

# Premier and Cabinet Circular

**PC 016 – REMUNERATION FOR GOVERNMENT APPOINTED PART-TIME BOARDS AND COMMITTEES**



Effective from March 2020

## Contents

1. Introduction and Scope.....	3
2. Remuneration of government employees .....	3
3. Former SA Government employees subject to Targeted Voluntary Separation Package (TVSP) agreements.....	4
4. Inter-agency charges for government employees .....	5
5. Seeking a remuneration determination.....	5
6. Reviews of existing remuneration.....	6
7. Approval of remuneration .....	6
8. Methods of payment of remuneration.....	6
• Board members required to remit board fees to a third party.....	7
• Board members choosing to remit board fees to a third party .....	7
9. Types of remuneration: annual and sessional .....	7
• Annual remuneration .....	7
• Sessional remuneration.....	8
• Remuneration for out of session duties .....	8
10. Remuneration for subordinate entities (eg. subcommittees) .....	9
11. Superannuation entitlements for board members.....	9
• Membership of the SA Government’s Triple S Scheme.....	10
• Other compliant superannuation funds.....	10
12. Salary sacrifice of government board remuneration.....	10
• Establishing a salary sacrifice arrangement .....	10
• Salary sacrifice for government employee members of boards and committees .....	11
13. Reimbursement of necessarily incurred expenses .....	11
14. Personal accident insurance .....	12
15. The Boards and Committees Information System (BCIS) .....	13
16. Publication of board and committee information.....	13
17. Privacy information for board members.....	13
18. Further information and contact details .....	14
19. Document control.....	14

## 1. Introduction and Scope

- 1.1. Cabinet has delegated to the Chief Executive (CE) of the Department of the Premier and Cabinet (DPC) the authority to assess and recommend remuneration for members of government appointed part-time boards and committees.
- 1.2. Except where otherwise indicated, this Circular applies to all part-time boards, committees, tribunals, trusts, commissions, councils, authorities, panels, taskforces, forums, working parties and groups:
  - established by or under an Act of Parliament of South Australia (generally excluding the *Local Government Act 1999*) and have a majority of members appointed by either a minister or the Governor; or
  - established by a minister or legal instrument such as a constitution or charter, have a majority of members appointed by a minister, and have at least one member in receipt of remuneration.

Note: Except where otherwise indicated, this Circular also applies to any subordinate entity created by a body described above.

- 1.3. The use of the terms “board”, “committee” or “boards and committees” hereafter is to be taken as a reference to any body described in section 1.2.
- 1.4. The following are excluded from the operation of this Circular:
  - full-time board or committee positions;
  - departmental or internal committees; and
  - local and federal government bodies (except where the state government has the power to make appointments or nominations to such bodies and to determine remuneration for its appointees or nominated appointees).

## 2. Remuneration of government employees

- 2.1. Government employees are not entitled to be paid for board membership without the specific approval of the CE, DPC, and the support of the responsible minister.
- 2.2. “Government employee” means any person employed by a State Government organisation. This includes, but is not limited to:
  - employees of State Government departments and agencies;
  - employees of public hospitals and health services;
  - employees of public schools and TAFE colleges;
  - employees of the South Australian Ambulance Service
  - employees of the Metropolitan Fire Service, Country Fire Service or State Emergency Service;

- members of South Australia Police;
- staff of State Government boards, committees, statutory authorities and public corporations;
- members of Parliament or Legislative Council and their employees;
- staff of either House of Parliament;
- members of the judiciary; and
- any person whose position is created by or under an Act of the Parliament of South Australia (other than the *Local Government Act 1999* or an Act pertaining to a university).

2.3. The payment of board fees to government employees may occur where exceptional circumstances can be demonstrated. The minister (or the responsible agency with the support of the minister) on behalf of the individual who is seeking an exemption, must make a submission to the CE, DPC, outlining the member's particular circumstances and present a case as to why the individual may be entitled to remuneration.

