

Guide to seeking the Tribunal's advice on paying an executive in a prescribed public entity above the remuneration band

Under section 19 of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (the **Act**), the Victorian Independent Remuneration Tribunal (**Tribunal**) is responsible for determining the values of remuneration bands for executives in prescribed public entities.

The Tribunal is also responsible for providing advice to public entity employers if they propose to pay an executive above the maximum amount of the relevant remuneration band.

Under section 37 of the Act:

- (1) If an employer proposes to pay -
 - (a) an executive employed in a prescribed public entity remuneration that exceeds the maximum of the relevant remuneration band set by a Determination –
the employer must apply to the Tribunal for advice as to the remuneration proposed to be paid and consider the advice provided.
- (2) The Tribunal must provide advice on an application under subsection (1) within a reasonable time.

Prescribed public entity employers must seek the Tribunal's advice whenever they propose to pay an executive above the band, which may occur with a new appointment, a reappointment, or as a result of a mid-contract remuneration review. Requests for advice to pay above the relevant band are expected only in exceptional circumstances. For a new appointment, employers should seek the Tribunal's advice before the recruitment process commences in relation to the executive position, to enable the employer to advertise the position with the advised total remuneration package (**TRP**).

The Tribunal has developed and approved the process for employers to seek advice under section 37 of the Act summarised in this Guide. The process requires employers and executives (for Form B applications) to provide certain information to the Tribunal about the proposal to remunerate above the band by completing the relevant [Request for Advice form](#).

Form A should be completed **where the executive is not known**, such as for a new appointment where the proposed executive is yet to be identified, to enable the employer to advertise and recruit.

Form B should be completed **where the executive is known**, such as for a new appointment where the proposed executive has been identified, a reappointment, or as a result of a mid-contract remuneration review.

Publication of the Tribunal's advice and notice to executives

To support greater transparency, accountability and evidence-based decision-making in relation to remuneration arrangements, the Tribunal intends to publish the advices provided to employers on its website. All advices will be published within 10 business days of being communicated to the employer. Periodic summaries of the advices may also be published elsewhere (such as in the Tribunal's annual report).

The Tribunal's approach to the publication of advice in relation to Form A and Form B requests is detailed below.

Advices provided in relation to a Form A request

In publishing an advice (or summaries of advices) where the proposed executive is yet to be identified for an executive position (Form A), the Tribunal may disclose information about the executive position to which the advice relates. This could include the TRP or TRP range the Tribunal considers appropriate for the position. However, the Tribunal will **not** state the TRP proposed by the employer or details of other TRPs provided by the employer as supporting evidence.

Once an employer identifies the executive to be appointed to the position, the employer must notify that executive that the Tribunal has published remuneration advice about the position.

Advices provided in relation to a Form B request

In publishing an advice (or summaries of advices) where the executive or proposed executive is identified (Form B), the Tribunal may disclose personal information about the executive to which the advice relates. This could include details about the executive's current remuneration, personal characteristics of the executive such as their skills and experience, or the TRP the Tribunal considers appropriate for the executive. However, the Tribunal will **not** expressly state the executive's name, the TRP proposed by the employer or details of other TRPs provided by the employer as supporting evidence.

An employer must ensure that the executive or proposed executive receives, completes, and signs Section 6 of the Request for Advice form, which gives the executive notice about the intended uses and disclosures of their personal information, and seeks the executive's consent to disclose this information.

While the Tribunal requests that the executive or proposed executive consents, the giving of consent is not mandatory. The legislative framework governing and applicable to the Tribunal supports and enables the publication of its advice and summaries without consent.

If an executive or proposed executive does not wish to provide consent, he or she may leave that particular box in Section 6 of the Request for Advice form unchecked. However, they must

acknowledge that they have read and understood the Tribunal's notice about the intended disclosures of their personal information before the form is lodged with the Tribunal.

Public entity executive remuneration bands

The remuneration bands for executives in prescribed public entities are set in the Tribunal's *Remuneration bands for executives employed in prescribed public entities (Victoria) Determination No. 01/2020 (Determination)*.

