

# VICTORIAN PUBLIC ENTITY EXECUTIVE EMPLOYMENT HANDBOOK

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The Victorian Government has vested the Victorian Public Sector Commission with functions designed to enhance the performance of the public sector – fostering the development of an efficient, integrated and responsive public sector which is highly ethical, accountable and professional in the ways it delivers services to the Victorian community.

The key functions of the Commission are to:

- strengthen the efficiency, effectiveness and capability of the public sector in order to meet existing and emerging needs and deliver high quality services; and
- maintain and advocate for public sector professionalism and integrity.

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# 1. INTRODUCTION

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## 1.1 Background

The Victorian Public Sector Commission (VPSC) completed a review of executive employment and remuneration arrangements in the public sector in June 2018. The review indicated that, to reduce the risk of inappropriate practices and enhance accountability of the public sector, a dedicated Victorian Public Entity Executive Employment Handbook (the Handbook) should be developed.

The Handbook was released in July 2019. The Handbook enhances awareness of public sector standards and obligations that relate to executive employment in public entities. Taken together with the VPSC's [Standard Public Entity Executive Employment Contract](#) (Standard Contract), the Handbook will promote executive employment arrangements that are clear, consistent, effective, and transparent to ensure appropriate use of public funds and the minimisation of integrity risks.

The Handbook is managed by VPSC and questions about its content should be directed to [info@vpsc.vic.gov.au](mailto:info@vpsc.vic.gov.au).

## 1.2 Purpose of the Handbook

The Handbook will:

- assist public entities to manage employment contracts, remuneration and employment matters relating to executives
- inform executives, or those contemplating executive employment, about working conditions and responsibilities in the public sector
- provide guidance to executives and employers in public entities on executive employment and remuneration policy.

## 1.3 Scope of application of the Handbook

The Handbook provides guidance for employing executives in public entities. Public entities are defined in Part 1 Section 5 of the *Public Administration Act 2004* (PAA) and include statutory authorities, state-owned corporations and advisory bodies that exercise a public function. Some public entities are excluded from the scope of the Handbook, as they have been designated as public service employers by specific legislative reference or an Order in Council. The [State of the Public Sector in Victoria Report](#) provides further detail on which entities have been designated as public service employers.

Some Victorian public health entities are also not covered by the remuneration arrangements in this Handbook, listed in Appendix 6. These employers can contact the Department of Health and Human Services for further advice on health services executive employment by email:

[executive.employment@dhhs.vic.gov.au](mailto:executive.employment@dhhs.vic.gov.au).

Executive employment arrangements differ between the Victorian public service (VPS) and public entities due to the differences between how they are established in legislation. The Handbook provides the general employment conditions for executives in public entities. Executives should contact their employer if they are unclear on whether they are employed in the VPS or a public entity. Information on the standard employment conditions for VPS executives is available in the [Victorian Public Service Executive Employment Handbook](#).

## 1.4 How to use the Handbook

The interpretation of the Handbook is subject to an executive's employment contract. The Standard Contract contains mandatory terms (which must be included in all public entity executive employment contracts) and non-mandatory clauses (provided as model clauses). Mandatory requirements have been highlighted in the summary boxes at the top of each chapter.

The Handbook should be read in conjunction with an executive's employment contract and relevant legislation. The Handbook does not form part of an executive's contract.

### Employers

The Handbook will help employers with policies that are relevant to executive employment in public entities. Employers should seek information relating to tax matters from the Australian Tax Office (ATO) or another expert advisor.

### Executives

The Handbook sets out executive employment arrangements. It explains the benefits and responsibilities of working in public entities. Executives should seek information relating to tax matters from the ATO or another expert advisor. The ATO website is also a good source for publications on tax matters, and the ASIC Money Smart website has information on superannuation.

## 1.5 Roles and responsibilities

The Department of Premier and Cabinet (DPC) and VPSC are the key advisers to Government on executive employment matters. VPSC provides advice on executive employment to departments and agencies and publishes resources to support executives and employers. The Victorian Independent Remuneration Tribunal (the Remuneration Tribunal) will determine executive remuneration bands for public sector executives and may issue guidelines on the placement of executives within remuneration bands.

Until the Remuneration Tribunal is fully operational, all remuneration enquiries should be directed to the [Office of Public Sector Executive Remuneration \(OPSER\)](#). Portfolio departments can assist public entities with executive employment queries. If an executive is unsure whether they are employed as a public entity executive or public service executive, they should contact their employer in the first instance. Executives should contact the public entity's human resources unit on matters relating to their employment contract. If required, HR units can contact VPSC via email at [info@vpvc.vic.gov.au](mailto:info@vpvc.vic.gov.au).

It should be noted that the executive remuneration function for the public sector was previously administered by the Government Sector Executive Remuneration Panel (GSERP). This ceased to exist in November 2018.

The roles and responsibilities for executive employment are set out in Table 1 on page 5.

**Table 1. Victorian public entity executive employment – roles and responsibilities**

<b>Premier and Special Minister of State (supported by DPC)</b> Primary responsibility for whole of government executive workforce policy, including with respect to remuneration, classification, employment, and performance management.	
<p style="text-align: center;"><b>Remuneration Tribunal</b></p> <ul style="list-style-type: none"> <li>• Determine remuneration bands and annual adjustments for executives employed in prescribed public entities.</li> <li>• Issue guidelines on the placement of executives within remuneration bands.</li> <li>• At the request of the Minister, inquire into and determine the remuneration package for a Chief Executive Officer employed in a prescribed public entity.</li> </ul>	<p style="text-align: center;"><b>VPSC</b></p> <p style="text-align: center;"><i>Primary responsibility for employment, classification and performance management policies and frameworks</i></p> <ul style="list-style-type: none"> <li>• Set the standard executive contract of employment.</li> <li>• Produce executive employment handbooks and guidance materials.</li> <li>• Set frameworks for executive classification and performance management.</li> <li>• Provide tools and materials for executive work value assessments and performance management.</li> <li>• Provide materials and programs to improve employers' capability and awareness of public sector requirements.</li> <li>• Monitor the operation and effectiveness of the contracts, handbooks, and frameworks, and identify improvements.</li> <li>• Collect and share data to support the functions of the Remuneration Tribunal, OPSER and departments.</li> <li>• Advise employers on more complex employment, classification and performance matters.</li> </ul>
<p style="text-align: center;"><b>OPSER</b></p> <p>Oversees the administration of the Public Entity Executive Remuneration (PEER) Policy.</p>	
<p style="text-align: center;"><b>Departments</b></p> <p>Provide advice and support to public entities within the Department's portfolio on executive workforce matters across remuneration, classification, employment and performance.</p>	

## 2. RECRUITMENT AND SELECTION

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### Summary of mandatory requirements and responsibilities

- The [Public Sector Values](#) and the [Employment Principles and Standards](#), outlined in Part 2 of the PAA, are binding on all public entities. Employers must ensure that employment processes in their public entity comply with these requirements.
- Employers must deal with all information collected through employment processes in accordance with the *Privacy and Data Protection Act 2014*.

### 2.1 Recruitment, selection and appointment process

The Victorian public sector is a major employer. Recruiting the right people is integral to ensuring the maintenance of the Public Sector Values. The process followed to recruit executives therefore needs to demonstrate a fair and consistent approach. This means proper thought, planning, and a rigorous assessment should be undertaken, balanced against the Public Sector Employment Principles.

The Public Sector Employment Principles and Standards, outlined in Section 8 of the PAA, and the Victorian Public Sector Code of Conduct are binding on all public sector bodies. They require public entity heads to establish employment processes that ensure:

1. Employment decisions are based on merit
2. Public sector employees are treated fairly and reasonably
3. Equal employment opportunity is provided
4. Human rights as set out in the Charter of Human Rights and Responsibilities are upheld
5. Public sector employees have a reasonable avenue of redress against unfair or unreasonable treatment

#### How do I recruit for an executive position?

Each public entity should have in place policies and guidelines for recruiting, selecting, and appointing people. A generic recruitment, selection and appointment process is outlined in Appendix 1.

Employers should refer to VPSC's resources on the Employment Principles and Standards, [Recruiting a CEO](#) and [Serving Victoria: A guide for public sector CEOs](#).

#### Who has the authority to make an appointment?

VPSC considers best practice executive recruitment to be:

- a public entity's Board appoints the CEO (or equivalent)
- the CEO appoints the subordinate executives.

In practice, the authority to appoint varies between public entities depending on the establishing legislation for the public entity. In most instances the Board will have the authority to make a CEO appointment whereas in other cases, the appointment may require the approval of the responsible minister(s). In some cases, the minister may require the proposed appointment be referred to Cabinet for approval. It is recommended that the Board chairperson should liaise with the portfolio department prior to commencing the recruitment for a CEO. In the case of a subordinate executive, the authority to recruit will usually reside within the public entity.



