure requirements outlined in Part B of the Guidelines.

The terms used in the Guidelines have the same meaning as the defined terms included in the Director and Executive Remuneration Disclosure Template available from the Tasmanian Audit Office website.

COMPLIANCE

The Board of a Government business must ensure that the remuneration arrangements for senior executives are consistent with these Guidelines and that all disclosure requirements are met.

A Government business may request approval for an exception to a requirement within the Guidelines. However, exceptions must be approved by the Treasurer and should not be requested to apply retrospectively.

The Board is responsible 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 remuneration (for example, through setting a benchmark or because of relativities). No senior executive should be involved in deciding their own remuneration.

Part A – Remuneration and Employment Arrangements

1. REMUNERATION PRINCIPLES

The key principle when establishing senior executive remuneration arrangements is that Government businesses remunerate fairly and responsibly. This includes ensuring that the level and composition of remuneration is sufficient and reasonable, and that the relationship between remuneration and performance is clear.

The Tasmanian Government has determined that senior executive remuneration arrangements in Tasmanian Government businesses should be:

- aligned with the 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, while avoiding paying more than is necessary for the purpose; and
- relative to the remuneration arrangements in other comparable organisations, especially those in the public sector and/or in the same or a similar industry.

2. CEO REMUNERATION

The total remuneration of a Government business CEO must not exceed the maximum of the CEO remuneration band approved by the Treasurer.

The CEO remuneration band framework has been developed taking into consideration:

- the legal, regulatory and industrial environment in which Government businesses operate;
- the skills, experience and qualifications required;
- remuneration of senior executives in equivalent businesses within the sector, or those in similar businesses in terms of size, revenue, competition, asset base, total employees, degree of regulation or oversight, and degree of risk and complexity of operating environment;
- remuneration of State Government Heads of Agency; and
- shareholder and community expectations of what are fair and defensible levels of remuneration.

The CEO remuneration bands are reviewed annually with reference to the annual change in the Consumer Price Index (the weighted average of eight capital cities).

The classification of each business within the CEO remuneration band framework is based on the industry, complexity and size of the business. Each businesses' classification within the CEO remuneration band framework is reviewed every three years.

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

3. OTHER SENIOR EXECUTIVE REMUNERATION

Other senior executives' maximum remuneration limits are linked to the CEO remuneration bands and must comply with the following thresholds:

- the remuneration of any senior executive (excluding the CEO) is to be no more than 80 per cent of the maximum of the approved CEO remuneration band; and
- the average total remuneration of all senior executives (excluding the CEO) is to be no more than 70 per cent of the maximum of the approved CEO remuneration band.

4. REMUNERATION INCREASES

The Board can approve an increase in the remuneration of the CEO without approval from the Treasurer if:

- the increase is consistent with the agreed terms of appointment for the CEO; and
- the increase will not result in the CEO's total remuneration exceeding the maximum of the approved CEO remuneration band.

Other senior executive remuneration may be increased without the Treasurer's approval providing it does not exceed the relevant thresholds detailed in these Guidelines.

In cases where an exception has been granted, unless specifically approved otherwise, no increase in remuneration is permitted until such time as total remuneration falls within the CEO remuneration band and/or thresholds, i.e. remuneration must be frozen until total remuneration complies with the Guidelines.

5. PERFORMANCE PAYMENTS

In limited circumstances, performance payments may be considered an appropriate mechanism to incentivise performance beyond what is expected of the position and when performance exceeds agreed stretch targets. However, performance payments are not considered an appropriate mechanism to remunerate a senior executive for meeting the expected requirements of that position.

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.

All performance targets attracting performance payments, and the method by which their achievement is assessed, must be based on objective criteria. When setting performance targets, indicators of success should be specific, measurable at an individual performance level, difficult to manipulate and aligned with the objectives of the Shareholding Ministers (including the Shareholding Ministers' risk/return position).

Performance payments should be linked to a diverse range of performance targets that include measures for accountability in financial management, relationships with key stakeholders, human resource practices and productivity improvements.