Under the Determination, the TRP is defined as the total remuneration package and includes base salary, superannuation contributions, employment benefits (i.e. non-salary) specified in the executive's employment contract, and the annual cost to the employer of providing the non-monetary benefits, including any fringe benefits tax payable. TRP does not include bonus opportunities. The Public Entity Executive Remuneration Policy requires that all new or renewed executive contracts entered into from 4 February 2020 must not include a bonus opportunity (except for specific roles excluded under the Policy).

The values of the remuneration bands for executives employed in prescribed public entities are set out in the Tribunal's Determination available [here](#).

When to request the Tribunal's advice

When should the Tribunal's advice be sought

If an employer is proposing to pay an executive or executive position above the relevant remuneration band, the *Request for Advice* must be submitted and the Tribunal's advice sought:

- before the recruitment process begins in relation to the executive position for a Form A application;
- before an executive enters into a new contract for employment;
- before an existing executive is reappointed on a new contract in the same position; or
- during an executive's contractual term if a remuneration review is undertaken and it is agreed to adjust the executive's TRP.

Using advice given for an executive position to finalise an appointment (Form A request)

In relation to Form A requests, once an employer receives the Tribunal's advice for an executive position, the TRP advised can be used to commence or finalise a recruitment process.

This means that once the executive is identified, the employer is not required to again seek the Tribunal's advice to appoint the executive, provided the executive is remunerated equal to or less than the TRP (or TRP range) advised by the Tribunal for the position.

The Tribunal will specify in its advice how long the advice for an executive position will remain current, which will typically be between 6 to 12 months. If the executive position is not filled within that time, then the employer must seek new advice from the Tribunal.

Considerations before paying above the band

In most cases, it is expected that the value of the remuneration bands will provide an appropriate TRP range for executive positions. Requests for advice to pay above the band are therefore expected only in exceptional circumstances.

As a threshold decision for SES-1 and SES-2 positions, employers should first consider whether the position is appropriately classified.

There may, however, be occasions where an employer considers it necessary to remunerate an executive above the band which corresponds to the classification for the position. The Guiding Principles (detailed in the following section) cover the circumstances which may lead to an employer requesting the Tribunal's advice.

Guiding Principles

The following principles should guide employers in requesting advice from the Tribunal. Employers are requested to provide statements and evidence against one or more of the following.

Guiding Principle 1: There are significant market pressures on the position meaning that a more competitive remuneration offering is required.

Guiding Principle 2: There will be a significant impact on the prescribed public entity's business if the individual or executive position is not remunerated according to the request.

Guiding Principle 3: There is evidence that a recruitment process failed to attract candidates with the required skills and/or qualifications at a remuneration range within the relevant band.

Guiding Principle 4: Any other reasons underpinning the proposal which a prescribed public entity employer may consider relevant.

Request for Advice process

Step 1: Employer prepares a Request for Advice

The employer makes an application using the appropriate *Request for Advice* form available on the Tribunal's [website](#). **Form A** should be used for a new appointment, where the proposed executive is yet to be identified for the position; for example, before the recruitment process has commenced. **Form B** should be used where the proposed executive has been identified in relation to a new appointment, a reappointment to the same position or as a result of a mid-contract remuneration review.

Depending on the executive position that is the subject of the *Request for Advice*, the authorising employer will be one of the following or their delegate:

- the relevant Chair of the Board in the case of a Chief Executive Officer; or
- the Chief Executive Officer (or equivalent) for requests regarding subordinate executive remuneration.