## Pre-employment screening

Inadequate pre-employment screening processes have been identified by the Independent Broad-based Anti-corruption Commission as a significant risk to the integrity of the Victorian public sector. Public entities are expected to ensure appropriate pre-employment misconduct screening processes are used when recruiting executives. Public entities should consider implementing a pre-employment misconduct screening process in line with the VPS Pre-employment Screening Policy, released by VPSC in October 2018. The VPSC [Pre Employment Screening Policy](#) is mandatory in public service bodies and is a model policy for public entities.

## 2.2 Review of a selection decision

The Public Sector Employment Principles and Standards require public entities establish a reasonable avenue of redress against unfair or unreasonable treatment. Applicants should contact the public entity's HR unit for advice on the process for reviewing selection decisions.

## 2.3 Information privacy

The *Privacy and Data Protection Act 2014* (PDPA) requires all public entities to comply with its principles. All private information about individuals that is collected must be used in accordance with the PDPA. Every public entity is required to have its own privacy policy outlining responsibilities and procedures for collecting, using and storing private information. This means that all applications for executive positions will be collected, used and stored in accordance with the PDPA and the public entity's policies. Any breach of the PDPA requirements can be reported to the [Office of the Victorian Information Commissioner](#).

## 3. WORK ENVIRONMENT

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### Summary of mandatory requirements and responsibilities

- Victorian public sector employees must comply with the Public Sector Values (Section 7 of the PAA 2004) and [Code of Conduct for Victorian Public Sector Employees](#) or [Code of Conduct for Victorian Public Sector Employees of Special Bodies](#).
- Executives in public entities must also comply with the [Victorian Government Professional Lobbyists Code of Conduct](#) and the [Gifts, Benefits and Hospitality Policy Guide](#).
- Executive employment contracts are based on the [Standard Contract](#). The Standard Contract is a model best practice contract but all public entity executive employment contracts must contain the mandatory contractual terms contained in the [Public Entity Executive Remuneration Policy](#).

### 3.1 Values and conduct

The Victorian public sector is made up of public service bodies and public entities. The public sector funds, delivers and regulates a range of public services on behalf of government. The Public Sector Values define the behaviours expected of employees - outlined in section 7 of the PAA:

#### **Responsiveness – public officials should demonstrate responsiveness by:**

- providing frank, impartial and timely advice to Government
- providing high quality services to the Victorian community
- identifying and promoting best practice.

#### **Integrity – public officials should demonstrate integrity by:**

- being honest, open and transparent in their dealings
- using powers responsibly
- reporting improper conduct
- avoiding any real or apparent conflicts of interest
- striving to earn and sustain public trust of a high level.

#### **Impartiality – public officials should demonstrate impartiality by:**

- making decisions and providing advice on merit without bias, caprice, favouritism or self-interest
- acting fairly by objectively considering all relevant facts and applying fair criteria
- implementing government policies and programs equitably.

#### **Accountability – public officials should demonstrate accountability by:**

- working to clear objectives in a transparent manner
- accepting responsibility for their decisions and actions
- seeking to achieve best use of resources
- submitting themselves to appropriate scrutiny.

**Respect – public officials should demonstrate respect for colleagues, other public officials and members of the Victorian community by:**

- treating others fairly and objectively
- ensuring freedom from discrimination, harassment and bullying
- using their views to improve outcomes on an ongoing basis.

**Leadership – public officials should demonstrate leadership by:**

- actively implementing, promoting and supporting these values.

**Human Rights – public officials should respect and promote the human rights set out in the Charter of Human Rights by:**

- making decisions and providing advice consistent with human rights
- actively implementing, promoting and supporting human rights.

The [Code of Conduct for Victorian Public Sector Employees](#) and the [Code of Conduct for Victorian Public Sector Employees of Special Bodies](#) reinforce the values. The Victorian Public Sector Values and Codes of Conduct are a public statement of how we conduct our business and how we treat our clients and colleagues.

## 3.2 Conflict of interest

In line with the Code of Conduct, when executives are performing public duties, their private interests must not influence, or be seen to influence decisions. Personal interests can change over time as personal circumstances change. Conflicts of interest must be declared and managed or avoided.

Conflicts of interest can be actual, perceived or potential:

- an actual conflict of interest is one where there is a real conflict between public duties and private interests
- a potential conflict of interest arises where private interests could conflict with public duties
- a perceived conflict of interest is where a third party could form the view that an executive's private interests could improperly influence their actions as a public sector employee, now and in the future.

Examples of where a conflict of interest may arise include where an executive has other significant sources of income, is an office holder in a public or private company or has shareholdings and other business interests. It also includes family interests that may represent a conflict of interest through ownership of real estate or being a trustee or beneficiary of a trust. VPSC has published a [Model Conflict of Interest policy](#), guidance and supporting materials to assist public entities. The model policy sets standards for managing conflict of interest risks that reflect Code of Conduct requirements for Victorian public sector employees.

Executives are not only required to disclose their interests, but also take reasonable steps to identify and manage a conflict, or the appearance of a conflict of interest. All executives are required to complete a declaration and management of private interests form upon appointment (prior to their contract being entered into) and annually after appointment or within five working days after a change in circumstances (i.e. to any matter relating to information that an executive has previously disclosed in their form, for example, change of residence). Conflicts of interest should be declared using the public entity's conflict of interest declaration and management form.

Public entities are encouraged to monitor and revise their policies and procedures in relation to identifying, reporting and managing conflicts of interest. If an executive is unsure if they have a conflict, it is recommended that they contact their HR area for further advice.

### 3.3 Gifts, benefits and hospitality

The way public sector employees manage offers of gifts, benefits and hospitality is critical to maintaining the trust of the community. Employees need to act in a manner that allows the community, customers, government, clients and business associates to feel confident that they perform public duties without favoritism or bias, or for personal gain.

VPSC has issued a [Gifts, Benefits and Hospitality Policy Guide](#), which includes minimum accountabilities for public sector employees. These minimum accountabilities are binding on public entities under the Department of Treasury and Finance issued [Instruction 3.4.11 supporting the Standing Directions of the Minister for Finance](#). The minimum accountabilities are:

#### **Public officials offered gifts, benefits and hospitality:**

1. Do not, for themselves or others, seek or solicit gifts, benefits and hospitality.
2. Refuse all offers of gifts, benefits and hospitality that:
  - are money, items used in a similar way to money, or items easily converted to money
  - give rise to an actual, potential or perceived conflict of interest
  - may adversely affect their standing as a public official or which may bring their public sector employer or the public sector into disrepute or
  - are non-token offers without a legitimate business benefit.
3. Declare all non-token offers (valued at \$50 or more<sup>1</sup>) of gifts, benefits and hospitality (whether accepted or declined) on the public entity's register and seek written approval from their manager or delegate to accept any non-token offer.
4. Refuse bribes or inducements and report inducements and bribery attempts to the head of the public entity or their delegate (who should report any criminal or corrupt conduct to Victoria Police or the Independent Broad-based Anti corruption Commission).

#### **Public officials providing gifts, benefits and hospitality:**

5. Ensure that any gift, benefit and hospitality is provided for a business purpose in that it furthers the conduct of official business or other legitimate organisational goals or promotes and supports government policy objectives and priorities.
6. Ensure that any costs are proportionate to the benefits obtained for the State, and would be considered reasonable in terms of community expectations.
7. Ensure that when hospitality is provided, individuals demonstrate professionalism in their conduct, and uphold their obligation to extend a duty of care to other participants.

#### **Heads of public entities:**

8. Establish, implement and review organisational policies and processes for the effective management of gifts, benefits and hospitality that comprehensively address these minimum accountabilities.
9. Establish and maintain a register for gifts, benefits and hospitality offered to public officials that, at a minimum, records sufficient information to effectively monitor, assess and report on these minimum accountabilities.

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<sup>1</sup> Except where a person employed under the *Education and Training Reform Act 2006* in a Victorian government school receives an offer from or on behalf of a parent, guardian, carer or student intended to express appreciation of the person's contribution to the education of a student or students, in which case non-token includes any offer worth more than \$100.

10. Communicate and make clear within the public entity that a breach of the gifts, benefits and hospitality policies or processes may constitute a breach of binding codes of conduct and may constitute criminal or corrupt conduct, and may result in disciplinary action.
11. Establish and communicate a clear policy position to business associates on the offering of gifts, benefits and hospitality to employees, including possible consequences for a business associate acting contrary to the public entity's policy position. This must take into consideration any Whole of Victorian Government supplier codes of conduct.
12. Report at least annually to the public entity's audit committee on the administration and quality control of its gifts, benefits and hospitality policy, processes and register. This report must include analysis of the public entity's gifts, benefits and hospitality risks (including repeat offers from the same source and offers from business associates), risk mitigation measures and any proposed improvements.
13. Publish the public entity's gifts, benefits and hospitality policy and register on the public entity's public website (applies only to public entities with an established website). The published register should cover the current and the previous financial year.

