

# MYTHS AND FACTS IN PUBLIC SERVICE EXECUTIVE EMPLOYMENT



This document is a compilation of some common Victorian Public Service (VPS) myths and facts surrounding executive employment and remuneration. It is intended to provide employers and executives with answers to the more common questions that have been asked or have arisen in discussion about executive employment arrangements.

**Please note:** The information contained within this document does not replace any enterprise bargaining agreements, departmental or agency policy, and is provided as a guide only.

## The Contract

**Myth 1.** The standard executive contract issued by government (available through the VPSC website) is optional for use in the VPS.

**FACT:** The standard contract is compulsory for all executive employment in the VPS. The contract template incorporates all the required government executive employment policies and ensures a consistent approach to executive employment in your organisation and across the public service.

**Myth 2.** The employment of an executive can be ongoing.

**FACT:** An executive must be employed on a fixed term contract of up to 5 years. The contract can be renewed with the agreement of both parties.

**Myth 3.** The contract must be for a minimum of one year.

**FACT:** There is no minimum period, only a maximum of 5 years. Employers need to be aware of the implications of the Right of Return under S27 of the Public Administration Act 2004 when agreeing to an executive contract for a very short term—refer points 23 and 25.

**Myth 4.** There is a limit to how many times a contract can be renewed.

**FACT:** There is no limit to the number of times an employer and an executive can renew a contract

**Myth 5.** The employer can decide at anytime to renew the contract.

**FACT:** When approaching contract expiry the employer must initiate discussions with the executive a minimum of 6 months prior to the contract completion date. The employer must formally advise the executive of his decision regarding contract renewal at least 4 months prior to contract completion.

**Myth 6.** It is OK to pay an executive via their private company.

**FACT:** An executive is an employee of your organisation and a public official under the Public Administration Act 2004 (PAA). It is the executive who must be held accountable in the exercise of their functions – not his or her company.

Such an arrangement would not be an executive employment contract but the engagement of a contractor or a consultant. A contractor/consultant would not be eligible for any benefits under the executive contract such as motor vehicle, paid leave or training. More importantly, in most situations, a contractor or consultant cannot hold any delegations, particularly financial delegations.

## Remuneration

**Myth 7.** The remuneration bands for executives are set by VPSC and are benchmarked against the 25th percentile of the private sector market.

**FACT:** Government sets the rates for executives. Government's position is to be a fair and reasonable employer and to pay sufficient to attract and retain suitable employees.

**Myth 8.** It is up to the Public Service Body Head to determine the salary of their executives.

**FACT:** The Secretary or Public Service Body Head may determine the remuneration of executives within Band 3 and 2 of the executive remuneration policy bands.

The Secretary DPC approves any remuneration at Band 1 level.

**Myth 9.** An executive can be paid a straight salary or a Total Remuneration Package (TRP).

**FACT:** Remuneration must be expressed in the contract as a TRP. This includes:

- cash
- employer superannuation contributions
- car (note that a standard car costing methodology is provided)
- any other benefits provided by the employer
- any FBT arising from the provision of those benefits.

The TRP does not include employer-provided work tools such as a mobile phone or lap-top computer.

## Adjustment to Remuneration of Contract Executives

**Myth 10.** All executive salaries are adjusted annually.

**FACT:** Annually, the Premier determines the rate of increase available to an employer to review executive TRPs. Employers have discretion as to whether to apply the approved increase.

**Myth 11.** You cannot amend the TRP of an executive during the life of a contract.

**FACT:** Jobs change, responsibilities alter, teams are restructured, and executives leave, creating opportunities to reassign duties. TRPs can be adjusted as long as the contract and performance plans reflect the change, and the remuneration remains within the limits of the relevant EO band.

**Myth 12.** It is OK to increase the TRP of an executive to retain them in the organisation.

This is an issue for the Secretary or Public Service Body Head to consider and is subject to the constraints on remuneration set out earlier – refer to point 8.

## Termination

**Myth 13.** A contract cannot be terminated early unless for misconduct.

**FACT:** The standard contract provides the employer the opportunity to terminate a contract without cause with 4 months notice or pay in lieu of notice.

Myth 14. An executive must be paid for the balance of the contract on termination.

**FACT:** Termination is to be managed strictly in line with the termination clause of the contract. A notice period of 4 months is provided in the contract. The employer may elect to provide pay in lieu of notice.

The contract also allows termination for misconduct or under performance.

Myth 15. Pay in lieu of notice is paid at the cash rate in the contract.