If the Board of a Government business chooses to offer performance payments, it must comply with the following requirements:

- be non-recurrent;
- be stand-alone and not form part of the base salary;
- not exceed 15 per cent of base salary; and
- not result in a senior executive's total remuneration exceeding the maximum of the CEO remuneration band or breaching any other thresholds in the Guidelines, including the average total remuneration of other senior executives.

If a CEO's remuneration band or a threshold limit may be exceeded due to a performance payment, the Treasurer's approval is required before the performance payment is offered.

If performance pay is considered appropriate, the Board is responsible for setting the performance targets for each senior executive in writing and in advance of the period for which the performance payment relates. The Board is also responsible for monitoring each senior executive's performance against these targets and ensuring there is appropriate disclosure on the performance payment, and how it aligns with the creation of value.

Performance payments, performance targets and the method by which their achievement is measured must be clearly articulated in a Remuneration Report, approved by the Board, and included in the Annual Report of the business.

6. CEO APPOINTMENT OR REAPPOINTMENT

Under section 18 of the *Government Business Enterprises Act 1995*, the Premier is responsible for appointing the CEOs of GBEs, based upon a recommendation from the Portfolio Minister and following nomination by the Board. For SOCs, the Board is responsible for the selection and appointment of CEOs.

If the proposed remuneration package is above the maximum of the approved CEO remuneration band or the terms of appointment for the CEO are not consistent with the Guidelines, an exception to the Guidelines must be approved by the Treasurer prior to a position being advertised or a reappointment contract being offered. The remuneration package is not required to be approved by the Treasurer if the proposed remuneration package is within the remuneration band or below the minimum of the remuneration band.

Previously approved exceptions to the Guidelines do not carry over to any term extension, re-appointment or future appointment. CEO contracts or appointments seeking a term extension or re-appointment must fully comply with the Guidelines or seek an exception to the Guidelines from the Treasurer, if required.

Crown Law must review all CEO contracts and instruments of appointment. All CEO appointments must be considered by Cabinet prior to the position being offered to a candidate.

Flow charts outlining the CEO appointment process and CEO appointment checklists for both GBEs and SOCs are available on the Treasury website.

It is important that Government businesses allow sufficient time for the CEO appointment process. If a position must be filled at short notice the business should contact Treasury as soon as possible to ensure the business can be assisted to meet its timeframes.

7. KEY CONTRACTUAL TERMS

All Government business senior executive Employment Contracts and/or Instruments of Appointment (contracts) should:

- include clear duties and responsibilities;
- include details on how annual performance objectives will be set and how performance will be reviewed;
- include the basis for calculating performance pay, where relevant;
- include details of total remuneration and all benefits, including vehicles, annual leave, other monetary benefits and superannuation;
- not include any remuneration or payment as a signing bonus for accepting the position;
- require current and ongoing conflict of interest declarations and disclosures;
- not contain non-disclosure or confidentiality clauses designed to limit remuneration disclosure requirements;
- include alternatives to court or formal tribunal proceedings, in the event of a dispute; and
- contain clear termination provisions, consistent with the template contract prepared by Crown Law, including:
 - the notice provisions for the termination of service prior to the contracted period required by both the employer and the employee; and
 - the notice periods and payments in lieu of notice required by the employer and employee, differentiating between no-fault terminations and terminations with cause.

Government business CEO contracts must prescribe a set term of no more than five years. CEO contracts must not include automatic extension rights at the conclusion of the set term of employment. Other senior executive contracts may be open-ended, subject to the inclusion of clear termination provisions.

A model contract and instrument for GBEs, including termination clauses, is available from Treasury on request. Any variations to the substance of the provisions outlined in the model contract or instrument must have strong justification.

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 senior executive. However, the Treasurer's approval is required for any termination provisions not consistent with the model contract.

The draft contract and instrument must be reviewed by Crown Law and, if required, any exceptions must be approved by the Treasurer prior to an offer being made to the preferred candidate.