**Definitions:**

Benefits – preferential treatment, privileged access, favours or other advantage offered including invitations to sporting, cultural or social events, access to discounts and loyalty programs, and promises of a new job.

Gifts – free or discounted items or services and any item or service that would generally be seen by the public as a gift. These include items of high value (e.g. artwork, jewellery, or expensive pens), low value (e.g. small bunch of flowers), consumables (e.g. chocolates) and services (e.g. painting and repairs).

Hospitality – a friendly reception and entertainment of guests. Hospitality may range from light refreshments at a business meeting to expensive restaurant meals and sponsored travel and accommodation.

Disciplinary action consistent with the relevant industrial instrument and legislation, including dismissal, may be taken where an employee fails to adhere to this policy. This includes where an employee fails to avoid wherever possible or identify, declare and manage a conflict of interest related to gifts, benefits and hospitality in accordance with VPSC's [Conflict of Interest Policy](#).

### 3.4 Professional Lobbyists Code of Conduct

In Victoria, lobbyists and government affairs directors are required to be listed on the [Register of Lobbyists](#) to engage in lobbying activities. They must comply with the Victorian Government [Professional Lobbyist Code of Conduct](#). This Code also places obligations on executives who have contact with lobbyists and government affairs directors.

A lobbyist is a person or organisation who represents the interests of a third party to government. Lobbyists can strengthen democracy by advising individuals and organisations on public policy processes and by facilitating contact with relevant government representatives.

A government affairs director (GAD) is a person who makes regular enquiries, advocates changes to public policy, or seeks specific assistance from government in a paid capacity of an organisation or business or professional or trade association.

The following obligations apply to executives in the public sector:

- Executives must not knowingly and intentionally be party to lobbying activities by a lobbyist or government affairs director who is not listed on the Register of Lobbyists.

- When first contacted by a lobbyist, executives should ensure they are informed of which clients the lobbyist is representing, the nature of the clients' issues, and whether the clients are involved in a government tender process.
- Executives must not be party to lobbying activities when they are involved in a government tender process.

Executives should review the Professional Lobbyists Code of Conduct to ensure they are aware of the details of these requirements. An executive's failure to comply with these obligations could be considered a breach of the Code of Conduct for Victorian Public Sector Employees and result in disciplinary action.

### 3.5 Standard Public Entity Executive Employment Contract

The terms and conditions of an executive's employment are set out in the executive's employment contract. The employment contract puts into writing the expectations of both parties. The [Standard Contract](#) is a model contract that should be used in all public entities. The Standard Contract for public entities can be downloaded from the [VPSC website](#).

The Standard Contract includes mandatory terms, which cannot be removed in individual employment contracts. The mandatory terms are set out in the [Public Entity Executive Remuneration Policy](#). The VPSC strongly encourages the use of the non-mandatory clauses unless there is a clear business reason or a requirement of the specific role for the variation. Schedules appended to the standard executive employment contract set out the position, duties, location, and remuneration package that are specific to an executive.

Although public entities are able to vary the model clauses in the Standard Contract, there are some issues and risks associated with drafting new clauses. Public entities should seek legal advice when making changes to the model clauses.

There is no minimum term of employment. The length of employment can be agreed between the two parties as long as the term does not exceed five years.

### 3.6 Work/life balance

The Victorian Government supports a balance between work and family for all Victorians. The Government has demonstrated this commitment through the Wages Policy 2019, which requires that all public entities operationalise elements to the Government's priorities in employment, such as gender equity and flexible working arrangements.

Executives can be offered flexible work arrangements to enable a balance of work with other life activities including family, health, study, sport and exercise, carer responsibilities, hobbies, and life or career aspirations.

This section outlines the various benefits that may be available in public entity employment that go beyond simply financial rewards.

#### Flexible working arrangements

The Victorian Government supports flexible work arrangements to enable a balance of work with other life activities including caring for family, contributing to the community, maintaining health and wellbeing, studying, transitioning to retirement or participating in leisure activities.

Processes will differ from one public entity to another, but the goal should be to reach an outcome in which an individual's needs for flexibility are met, consistent with business requirements, industrial instruments and legislative requirements.

Flexible working arrangements include flexible start and finish times, working part-time, job sharing, etc. Executives can negotiate with their employer their working hours to fit with their other commitments, balanced against the demands of the role.

## Support programs

In many public entities, executives can access support programs through the Employee Assistance Program (EAP). The EAP is a personal coaching and counselling service that offers confidential, short-term support for a variety of work-related and personal issues that may be affecting an executive at work or at home.

A qualified advisor from the EAP can talk with the executive or a member of the executive's immediate family over the phone or arrange a face-to-face consultation at an agreed location, either on or off site. If an executive decides to access the EAP, their details are not passed on to anyone in their public entity.

## Professional development

To meet the challenges facing Victoria, our public sector needs high performing, diverse and collaborative leaders who deliver high quality services and outcomes for our community. Each public entity will approach leadership development in light of the specific capability needs and strategic aims of the public entity. Executives should discuss development opportunities with the public entity's HR unit directly.

Executives may be able to access opportunities to undertake intensive study focused on leadership in the public sector. For example, study programs include the Executive Fellow Programs and Executive Master of Public Administration offered by the Australia and New Zealand School of Government. VPSC and the Australian Institute of Company Directors (AICD) have adapted the Company Director Course to the public sector. Further information on the [Company Directors Course for the Victorian Public Sector](#) is available on the VPSC website.

## Diverse and inclusive culture

A diverse public sector is best equipped to understand, value and deliver for the Victorian community. Current Whole of Victorian Government strategies are focused on increasing the low representation and improving employment experiences of [Aboriginal employees](#), those with a [disability](#), [LGBTI employees](#) and people from culturally and linguistically diverse backgrounds (CALD).

Executives play a significant role in improving and driving inclusion across the sector. The VPSC website lists current diversity programs and initiatives and executives are encouraged to familiarise themselves with these.

## Outside employment

Executives must seek the approval of their employer before engaging in any outside employment. The opportunity exists for executives to seek a leave of absence to undertake outside work that contributes to their professional development. Executives may also be able to undertake other secondary work unrelated to their position (so long as there is agreement with the employer). Executives must ensure that there is no direct or indirect conflict of interest arising from the secondary work they undertake (refer to Section 3.2 – Conflict of interest).

**Health and wellbeing**

The employer may require an executive to undergo and satisfactorily pass a medical examination by a qualified medical practitioner (at the employer's expense). Check with the employer's HR unit for details on how to access a medical check. A medical check entitlement should not be 'cashed in' or used for expenses such gym memberships.



## 4. REMUNERATION

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### Summary of mandatory requirements and responsibilities

- Remuneration of public entity executives must comply with any determinations and guidelines issued by the Victorian Independent Remuneration Tribunal (Remuneration Tribunal), which has been established to determine remuneration bands for public sector executives and associated guidelines.
- Until such time as the Remuneration Tribunal has made determinations or issued guidelines, employers must continue to follow current requirements for setting executive remuneration in line with [Public Entity Executive Remuneration Policy](#) (PEER Policy) issued by the [Office of Public Sector Executive Remuneration \(OPSER\)](#).
- Employers must report executive employment details annually to the VPSC in the form and detail advised at the time.
- Employers must comply with the [Financial Reporting Directions](#), issued under the *Financial Management Act 1994*, relating to reporting of executive salaries in annual reports.

### 4.1 Responsibility for remuneration in the public sector

The roles of VPSC, OPSER and the Remuneration Tribunal are set out in Section 1.5 Roles and responsibilities. The Remuneration Tribunal has responsibility to establish remuneration bands for prescribed public entities. The Remuneration Tribunal may also issue guidelines on the placement of executives within the bands.

Until such time as the Remuneration Tribunal processes have been fully established public entities should continue to follow the current processes outlined on the OPSER website consistent with the PEER Policy. When available, remuneration bands and guidelines issued by the Remuneration Tribunal will take precedence over information provided in the Handbook.

If you are unsure if your entity is subject to the PEER Policy, OPSER publishes a list of entities that are required to comply on their website.

### 4.2 Public Entity Executive Remuneration Policy

Remuneration of executives in the public sector is governed by the PEER Policy. OPSER is responsible for overseeing decision making about public sector executive remuneration. The PEER Policy stipulates that the following principles are to guide public entity boards in preparing submission for OPSER:

*Principle 1: Executive remuneration should be fair and reasonable*

Executives in public entities should receive fair and reasonable recompense for performing their public duties.

*Principle 2: Executive remuneration should consider organisational performance as well as Victorian fiscal and economic conditions*

Executive remuneration decisions should have regard to the financial performance of the entity. Decisions should also consider the fiscal and economic conditions of the state, reflected in the Victorian Government's Wages Policy, as updated from time to time.

*Principle 3: Executive remuneration should be competitive*

Remuneration should be set at a competitive level for the relevant market and sector, so as to attract and retain talented people.