**FACT:** The rate for calculation of pay in lieu of notice is 100% of the TRP.

Pay in lieu may be superable depending on fund membership. Employers should check superable salary definitions and deduct employer superannuation from pay-in-lieu if necessary.

## Motor vehicle

Myth 16. Executives may only access cars through the executive vehicle scheme.

**FACT:** Employers must offer an executive a vehicle for business/private use as part of the standard conditions of employment. However, an executive is not compelled to take the car.

An executive may elect to novate a private vehicle instead of, or in addition to, an executive vehicle scheme car.

Myth 17. Cars are charged at a commercial rate against the TRP.

**FACT:** VPSC provides a notional formula for calculating the cost to package of an executive vehicle scheme car.

The cost is notional and will not necessarily reflect the actual cost to the employer of providing the benefit.

Myth 18. Employers do not have to provide parking for an executive scheme vehicle.

**FACT:** If an executive takes a car under the executive car scheme, then the car is to be available for business use during business hours. The employer is therefore required to provide a parking space for the vehicle at no cost to the employee.

Employers may only provide a parking space for an executive's private vehicle if the executive meets the cost of the parking space plus any FBT.

Myth 19. It is the employer's responsibility to pay tolls on an executive car.

**FACT:** Tolls on an executive vehicle are the executive's responsibility. The employer may reimburse the executive for tolls incurred while engaged in official business. **The journey to work is private travel – not official business.**

Myth 20. Executives can return the car to the employer when they go on extended leave and not have to pay for the car during this time.

**FACT:** This is permissible but not encouraged and not supported as a general policy position. Each employer should have a corporate policy in place to address this situation.

Myth 21. An executive cannot take their car on extended leave.

**FACT:** An executive may continue to use and pay for the vehicle while on extended leave.

## Terms and conditions

Myth 22. Executives cannot access part-time work or purchase additional annual leave.

**FACT:** Executives can explore part-time work options with their employer. With the agreement of their employer an executive may purchase additional annual leave. See [Flexible Work Arrangements](#) on this website.

## Right of return

Myth 23. A Right of Return is only available to an executive if offered by the employer.

**FACT:** Section 27 of the Public Administration Act 2004 establishes the Right of Return for executives who were non-executive employees prior to appointment as an executive. The Right of Return provides that on ceasing to be an executive for any reason on the initiative of the employer (other than if the contract is terminated for misconduct as defined in S22 of the Public Administration Act 2004) or because of the expiry of the contract, the executive is entitled to employment as a non-executive employee in the public service body in which they were last employed as an executive.

The Right of Return extinguishes if an executive has **not** been continuously employed as a public service executive since first appointment as an executive.

Myth 24. The Right of Return is to whatever job happens to be vacant at the time and at a classification level offered by the employer.

**FACT:** The Right of Return is to the highest non-executive level – a Senior Technical Specialist or Grade 7 level (s.27 of the PAA).

Myth 25. An executive returning to a non-executive level will be paid at a level determined by the employer.

**FACT:** The employer will do the calculation but must pay the returning executive at a rate calculated as follows:

The rate of pay on return is calculated by taking the employer superannuation contribution from the contracted TRP to arrive at a maximum cash figure. (Note that this method of calculation was approved by government to ensure that all returning executives were treated equally regardless of superannuation scheme membership.)

The outcome of that calculation is the former executive's salary on return unless it exceeds the midpoint of the Grade 7 and if that is the case the salary on return is capped at the midpoint of Grade 7. The return salary **cannot exceed the midpoint of Grade 7 but may be lower.**

Myth 26. An executive returning to a non-executive level is able to keep their executive scheme car.

**FACT:** Once the Right of Return has been exercised the executive is then a non-executive employee employed under the terms and conditions established in the VPS Agreement in place at the time (and subsequently).

Myth 27. An executive whose contract is terminated for misconduct must be allowed a Right of Return.

**FACT:** If the employment contract is terminated for misconduct, the Right of Return is extinguished.

Myth 28. An executive has no choice but to return to a non-executive role if eligible for a Right of Return.

**FACT:** An executive may elect to leave the VPS at the termination or expiry of the contract.

Myth 29. An executive may have their contract terminated by the employer and be paid in lieu of notice and then be returned to a non-executive level.

**FACT:** If an executive is returning to a non executive role, the notice period under the contract cannot be paid in lieu as employment is continuing.

Myth 30. An executive who returns to a non executive level cannot subsequently be declared surplus or redundant.

**FACT:** As a non-executive employee the former executive is subject to the terms and conditions of the VPS Agreement and could become surplus to the requirements of the employer at some point.

The VPS Agreement contains a process for the management of surplus employees through a redeployment process.