8. CEO PERFORMANCE APPRAISAL

The Board is responsible for ensuring the CEO's performance is appraised each financial year. The annual performance appraisal should consider both organisational and individual performance against a set of evaluation criteria, including measurable goals. If relevant, the Board should determine whether the CEO's performance merits the payment of agreed performance incentives.

The annual CEO performance appraisal must be completed no later than 90 days after the end of the financial year in respect of which it is conducted.

If a CEO is approaching the end of their term of appointment, and will be considered for reappointment, a performance appraisal must be conducted a minimum of six months prior to the expiration of their employment agreement. This appraisal should then be considered by the Board during any reappointment deliberations.

A copy of the CEO's annual performance appraisal must be provided to the Shareholding Ministers within 14 days of completion.

9. EXCEPTIONS

To seek an exception to the Guidelines, a business case must be submitted to Treasury using the business case template available from the Treasury website. All business cases are referred to the Treasurer for consideration. The burden for demonstrating circumstances that justify an exception to the Guidelines sits with the business.

Part B – Disclosure

1. REPORTING TO SHAREHOLDING MINISTERS

Within 30 calendar days of the end of the financial year, Government businesses must provide a remuneration report to Treasury as the adviser to the Shareholding Ministers.

At a minimum, the remuneration report must:

- include the remuneration details for each person holding, or acting in, the position of director or senior executive during the past two financial years' reporting periods;
- identify any performance payments made to senior executives and clearly describe the relationship between the performance payment and the senior executive's performance, including how that aligns with the creation of value for the business; and
- clearly identify all instances of a business's non-compliance with the Guidelines, including details of approved exceptions. Any instances of non-compliance not approved by the Treasurer must be clearly explained.

The remuneration report must be prepared using the Director and Executive Remuneration Disclosure Template, available from the Tasmanian Audit Office website.

2. DISCLOSURE IN ANNUAL REPORTS

Financial Statements

Government businesses are required to disclose director and senior executive remuneration on an accrual basis in the notes to the Financial Statements, consistent with the Director and Executive Remuneration Disclosure Template.

Information about directors

The Directors' Report, or equivalent section of the Annual Report, must include the following information about directors:

- the number of board and committee meetings attended by each director;
- each director's original date of appointment;
- the commencement date of each director's current term; and
- the expiry date of every director's current term.

A model extract of the Directors' Report that demonstrates the disclosure requirements is available from the Treasury website.

Remuneration Report

The Annual Report of a Government business must include a Remuneration Report that provides the following information:

- a discussion of the Board's policy for determining the nature and amount of remuneration paid to senior executives;
- a discussion of the relationship between the policy and the Government business's performance;
- an explanation of how the policies and arrangements aim to influence senior executives to achieve the Government business's objectives;
- a reference to the note in the Financial Statements that includes the details of payments made to senior executives; and
- if performance payments were made, for each senior executive that received a performance payment, the following details:
 - the performance conditions;
 - what the senior executive needs to do to meet those conditions;
 - an explanation of why the performance conditions were chosen; and
 - a summary of how the senior executive met the performance conditions in the relevant financial year.

Statement of Compliance

The Remuneration Report section of the Annual Report must contain a statement of compliance with the Guidelines.

If a business complies with the Guidelines without exceptions, the statement should read:

[Name of Business] has complied with the Guidelines for Tasmanian Government Businesses – Director and Executive Remuneration for the year ended [XXXX].

If a business has an approved exception, the statement should read:

For the year ended [XXXX] [Name of Business] has complied with the Guidelines for Tasmanian Government Businesses – Director and Executive Remuneration and has an approved exception ... [include details of the exception eg from the requirement that no senior executive receives a remuneration package exceeding 80 per cent of the CEO's remuneration package]. This exception was approved on [insert date].

If compliance was not achieved, and an exception was not granted, the statement of compliance should clearly identify and explain the instances of non-compliance.

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