*Principle 4: Executive remuneration should reflect the non-financial benefits of public sector employment*

Remuneration should not be the overriding factor in attracting and retaining executives, in recognition of the fact that there are a variety of non-financial benefits of public sector employment.

*Principle 5: Executive remuneration arrangements should be consistent and understandable to both executives and the general public*

The methodology underpinning remuneration decisions should be robust and based on rigorous analysis of all of the relevant factors. The principles should be considered when recruiting for each executive role individually rather than applying a generic approach to all executive positions in the public entity. For example, competitive remuneration to attract one role may be different to another, as some roles are generalist and can be recruited from both private and public sectors. Others may be more unique with specialist expertise only available in certain industry sectors.

## **What is considered remuneration?**

The total remuneration for executives includes:

- base salary (including any post-tax employee superannuation contributions or other post-tax deductibles)
- employer superannuation contributions (compulsory employer contributions and pre-tax contributions directed by the executive)
- employment benefits (i.e. non-salary benefits such as the cost of a motor vehicle to an employer but excluding general business expenses such as laptop computers, mobile phones, or study leave)
- the annual cost to the employer of providing the non-monetary benefits, including any fringe benefits tax payable.

The most common non-salary employment benefit utilized by executives is a motor vehicle. Further guidance is available in Section 6.2. Employers should refer to the [PEER Policy](#) for further information on remuneration requirements and processes.

## **4.3 When is remuneration reviewed?**

### **Premier's annual remuneration adjustment**

Employers may choose to increase an executive's TRP by the Premier's annual adjustment, which occurs on 1 July. The annual adjustment to TRP may be made at any time during the 12 month period to 30 June of the current year, but not backdated prior to 1 July of the previous year.

Under the PEER Policy a public entity must make a submission to OPSER for any proposed adjustment to a CEO's TRP that is greater than the Premier's annual adjustment.

The employer has discretion in determining whether to apply the Premier's annual adjustment. Employers may wish to consider a range of factors, including:

- CPI
- wages policy
- financial context and performance of the entity
- performance of the executive
- if the executive has been recently appointed or has recently had an ad hoc remuneration review
- executive remuneration reviews.

## Remuneration reviews

The Standard Contract provides that the executive's remuneration will be reviewed annually. The remuneration review for individual executives is conducted in the context of the outcome of the Premier's annual remuneration adjustment (see above) but should also take into account sustained performance evidence of the executive's application of key competencies, and retention factors.

An employer may agree to undertake an ad hoc remuneration review. This may be to acknowledge changes in responsibility, accountability or for retention purposes. An employer agreeing to undertake this review does not guarantee any increase to any element of the executive's remuneration.

Any increases or other change to base salary or employment benefits (including as a result of a change in the annual cost to the employer of providing the non-monetary benefits) shall be notified to the executive in writing. Boards are still subject to the PEER Policy in relation to ad hoc reviews.

An executive may request in writing at any time to re-structure base salary and any employment benefits for consideration by the employer. Should the employer agree to this request, such a re-structure shall only apply prospectively, and must include a superannuation component at least equivalent to the minimum superannuation contribution required by the employer to avoid a charge under the *Superannuation Guarantee (Administration) Act 1992 (Cth)* (although note that special requirements may arise for an executive who is a member of a statutory superannuation scheme where superannuation contribution obligations arise through the relevant legislation).

## 4.4 Executive remuneration committee

Public entities are encouraged to establish an executive remuneration committee. The committee's role is to ensure that a consistent and rigorous approach is taken to setting and adjusting executive remuneration. For smaller public entities it may be more appropriate for this role to be undertaken by the Board.

### Responsibilities of the committee

The specific role and responsibilities of the committee are for each employer to determine. A suggested model is set out on page 18.

The executive remuneration committee responsibilities are to:

- Provide a budget forecast of expenditure on executive salaries for each financial year.
- Provide a forecast of any changes to the executive profile in the public entity and the challenges this will bring.
- Monitor budget expenditure and report progress against the forecast on a six-monthly basis.
- Review all proposals for remuneration levels and adjustments to assure transparency and fairness.
- Ensure that the distribution of executive salaries is reported in the public entity's annual report (for more details, refer to the current [Financial Reporting Directions](#) issued under the *Financial Management Act 1994* which are published on the Department of Treasury and Finance website).
- Report to VPSC annually, details of executive employment in the public entity in the form and format advised at the time.
- Provide VPSC with an aggregate report on the total cost of executive employment for the public entity on an annual basis.
- As required, ensure it has documented its methodology for determining work value, related benchmarks, reasons for any remuneration level, including changes in, and premium remuneration. These policies must stand up to review.

**Note:**

- Public entities should consider including an independent external member– someone who can provide an unbiased external viewpoint.
- VPSC maintains a Whole of Victorian Government database on executive remuneration. Reports are provided to the Government and the Victorian Secretaries Board. Therefore, accurate and timely information must be provided.

## 5. EMPLOYMENT CONDITIONS

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### Summary of mandatory requirements and responsibilities

- The *Long Service Leave Act 2018 (Vic)*, *Public Holidays Act 1993 (Vic)* and the *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)* apply to public sector executives. These acts provide the minimum entitlements, but additional leave provisions may be included in contracts consistent with the employer's policies.

### 5.1 Leave entitlements

Public entities are encouraged to establish policies relating to employment conditions, such as leave entitlements. Employers are provided with flexibility to amend the leave entitlements in the Standard Contract to ensure consistency with the employer's policies. Executives should contact the HR unit with any queries relating to leave entitlements, policies and processes. Employers seeking advice on long service leave entitlements should refer to Business Victoria's resource [Long Service Leave – an overview](#).

### 5.2 Can executives be paid via a private company?

Executives cannot be paid via their private company. An executive is an employee of the public entity and a public official under the PAA. It is the executive who must be held accountable in the exercise of their functions – not their company.

Such an arrangement would not be an executive employment contract but the engagement of a contractor or a consultant. More importantly, in most situations, a contractor or consultant cannot hold key delegations, particularly financial delegations.

### 5.3 Reimbursements

Employers should develop policies and procedures for seeking prior authority for material expenses. The following guidance provides advice on common expenses claimed for reimbursement.

#### Relocation policy

An executive who is relocated for a position may be reimbursed necessary and reasonable expenses of relocation for themselves, their family and their effects (for example, airfares, temporary accommodation costs during settling in and settling out periods, and insurance). Relocation expenses may be considered appropriate at the start and conclusion of a term of appointment. Optional expenses may also be reimbursed on a case by case basis. See Appendix 2 for further detail on relocation expenses.

Relocation arrangements should be agreed to by the employer prior to the executive accepting the offer of employment. Employers should ensure that agreed relocation terms are appropriately documented.

Any caps on relocation allowances decided between an employer and executive should be considered as an upper limit, not as an entitlement. The need and reasonableness of each individual item should be considered by the executive and employer.

The executive should keep track of expenses against agreed relocation terms and provide receipts for reimbursements as required by the employer.

## Travelling and personal expenses

Executives may be reimbursed for any necessary and reasonable expenses incurred during the course of their duties. The [VPS Travel Policy](#) is mandatory for all public service entities. It is not mandatory for all public entities but does provide a guide for employers when establishing their own policies.

## Telephone expenses

Executives who make work-related calls or are required to be available by telephone outside normal working hours can have their service charges reimbursed by the employer. The reimbursement should be related to the number of work-related calls.

Employers should note that mobile devices (such as a mobile phone, iPad or laptop) are considered business expenses and should not be included in contracts or in TRP.

## Living away from home allowance

Depending on the employer's policies, an executive who is living away from home<sup>2</sup> may receive an allowance that reimburses additional costs incurred for living in another place. This arrangement would be for a short-term assignment and the allowance must be negotiated between the executive and employer. A living away from home allowance should not be paid for an entire contract.

Reimbursements may be subject to fringe benefits tax. Any fringe benefits tax liability must be included in the executive's TRP. Refer to the [ATO](#) for more information.

## Hospitality

Executives and employers should refer to Section 3.3 Gifts, Benefits and Hospitality Policy Guide when considering reimbursements for hospitality expenses.

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<sup>2</sup> A person is considered to be living away from a usual place of residence if, 'but for a change in residence in order to work temporarily for the employer, the person would have continued to live at the former place'. It must also be the intention of the employee to return to the former locality.

## 6. EMPLOYMENT BENEFITS AND SALARY SACRIFICE ARRANGEMENTS

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### Summary of mandatory requirements and responsibilities

- Executives and employers must comply with [ATO](#) advice when entering into salary sacrifice arrangements.
- General government agencies must comply with the Standard Motor Vehicle Policy issued by the Assistant Treasurer.
- Fringe benefits tax is included in the definition of TRP in the [PEER Policy](#).