The forms are designed to be filled in electronically. The forms require the following information:

Section 1: Core information about the executive

- Name of executive (Form B only)
- Relevant position title
- Name of employer (must be a prescribed public entity)
- Relevant remuneration band for the position
- Public Entity Classification Framework assessment result (mandatory)
- Whether the proposal applies to a new appointment, a reappointment to the same position, or a mid-contract remuneration adjustment (Form B only)
- Proposed TRP
- Current TRP of the executive or proposed executive (and any bonus payments if applicable) (mandatory) (Form B only)
- TRP of previous incumbent (if available)
- Explanation of the proposed recruitment process or the recruitment process used (Form A) and the results from that process (Form B), including:
 - number of applicants
 - number of applicants interviewed
 - number of applicants suitable for the position
 - remuneration expectations of suitable applicants
- Details on the organisational context, including:
 - Number of direct reports to the position and their TRPs
 - Manager's title and TRP
- Proposed/indicative contract dates (start and end) for a new contract, or variation dates for an existing contract
- Name and position of the employer who has authorised the request and information provided, and the date of this authorisation (see section 5 for further information on who is required to authorise particular requests).

Section 2: Statements against the Guiding Principles

The employer must provide statements against one or more of the Guiding Principles in support of the request. Evidence must be supplied in support of the request, which may take the form of (but is not limited to):

- independent remuneration reports
- information about the competitive recruitment process (Form B only), including:
 - information obtained about the candidate
 - information about the other suitable candidates, including the remuneration they were seeking.
- information gained through other relevant competitive recruitment processes
- objective reports about skills shortages in certain areas
- evidence of genuine poaching attempts of a particular executive
- other forms of remuneration advice.

Section 3: Attachments

- Current position description (mandatory)
- Evidence of the recruitment process and results (mandatory if applicable)
- Executive's or proposed executive's resume (Form B only – mandatory)
- Evidence of current TRP of the proposed executive (Form B only)
- Organisational chart of executives, showing TRP arrangements and dates TRPs were set (mandatory)
- Work value assessment report under the Public Entity Executive Classification framework documentation (mandatory)
- Other documentary evidence against the Guiding Principles.

Section 4: Contact information of relevant officer

The Tribunal Secretariat requires a person to contact with any questions about the application if further information is required. The form requires the following details:

- name of public entity contact officer
- position
- contact phone number and email address.

Section 5: Signature block of authorising employer

The form must be signed and dated by the employer. This will be the Chair of the Board or the Chief Executive Officer (or equivalent).

Section 6: Use and disclosure of executive's personal information (Form B only)

The employer must provide this section to the executive or proposed executive for review and completion. The Tribunal's intended publication of the advice provided under section 37 of the Act, and summary of those advices, has been explained above in this Guide. This section of Form B provides notice to the executive or proposed executive that their personal information provided to the Tribunal may be publicly disclosed when the Tribunal publishes its advice. The

executive or proposed executive must acknowledge the Tribunal's notice about the disclosure of their personal information.

The executive or proposed executive is requested to provide consent, but is not required to do so. It is at the employer's discretion as to when they provide section 6 of the form to the executive or proposed executive for completion (i.e. before or after the employer has completed the other sections of the form). However, section 6 must be completed by the executive before the form is lodged with the Tribunal.

Step 2: Tribunal considers Request for Advice

The Tribunal will assess the *Request for Advice* against the Guiding Principles. The Tribunal may also consider relevant benchmarking data held by the Tribunal's Secretariat or seek further information from independent experts, including work value assessment validations where necessary.

If further information is needed from the employer, the Tribunal's Secretariat will contact the person named as the contact officer on the form. In the absence of some or all of the information requested by the Tribunal, the Tribunal's advice is unlikely to support or endorse paying the executive or the executive position above the applicable remuneration band.

Step 3: Tribunal provides advice in response to Request for Advice

The Tribunal will provide its advice by way of letter emailed to the employer, and copied to the relevant contact officer named on the form.

In accordance with the Act, the Tribunal must provide its advice within a reasonable time. Generally, the Tribunal aims to provide advice within 10 working days, depending on whether further information is needed to assess the request. During this time, portfolio departments may be notified of the proposal and provided an opportunity to comment on the proposal.

Submitting a Request for Advice and further questions

The completed form and attachments, or any enquiries about the process, can be emailed to enquiries@remunerationtribunal.vic.gov.au.