2.4. Exceptional circumstances may include, but are not limited to:

- nomination or election on the basis of the individual's personal interests, which are not connected to the individual's employment position;
- board meetings are held at times outside of that for which the individual receives a salary from the government, such as unpaid leave or rostered days off; or
- cases of significant financial disadvantage resulting from the individual's attendance at meetings.

2.5. Notwithstanding the above, executive-level employees are not considered eligible to receive board fees except under extraordinary circumstances agreed between the minister and the CE, DPC.

2.6. Government employees are entitled to claim reimbursement of travel and other expenses necessarily incurred as a member of a board in accordance with section 13 of this Circular.

### **3. Former SA Government employees subject to Targeted Voluntary Separation Package (TVSP) agreements**

3.1. Targeted voluntary separation package (TVSP) agreements generally contain an 'employment exclusion clause' specifying a period during which a government position cannot be accepted. Similarly, the termination of executive contracts may include provision that the executive not be re-employed in the public sector for a specified period. This includes appointments to State Government boards and committees.

3.2. The Treasurer has delegated to the CE, DPC, the authority to grant exemptions to enable TVSP recipients to accept appointments (or

continue existing appointments) to boards during the operation of the clause, having regard to the following:

- exemptions will only be granted in exceptional circumstances;
- the appointment is due to the personal skills and expertise of the individual, rather than any connection with their former employment;
- the appointment will be highly beneficial or critical for the board in discharging its functions;
- the responsible Minister supports the appointment; and
- the appointment is either unpaid for the duration of the employment exclusion period or, in very rare case-by-case circumstances, remuneration is modest.

3.3. Where a minister seeks to appoint or retain a TVSP recipient who is subject to an employment exclusion clause to a board, the minister (or the responsible agency with the support of the minister) must make a submission to the CE, DPC, on behalf of the relevant employee outlining:

- why an exemption to the employment exclusion clause is appropriate, and
- if the minister seeks to pay board fees to the TVSP recipient, the justification for the payment of board fees.

#### **4. Inter-agency charges for government employees**

4.1. Government agencies are not permitted to charge government boards or other agencies for the provision of employees as members of government boards. Agencies should attempt to make their employees available for board membership where possible.

#### **5. Seeking a remuneration determination**

5.1. Where a minister wishes to pay members of a board, or a board wishes to pay members of a subordinate entity, a written submission must be made to the CE, DPC, to determine the appropriate level of remuneration. Submissions may be made by the minister or the responsible agency with the support of the minister.

5.2. Submissions to the CE, DPC, should set out the functions and responsibilities of the board and include the terms of reference or relevant extract from any establishing legislation. The following criteria should also be addressed:

- impact of the board's operation on the economy, including an indication of the level of business risk to which the board is subject;
- impact of the board's operation on the community;
- level of external pressure on the board's decision making processes;
- board's independence from government; and

- managerial and professional skills or experience required of members.

- 5.3. Additional information, such as the level of administrative support, the anticipated number of meetings, and a comparison with the functions of similar bodies, is also useful in determining appropriate remuneration.
- 5.4. Where the board is the governing body of a government business enterprise (GBE), details of the GBE's financial position should also be provided, including total assets, total revenue and gross operating result.

## 6. Reviews of existing remuneration

- 6.1. The minister or the responsible agency with the support of the minister may request a review of the remuneration paid to existing bodies. A written submission must be made to the CE, DPC, which clearly outlines the basis upon which a review is being sought.
- 6.2. An increase will generally only be supported where there has been a significant increase in the functions and responsibilities of a board or, in the case of GBEs, a significant change in the financial position of the organisation.

## 7. Approval of remuneration

- 7.1. Remuneration arrangements for boards and committees, including changes to existing arrangements, must be approved by the relevant authority before any payments to members can be made.
- 7.2. In the case of non-statutory boards, it is the minister who has the authority. For statutory boards, the relevant legislation will specify who has the authority (usually either the minister or the Governor).
- 7.3. A Cabinet submission is required where:
- the Governor is required to approve remuneration; or
  - a decision is made to pay remuneration which has not been recommended by the CE, DPC.
- 7.4. For guidance on preparing Cabinet submissions, agencies should contact [Cabinet Office](#).