### 6.1 What is salary sacrificing?

Executives may enter into a salary sacrifice arrangement as part of their total remuneration. In this arrangement, the executive agrees to forego part of their salary in return for the employer providing benefits of a similar value. The amount that is sacrificed forms part of the TRP an executive receives. Under an effective salary sacrificing plan:

- Taxable income is reduced.
- The employer may incur a liability to pay fringe benefits tax on the fringe benefits provided. The executive must meet any fringe benefits tax liability that arises from their salary sacrificing arrangement.
- Salary sacrificed superannuation contributions are classified as employer superannuation contributions (not employee contributions) for tax purposes (also called 'concessional contributions') – refer to the ATO for more information.

A salary sacrifice arrangement can only be entered into for prospective income, that is before the work is performed or the income derived. Once an employee is in receipt of the income it is subject to income tax and cannot be effectively salary sacrificed. The ATO has published reference material and definitive public rulings on the subject of effective salary sacrifice arrangements.

Executives are advised to read the information published by the ATO and obtain independent financial advice before entering into a salary sacrifice arrangement.

### 6.2 Non-salary benefits

Executives are able to include non-salary benefits as part of their TRP. Items that may be salary sacrificed as non-salary benefits include, and would normally be limited to:

- a motor vehicle obtained through the executive vehicle scheme
- a motor vehicle obtained through a novated leasing arrangement
- a health insurance scheme (subject to the employer participating in a scheme)
- superannuation – salary can be sacrificed towards superannuation savings. See Section 7 for information. (Note that special issues may arise for an executive who is a member of a statutory superannuation scheme where superannuation contribution obligations arise through the relevant legislation.)

**Note:**

- Salary sacrificing can incur fringe benefits tax (see Section 6.3). Executives must meet any fringe benefits tax liability that arises from the salary sacrifice arrangement.
- The ATO publishes rulings and handbooks for employers detailing salary sacrifice items and fringe benefits tax status.

### 6.3 Executive motor vehicles

One of the benefits that may be available to executives is access to a motor vehicle. There are two ways of accessing a motor vehicle: an executive vehicle scheme and/or a novated leasing arrangement. The cost of the motor vehicle may be paid by executives through a salary sacrificing arrangement.

Each employer is responsible for determining how it will access vehicles that it will provide to an executive. The employer may determine to:

- subscribe to the executive motor vehicle scheme managed by [VicFleet](#) (compulsory for general government agencies)
- establish their own scheme by entering into an agreement with another provider, including for novated lease arrangements
- purchase the vehicle directly.

An executive is not required to access a motor vehicle as part of their package. Executives who choose to use their own private motor vehicle should not be reimbursed for regular travel to and from work.

An executive can choose an executive vehicle from a list of approved vehicles determined by their employer for business and private use. The scheme is based on sharing costs between the executive and employer.

Adherence to the Government's [Standard Motor Vehicle Policy](#) (SMVP) is a requirement for all Victorian general government departments and agencies and should be used as a guide for all other public entities. It is to be applied consistently with the requirements of all relevant legislation, policies and contractual arrangements. VPSC has published a [motor vehicle costing methodology](#), which is mandatory for the VPS and can be used as a model for public entities. Further information regarding the vehicle costing methodology is provided in Appendix 5.

#### Benefits of an executive motor vehicle scheme

The benefits of this arrangement for an executive may include:

- tax benefits, as costs are deducted from the pre-income tax component of remuneration
- a comparatively inexpensive option for accessing a motor vehicle
- provision of a fuel card
- car parking at work
- car is maintained, insured and serviced by the employer
- provision of accident management services and manufacturer's roadside assistance.



## Conditions for executive motor vehicle scheme arrangements

The table below outlines the conditions for each party under an executive motor vehicle scheme arrangement through VicFleet and in accordance with the SMVP.

Conditions
<p>Executive:</p> <ul style="list-style-type: none"><li>• pays 2/3 of the approved costs of the car plus any accessories agreed with the employer through a salary sacrificing plan</li><li>• may claim for more than 1/3 use if a record of usage is kept over a three-month period</li><li>• pays for e-TAGs</li><li>• observes government motor vehicle policies</li><li>• pays the fringe benefits tax associated with the arrangement</li><li>• may nominate other persons to use the vehicle for private purposes</li><li>• ensures the vehicle is available for business use during business hours, if required.</li></ul> <p>Note: Vehicles are retained for a maximum of three years or 60,000km, whichever occurs sooner.</p>
<p>Employer:</p> <ul style="list-style-type: none"><li>• approves the provision of the vehicle</li><li>• meets 1/3 of the approved costs for business use</li><li>• arranges provision of a fuel card</li><li>• provides car parking at work site(s)</li><li>• is responsible for the maintenance, insurance and servicing of vehicles, and arranges accident management services and manufacturer's roadside assistance.</li></ul>

## Part-time executives

Part-time executives may access an executive motor vehicle scheme where the employer agrees. The vehicle cost to a part-time executive is not pro-rated.

## Novated leasing arrangement

An executive may access a motor vehicle solely for private use through a novated lease. This arrangement is entered into with the agreement of the employer. The vehicle is arranged through a finance company and the employer facilitates the payments through a salary sacrificing arrangement. The executive bears all costs of the vehicle. If the executive's employment ends, the arrangement continues between him/her and the finance company. [VicFleet](#) has more information about this arrangement.

### Note:

- The Government has a contract in place with providers of novated lease arrangements – refer to [VicFleet](#).
- Car parking is not provided by the employer as part of a novated lease or for a privately owned vehicle.

## 6.4 Fringe benefits tax

Fringe benefits tax (FBT) is a tax incurred by employers when employees are provided with certain benefits in respect of their employment. Benefits provided through salary sacrificing and some reimbursements of expenses may incur FBT.

A fringe benefit is a benefit received by a person in respect to their employment. A benefit includes any right, privilege, service or facility.

A number of benefits can be exempt from FBT. Refer to the [ATO](#) for more information on exempt benefits.

Salary sacrificed superannuation contributions are employer contributions and are not fringe benefits. Therefore, any salary sacrifice into superannuation does not incur FBT liability.

Executives must meet any fringe benefits tax liability that arises from the salary sacrifice arrangement (e.g. vehicle provided under an executive vehicle scheme or novated lease).

Employers must:

- Keep records of FBT liability
- Complete and lodge an annual FBT return with ATO by 21 May each year
- Provide executives with a payment summary of the total taxable value of the fringe benefits received in an FBT year exceeding \$2,000. The ATO uses the payment summary in income tests for a number of government benefits, e.g. Medicare Levy.

Executives must complete a FBT declaration form outlining the business use of any benefit that could be exempt from FBT.

Employers can find more information about their FBT obligations from the ATO, in particular, the ATO publication [Fringe benefits tax – a guide for employers](#). Executives are advised to seek independent financial advice to assist their decision making for maximising their benefits. The ATO also has a number of publications on FBT that are useful.

## 7. SUPERANNUATION

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### Summary of mandatory requirements and responsibilities

- Employers are required to make superannuation contributions in line with the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.
- Where an executive is a member of a defined benefits superannuation scheme, the employer is required to make contributions in line with the relevant legislation.

### 7.1 General superannuation information

Superannuation is a complex area and this Handbook does not attempt to provide advice to individuals. This Handbook outlines government policy and the choices available to employees.

A general information paper that executives may find useful is available on the VPSC website.

#### Which superannuation fund?

There are two types of superannuation fund: accumulation schemes and defined benefits schemes.

**Accumulation schemes** are lump sum funds where the investment of the individual and earnings on that investment determine the outcome for the individual on retirement. The employer contribution required under the *Superannuation Guarantee (Administration) Act 1992 (Cth)* is made into the accumulation fund.

The compulsory superannuation contribution is currently 9.5 per cent of “ordinary time earnings” (as defined for purposes of the Superannuation Guarantee legislation).

**Defined benefits schemes** operating in the broader Victorian public sector are closed to new membership, with the exception of the Emergency Services Superannuation Scheme which is open only to operational emergency services workers.

These schemes are established by legislation and have a prescribed level of contribution. They provide a defined benefit by way of lump sum, pension, or a combination of the two. The closed defined benefits schemes include the Revised Scheme, New Scheme, Transport Scheme and the State Employee Retirement Benefits Scheme.

Requirements for employer contributions for defined benefit schemes are available at:

- [State Superannuation Fund \(Revised Scheme\)](#)
- [State Superannuation Fund \(New Scheme\) and Transport Superannuation Fund](#)

All executives are required to be members of a complying superannuation fund. However, choices are available in terms of the superannuation provider. As some executives will have been members of statutory superannuation schemes prior to entering into executive contracts the choices are complex.

Executives are required to make employer and employee superannuation contributions from their TRP if they are under a defined benefits scheme.

It is strongly recommended that executives seek financial advice before making decisions relating to superannuation.

Executives joining the public sector, or who are already a member of an accumulation scheme must ensure their scheme is a complying superannuation fund or choose a complying superannuation fund to which employer contributions can be paid. Executives are required to provide the necessary

documentation to their employer to prove their fund is a complying fund if a fund other than the default fund is chosen by an individual. (Most funds provide this proof by way of a 'complying fund status' letter which can be easily accessed on their website.)

Emergency Services and State Superannuation can accept contributions where the executive has ceased membership of one of the defined benefit funds and still has funds with the fund.

## Superable salary

Defined benefits schemes superable salary, as elected by the executive, is:

- 70 per cent of the total remuneration package
- the pre-contract superable salary, if that salary is higher.

These limits are established by State legislation in the *Superannuation (Public Sector) Act 1992 (Vic)* and are therefore not able to be altered in any way.

Accumulation scheme members employer contribution is calculated on the basis of a notion of salary called "ordinary time earnings" in accordance with the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.

## 7.2 Superannuation requirements

### Employees contributing to superannuation

Employees in some public entities are able to contribute their employee contributions either after tax as a personal contribution (also called a 'non-concessional contribution') or before tax which can include through a salary sacrifice arrangement. Salary sacrifice contributions are considered to be employer contributions (also called 'concessional contributions').

The conditions for an effective salary sacrifice arrangement have been decided by ATO rulings and policy (refer to the ATO website). Executives are strongly advised to obtain independent financial advice before entering a salary sacrifice arrangement. Employers accept no liability for an executive's decision to request a salary sacrifice arrangement.

Employee contributions to defined benefits schemes are defined in the *State Superannuation Act 1988 (Vic)*.

Employees who are members of accumulation schemes may contribute additional voluntary contributions (whether concessional or non-concessional) subject to the rules of the relevant fund.

Limits apply with respect to concessional and non-concessional contributions. If contributions are made above these limits, additional tax may apply. Please check with the relevant superannuation scheme fund or the ATO website.

### Employee responsibilities

A member of a statutory superannuation scheme, as defined in section 3 of the *Superannuation (Public Sector) Act 1992 (Cth)*, who is about to enter an executive contract, must elect to either continue or cease to be a member of that scheme.

An executive should carefully consider their decision because once a choice has been made to cease membership of a statutory superannuation scheme that decision cannot be reversed.

The choice to remain in a statutory superannuation scheme may be changed prospectively at any time in the future.

When commencing a new contract, executives must nominate a super fund for their employer to make contributions. Executives should seek independent financial advice before making any decisions about their superannuation.

For more information about contributing towards superannuation refer to:

- the [VPSC website](#)
- the Emergency Services and State Super website
- independent financial advice.

## Lump sum payments towards superannuation

An executive may be able to make lump sum contributions directly into an accumulation superannuation fund either as a concessional contribution or a non-concessional contribution. Executives should check the rules of the relevant fund and the ATO website.

## Temporary changes to remuneration (including higher duties allowance)

Where an assignment is for a period of more than 12 months, the higher level of remuneration may be included in salary for superannuation purposes in a defined benefit scheme and also will constitute “ordinary time earnings” for superannuation guarantee purposes for members of accumulation funds.

## Termination benefits

Where an executive has elected to remain in a defined benefits scheme, membership of that scheme ceases on cessation of employment. The nature of any payment from the superannuation fund will be determined by the fund in accordance with the *Superannuation (Public Sector) Act 1992* and will depend on the reasons for the cessation of employment.

## Maximum superannuation contribution base

The amount of superannuation payable for some executives may increase each year as a result of the indexation of the maximum superannuation contribution base (MSCB) by the ATO. Increases to superannuation may be required for executives whose base salary exceeds the amount of the maximum superannuation contribution base prior to its indexation. Any increase in superannuation payable, as a result of the ATO’s indexation of MSCB, can be absorbed into the Premier’s annual adjustment.

These increases need to be passed on to executives without any reduction to their base salary. In practice, such an adjustment may be made at the same time as an annual remuneration increase. If the executive does not receive the annual adjustment the superannuation component of their TRP will still need to be increased by the ATO indexation of the MSCB with no reduction to their base salary.

## Superannuation guarantee rate

The compulsory superannuation contribution is currently 9.5 per cent. There are legislated annual increases to that rate scheduled between 2020 and 2025. Those increases should be passed on to executives without any impact on base salary. More information about the dates of the increases can be viewed on the ATO website.

## Mandatory superannuation contributions

Executives who are entitled to the 9.5 per cent superannuation contribution rate (accumulation fund members) are only entitled to receive contributions up to the maximum super contribution base amount which the ATO sets each year. For executives earning above the maximum superannuation contribution base, the 9.5 per cent will be capped and updated subject to indexation each year. For executives earning below the maximum superannuation contribution base, the contribution rate will be 9.5 per cent of their salary.

The monetary value of the 9.5 per cent should be updated in each executive's contract annually where there has been any change their remuneration package to ensure they receive their mandatory superannuation contribution.

Superannuation scheme	Type of fund	Employer contribution	Executive contribution
Default scheme for employer or other complying super fund nominated by the executive.	Accumulation fund	As defined in the <i>Superannuation Guarantee (Administration) Act 1992</i> . The employer contribution is made pre-tax.	Executives are able to make contributions from pre-tax and/or post-tax salary
<p>Revised Scheme</p> <p>New Scheme Transport Scheme</p> <p>Emergency Services Superannuation Scheme</p> <p>State Employees Retirement Benefits Fund</p> <p>Note: A member of any of these schemes about to enter an executive contract must elect to stay in these schemes or choose to change to the ESSSuper Accumulation plan or VicSuper or another complying fund.</p>	<p>Defined benefits schemes</p> <p>Cannot return to any of these schemes if membership has ceased by choice or end of employment.</p>	<p>Superable salary = 70 per cent of the total remuneration or (if higher) pre-contract superable salary as elected by the executive.</p> <p>Superable salary may change with changes in TRP. Employer contribution levels will depend on a number of variables including the age on joining the scheme and the age on first entering an executive contract – the percentage calculations for employer super contributions depend on whether the executive is a member of the Revised, New or Transport Scheme tables.</p> <p>Emergency Services Scheme members should consult their fund for further information.</p>	<p>Employee contributions are defined by the relevant legislation.</p> <p>Employees in the VPS and certain other sector employers may elect to salary sacrifice their employee contributions.</p>

## 8. PERFORMANCE MANAGEMENT AND DEVELOPMENT

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### 8.1 Performance management

An executive's performance should be reviewed regularly and employers can determine the frequency of formal reviews that best suit their operating environment. Executive performance management establishes the link between the whole of government, the employer and individual executive objectives and priorities.

All executives should have a written performance plan that measures their effectiveness to deliver organisational and government outcomes. A performance management plan should:

- be in written format
- be determined by the employer in consultation with the executive
- be determined at or within three months following commencement of employment
- include measurable performance goals that set clear, connected and collaborative expectations
- be reviewed on a regular basis – at least once a year.

VPSC has produced performance management guidance including [Assessing a CEO's performance](#) and the VPS [Performance Management Framework](#).

### 8.2 Managing under performance

Where the performance of an executive is considered as requiring improvement, it is the executive's and the employer's responsibility to:

- identify the cause(s)
- design a development plan with measurable performance standards – both the executive and employer should agree to this plan
- monitor improvement – the monitoring period should be between one and three months.

If the executive's performance does not improve after the second review period, this may be considered as a basis for terminating the executive's contract. Executives should check with the employer's HR unit for further information on performance management process.

## 9. GRIEVANCES

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### Summary of mandatory requirements and responsibilities

- Under the [Public Sector Employment Principles](#) public entities are required to establish a reasonable avenue of redress against unfair or unreasonable treatment.

### 9.1 Grievances or disputes

An executive may request a review of their employer's decision or action, or lack of action arising out of their employment contract. A procedure for resolving grievances or disputes is provided in the [Standard Contract](#).

### 9.2 Review processes

Under the [Public Sector Employment Principles](#) public entities are required to establish a reasonable avenue of redress against unfair or unreasonable treatment. The employer's HR unit should provide advice on the employer's processes.



## 10. END OF EMPLOYMENT

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### Summary of mandatory requirements and responsibilities

- The following mandatory terms from the [PEER Policy](#) apply to all public sector executive employment in relation to termination of contracts:
  - The employer may terminate a contract by providing the executive with four months' notice in writing
  - There is no compensation for termination of a contract beyond payment in lieu of notice and accrued leave
  - An unexpired portion of a contract may only be paid out in exceptional circumstances, with the written consent of the relevant department Secretary.

### 10.1 Circumstances ending employment

An executive's employment can end in a number of different circumstances. Some of these circumstances and the responsibilities of each party are discussed below.

- An employer may terminate a contract without notice for reasons of serious misconduct.
- The [Standard Contract](#) provides that an executive must give four weeks' notice to end their contract.
- An executive's employment may end due to the expiry of the contract, voluntary resignation, termination of contract, retirement or death.
- Executives must be paid out any accrued entitlements at the end of their employment, as appropriate. Any payments in lieu of accumulated leave entitlements are calculated by dividing the executive's TRP by 1.095 (The reference to 1.095 is the current SG rate of 9.5per cent).
- Pay in lieu of notice is based on 100 per cent of the TRP.
- Information or products developed by the executive during their employment remains the property of their employer.
- Executives are not eligible for redundancy payments.

There is no automatic right to a non-executive role on expiry or termination of an executive contract. Executives in public entities do not have such a right under the Standard Contract. This is the case regardless of their circumstances, which may include:

- the executive preferring a non-executive role
- the executive's employer terminating their executive contract
- the executive's employer deciding not to renew an expiring executive contract.

### 10.2 Re-employment

The Standard Contract provides that the employer:

- Consult the executive at least six months prior to the expiry of the contract regarding whether a further contract will be offered. In the case of a short-term contract (one year or less), the consultation should be undertaken at least three months prior to the expiry of the contract.
- Advise the executive on the decision about contract renewal no later than four months before contract. In the case of a short-term contract, no later than two months before contract expiry.

If a new contract is offered, the employer should ensure that the administrative processes (i.e. payroll processes, new contract ready for signing, delegations continue, etc.) are in place to execute the contract before the current contract expires.

If a contract is not renewed, the executive must be paid any outstanding accrued but untaken annual and/or long service leave entitlements, if applicable.

### 10.3 Termination of contract

A contract may be terminated by the employer or employee under the terms set out in their contract. See Appendix 3 for more detail on summary dismissal.

If the employer chooses not to continue employment through to the end of the notice period, payment in lieu of notice may be offered.

### 10.4 Retirement

It is unlawful to discriminate against an employee on the basis of age or for the employer to compulsorily retire an employee due to age (refer to the *Equal Opportunity Act 2010 (Vic)*). An exemption from the Attorney-General can be sought for compulsory age retirement in certain circumstances.

### 10.5 Death

It is important that employers have in place processes to deal with an executive's family, friends and colleagues, should an executive die in their employment. Many public entities have access to an Employee Assistance Program.

#### Payment of entitlements

The deceased executive's family (dependents or non-dependents) or representative (trustee) is to be paid any outstanding:

- remuneration
- annual leave and long service leave payment

provided that all legal requirements are satisfied.

#### Note:

Termination of contract is covered in the Standard Contract. A generic step-by-step guide for ending employment is in Appendix 4.

### 10.6 Redeployment

Redeployment to a vacancy at a similar level may be available for an executive who is identified as surplus, if provided in the employer's HR policies. Further advice can be sought from [Industrial Relations Victoria](#) on redeployment. Executives are not entitled to redundancy packages.

### 10.7 Outplacement support

An employer may offer reasonable outplacement support to an executive who is leaving the public entity involuntarily save as a result of termination on notice due to failure to fulfil duties or due to summary termination. The outplacement assistance provides the executive with support and enables them to search for a new job for up to four months.

## 10.8 Confidential information

When an executive leaves a public entity, any work produced by the executive remains the property of the employer, unless otherwise agreed in writing between the employer and executive. Confidential information obtained by an executive during his or her employment must not be used for:

- personal gain
- to advantage a prospective employer or business
- disadvantage the Victorian Government.

## 11. USEFUL WEBSITE LINKS

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### **Tax information**

[Australian Tax Office](#)

### **Motor vehicle leasing**

[VicFleet](#)

### **Public Sector Executive Remuneration**

[Office of Public Sector Remuneration](#)

[Victorian Independent Remuneration Tribunal](#)

### **Superannuation**

[Emergency Services and State Super Super Choice](#)

[VicSuper](#)

[Australian Securities and Investment Commission](#)

[Australian Prudential Regulation Authority](#)

### **Legislation and Regulations**

[\*Financial Management Act 1994 \(Vic\)\*](#)

[\*Privacy and Data Protection Act 2014 \(Vic\)\*](#)

[\*Public Administration Act 2004 \(Vic\)\*](#)

[\*Public Administration \(Review of Actions\) Regulations 2015\*](#)

[\*Superannuation Guarantee \(Administration\) Act 1992 \(Cth\)\*](#)

[\*Superannuation \(Public Sector\) Act 1992 \(Vic\)\*](#)

### **Privacy Information**

[Office of the Victorian Information Commissioner](#)

## 12. GLOSSARY

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### **Complying superannuation fund**

A fund that meets certain regulatory requirements. Refer to the APRA superannuation fund website for a list of complying superannuation funds.

### **Executive**

A person to whom the [PEER Policy](#) applies. See section 4.2-4.4 of the PEER Policy.

### **Employer**

The CEO or Board of a public entity, except where establishing legislation provides otherwise.

### **Employment contract**

An employment contract for an executive is the individual employment contract.

### **Expenses (work related)**

Expenses incurred from time to time in the course of authorised duties.

### **General government agency**

Defined in Chapter 4 of the [Financial Report for the State of Victoria](#).

### **Maximum contribution base**

This is a quarterly notion of salary for purposes of the superannuation guarantee (SG) legislation. An employer only needs to pay SG contributions on salary up to this amount each quarter.

### **Public entity**

Defined under Part 1, Section 5 of the PAA, noting the exceptions indicated in Section 1.2 in relation to the application of this Handbook.

### **Total Remuneration Package (TRP)**

The basis of remunerating executives in the public sector and includes base salary, employer's superannuation contribution, other employment benefits and any applicable fringe benefits tax.

# A1 RECRUITMENT, SELECTION AND APPOINTMENT

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Refer to VPSC's [Best Practice Recruitment and Selection Toolkit](#) and [Integrity in Recruitment Guide](#) for more comprehensive guidelines on recruitment.

## **Seek approval for advertising vacant position**

Approval to advertise for a vacant position varies depending on the position and the public entity. In many cases approval should be sought from the CEO. In the case of a CEO vacancy, the Board may need to provide approval.

## **Advertise position**

Define key selection criteria in line with the employer's requirements for the role. Advertise the vacancy widely to attract a sufficient pool of competent applicants. Use the Victorian Government's employment website: [www.careers.vic.gov.au](http://www.careers.vic.gov.au)

Other advertising mediums such as newspapers, internet job search sites or Victorian Government Purchasing Board contract recruitment agents may be used to attract a suitable pool of candidates.

## **Appoint selection panel**

Appoint selection panel – there should to be a gender balance and an independent panel member.

## **Shortlist candidates and interview**

Interview candidates with prepared questions to assess interviewees' knowledge, skills and abilities in relation to the key selection criteria.

Other means of assessment including oral or written presentations, work samples, role plays or testing maybe undertaken. Record panel assessment of each applicant against the key selection criteria.

## **Choose most suitable candidate**

Conduct reference checks in relation to key selection criteria. Seek approval from employer for appointment.

Offer employment

## **Confirm appointment**

Send appointment letter to successful candidate. Provide employment contract.

Notify unsuccessful candidates once an employment offer has been accepted.

## **Arrange any relocation**

## **Induction**

Prepare an induction programme to the public entity.

## Tips for Using Executive Search Consultants

The State Purchase Contract (SPC) for the provision of staffing services is in place for the period 1 January 2016 to 31 December 2019. Public entities can use the staffing services contract but are not required to. The objective of the contract is to ensure a consistent and timely supply of suitably qualified and high quality on-hire workers and permanent personnel for the Victorian Government. The use of the SPC for executive appointments is optional however the rules of use should be complied with and quotes sought when engaging an executive search firm to ensure transparency and competitive pricing.

- Ensure you have a range of executive search firms to call on for quotes – keep up to date with their track record and check with colleagues in other public entities or departments.
- Consider using consultants for an abbreviated service and only pay for what you need, e.g. executive search.
- Seek quotes from recruitment firms who have a successful track record in relevant industries as well as senior government appointments.
- Check if the consultant has the capacity to provide a comprehensive and targeted search function. Request quotes to be expressed as flat fees, not percentages of remuneration.
- Refer them to the PEER Policy and explain packaging arrangements.
- Refer them to the Standard Contract and Handbook on the [VPSC website](#).
- Request regular updates from the consultant for the duration of the search assignment. Request replacement guarantee of 6 months (below 6 months is insufficient).
- Negotiate on price where possible.
- Ensure the consultant is supplied with information to help them brief potential candidates (e.g. strategy documents, public entity culture, business plans, employee conditions and benefits).
- Request details of all candidates (including those who were referred). For the longlist meeting, ask the consultant to categorise candidates according to source (i.e. responded to advertisement or search).
- Link payment tranches to delivery of tangible services/products (e.g. presentation of search strategy, shortlist, candidate accepts offer).
- Check your liability for success fees if other candidates are subsequently placed in your public entity – if the amount is excessive, then negotiate before signing the contract.
- Seek help from your purchasing/contract officer on documentation before executing the contract (they can also give helpful feedback on evaluation of proposals).

## A2 RELOCATION COSTS

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Relocation costs may be considered appropriate at the start and conclusion of an executive appointment and should be negotiated and agreed before the contract is signed. There is no obligation on the employer to pay an executive's relocation costs at the conclusion of a contract where this was not negotiated as part of the original contract.

**Necessary and reasonable expenses are defined as:**

- economy airfares for staff member and immediate family
- accommodation costs incurred during travel and during settling-in and settling-out periods
- removal expenses relating to furniture, motor vehicles and effects including comprehensive insurance cover
- storage costs.

**Other optional expenses an employer may consider reimbursing, on a case-by-case basis include:**

- Costs associated with the sale of existing residence, including estate agent fees, legal costs, stamp duty and fees relating to the discharge of a mortgage.
- Costs associated with the purchase of permanent accommodation in Victoria, including legal costs, stamp duty, mortgage transfer, buyer's advocate and valuation fees. An appropriate depreciation allowance may also be paid.<sup>3</sup>
- Transport costs (return economy airfares) for a maximum of one return trip in each of the first three months of the period of employment from their new place of work to their former Australian residence to visit immediate family for a limited period while immediate family continues to live at their former residence – (this benefit would be subject to fringe benefits tax).
- Reimbursement of short-term accommodation costs during settling in and settling out periods such as:
  - an allowance to cover actual cost of reasonable temporary accommodation of up to 10 weeks pending the purchase or lease of permanent accommodation; and
  - where the temporary accommodation is in a hotel, reimbursement for breakfast and dinner, noting the hotel chosen should comply with relevant travel policy and offer a government discount.

Employers and executives should note that the purchase of assets, such as new furnishings, are not considered relocation expenses.

Employers should ensure that relocation caps or allowances are understood to be an upper limit not an entitlement to be paid in full regardless of the specific factors of the relocation. The need and reasonableness of each individual item should be considered by the executive and employer.

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<sup>3</sup> Reimbursement of expenses associated with purchase of a new residence would usually only be considered where the residence at the previous location is sold. Any real estate agent's commission applicable to the purchase of a new residence or any fee associated with a mortgage would not be reimbursed.



## A3 SUMMARY DISMISSAL

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Summary dismissal or immediate dismissal occurs where serious misconduct occurs. Examples of serious misconduct include:

- breaching the PAA or the entity's establishing legislation
- acting improperly in an official capacity breaching a directive
- making improper use of their position for personal gain
- making improper use of information acquired by him or her by virtue of his or her position to gain personally or for anyone else financial or other benefits or to cause detriment to the public sector (section 22 of the PAA).

For serious misconduct, no notice period, counselling or warning is required. In considering whether to terminate an employment contract, an employer must have regard to the public sector values in section 7 of the PAA, the public sector employment principles in section 8 of the PAA and the standards issued by VPSC.

# A4 STEP BY STEP GUIDE FOR ENDING EMPLOYMENT

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Below is a generic step-by-step guide for human resource administrators to consider when ending the employment of an executive. It is provided as a guide only and will not be applicable in all circumstances.

## **Decision making**

- Determine reason for ending employment.
- Discuss end of employment scenario with the CEO and the Board.
- Reach a consensus on the proposed decision to end employment.
- An appropriate person (e.g. a senior manager) is delegated to consult with the affected executive.

## **Administration**

The CEO/Board has been consulted with and has agreed to:

- any minimum process requirements
- proposed date for termination
- any redeployment options
- any outplacement support.

## **Consultation with executive**

The executive has been advised of:

- the intention to end employment
- the reasons for proposed termination
- expected formal notification date
- expected employment end date.

## **Formal notification**

- Written notice is signed by the CEO.
- Notice or payment in lieu is provided (if applicable).

## A5 EXECUTIVE VEHICLE COST TO PACKAGE

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### About the methodology

The Vehicle Costing Methodology is mandatory for the VPS and can be used as a model for public entities (including general government agencies). It can be used to calculate the cost of a motor vehicle in an executive's total remuneration package. The cost is notional – it represents value to the employee rather than cost to the employer.

An executive vehicle scheme is a non-salary benefit and has a key role in the attraction and retention of executives.

### When to apply the methodology

Public entities can use this methodology to calculate the annual cost to the executive's package in the following situations:

- a new appointment is made, including existing executives moving to new positions at different remuneration level
- the total remuneration under a current executive contract is reviewed.

### Details of the costing methodology

Total Cost to Employee Package = Cost of Vehicle (Formula No. 1) + Fringe Benefits Tax (Formula No. 2) Refer to the VPSC website for the [vehicle costing calculator](#) (a downloadable Excel spreadsheet).

#### Formula No. 1 – Cost of Vehicle

Vehicle Cost = A + B + C

A = notional standing cost (registration and insurance) x private use percentage

B = notional standing cost (depreciation) x private use percentage

C = running cost x total annual kilometres x private use percentage

The notional value of registration and insurance is based on VicFleet data.

Depreciation captures the residual loss for the vehicle, and is dependent on the vehicle purchase cost as well as the type of vehicle. The estimated depreciation is based on RACV data.

By assumption, the private use percentage is set to 2/3, and the total annual kilometres to 30,000. Both default figures can be adjusted if supported by appropriate justification. If the vehicle has a higher proportion of business use, the cost to the executive may be reduced. For a reduction in the private kilometre component, contact your fleet manager. The executive should complete a logbook for three months. The revised figures can then be used for five years (in line with ATO rules). If the executive changes roles, they will need to complete a new logbook for another three months. Refer to the ATO website for more details on the logbook method

Running costs (fuel, tyres, servicing etc.) are based on RACV data, and vary according to the type of vehicle.

### **Formula No. 2 – Fringe Benefits Tax**

Fringe benefits tax = (Purchase price including GST) x FBT rate x FBT gross-up factor x statutory distance rate  
Price is the Government purchase price of the vehicle (registration, stamp duty and cost of plates are not included).

GST is the full invoiced amount by the manufacturer/dealer.

The FBT rate is 0.47 (i.e. 47per cent expressed as a decimal) as per the ATO. The FBT gross-up factor is 1.8868 as per the ATO.

The statutory distance rate is 0.20 (i.e. 20per cent expressed as a decimal) as per the ATO.

## A6 VICTORIAN PUBLIC HEALTH ENTITIES

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### Public hospitals

Alexandra District Health  
Bairnsdale Regional Health Service  
Bass Coast Health  
Beaufort and Skipton Health Service  
Beechworth Health Service  
Benalla Health  
Boort District Health  
Casterton Memorial Hospital  
Castlemaine Health  
Central Gippsland Health Service  
Cobram District Health  
Cohuna District Hospital  
Colac Area Health  
Djerriwarrh Health Services  
Dunmunkle Health Service  
East Grampians Health Service  
East Wimmera Health Service  
Echuca Regional Health  
Edenhope and District Memorial Hospital  
Gippsland Southern Health Service  
Heathcote Health  
Hepburn Health Service  
Hesse Rural Health Service  
Heywood Rural Health  
Inglewood and Districts Health Service  
Kerang District Health  
Kilmore and District Hospital  
Kooweerup Regional Health Service  
Kyabram and District Health Services  
Kyneton District Health Service  
Lorne Community Hospital  
Maldon Hospital  
Mansfield District Hospital  
Maryborough District Health Service

Moyne Health Services  
Nathalia District Hospital  
Northeast Health Wangaratta  
Numurkah and District Health Service  
Omeo District Health  
Portland District Health  
The Queen Elizabeth Centre  
Rochester and Elmore District Health Service  
Rural Northwest Health  
Seymour Health  
South Gippsland Hospital  
South West Healthcare  
Stawell Regional Health  
Swan Hill District Health  
Tallangatta Health Service  
Terang and Mortlake Health Service  
Tweddle Child and Family Health Service  
West Gippsland Healthcare Group  
West Wimmera Health Service  
Western District Health Service  
Wimmera Health Care Group  
Yarram and District Health Service  
Yarrawonga Health  
Yea and District Memorial Hospital

### Public health services

Albury Wodonga Health  
Alfred Health  
Austin Health  
Ballarat Health Services  
Barwon Health  
Bendigo Health Care Group  
Dental Health Services Victoria  
Eastern Health  
Goulburn Valley Health

Latrobe Regional Hospital  
Melbourne Health  
Monash Health  
Northern Health  
Peninsula Health  
Peter MacCallum Cancer Institute  
The Royal Children's Hospital  
The Royal Victorian Eye and Ear Hospital  
The Royal Women's Hospital  
Western Health

### **Multiple-purpose services**

Alpine Health  
Corryong Health  
Mallee Track Community Health Services  
Orbost Regional Health  
Otway Health and Community Services  
Robinvale District Health Services  
Timboon District Healthcare Service

### **Other entities**

Ambulance Victoria  
Victorian Institute of Forensic Mental Health  
(Forensicare)