## 8. Methods of payment of remuneration

- 8.1. It is a principle of public law that board members are appointed as individuals and owe a duty to the board and not to the body that nominated or employs them. This principle applies equally to members appointed for their personal professional skills as to members nominated by non-government organisations who may be required by legislation to provide a representative on a board.

- 8.2. This means that board members provide a service to their board as individuals, rather than as representatives of the body that nominated them. Accordingly, nominating bodies do not have a legally enforceable right to invoice the government for the services of their employees when those employees are serving as board members.
- 8.3. In accordance with the principles set out above, board members are required to be remunerated through the responsible agency's payroll system. As with regular employees, the responsible agency is required to withhold from a board member's remuneration the amount of PAYG tax specified under the *Taxation Administration Act 1953* (Cth).

#### **Board members required to remit board fees to a third party**

- 8.4. Where there is a clear obligation for a board member to remit their board fees to a third party, such as their employing organisation, the Commissioner of Taxation has varied the rate of PAYG withholding to nil (see [Variation 40](#)). In these circumstances, agencies must not issue payment summaries or lodge earnings information with the Australian Taxation Office (ATO).
- 8.5. Members required to remit their fees to their employer (or other third party) must provide written confirmation of this requirement from the employer, so that the agency knows that the variation to nil applies.
- 8.6. For guidance on the payment of superannuation in these circumstances, see section 11.

#### **Board members choosing to remit board fees to a third party**

- 8.7. Where a board member chooses to remit their fees to a third party, such as in the form of a donation to a deductible gift recipient, PAYG tax must be withheld at the ordinary rate and the fee paid directly to the board member. As these are private arrangements, the government is not responsible for paying the third party directly.

### **9. Types of remuneration: annual and sessional**

- 9.1. The [Cabinet-approved remuneration framework](#) divides boards and committees into one of two categories. Category 1 bodies receive annual fees, while category 2 bodies are paid on a sessional basis.

#### **Annual remuneration**

- 9.2. Annual fees are to be paid in full for each year of service regardless of the number of meetings attended by the member during the course of their appointment.

- 9.3. Where a board member ceases to hold office for any reason, the individual’s entitlement to remuneration ends effective from the relevant date.
- 9.4. Annual fees cover all work of the board, including preparation for meetings and discussions held outside of formal meetings.

**Sessional remuneration**

- 9.5. Sessional fees are expressed as an amount per four hour session based on the assumption that board meetings generally last four hours.
- 9.6. Sessional fees are only to be paid to members for board meetings at which they are present.
- 9.7. Included in each sessional fee is up to three hours meeting preparation time for which no additional remuneration is payable.
- 9.8. Where a meeting lasts for between two and four hours, the sessional fee is to be paid in full.
- 9.9. Where a meeting lasts for less than two hours, the sessional fee is to be converted into an hourly rate. The hourly rate is then to be paid for each completed or partially completed hour.
- 9.10. Where a meeting exceeds four hours duration, the sessional fee is to be paid for the first four hours. The hourly rate is then to be paid for each completed or partially completed hour beyond the fourth.

**Table 1: Example of how sessional payments would be made where members are entitled to \$100 per four hour session**

Meeting duration	Amount paid	Reason
2 hours	\$100	As two hours have elapsed, the full sessional fee is paid
1.5 hours	\$50	The hourly rate, \$25, is paid for the first completed hour and the second partially-completed hour
5.25 hours	\$150	The full sessional fee is paid for the first four hours and the hourly rate, \$25, is paid for the fifth completed hour and the sixth partially-completed hour

**Remuneration for out of session duties**

- 9.11 In some cases, members of sessionally-paid boards may be required to undertake duties of the board outside of formal meetings. Where the

responsible minister believes that remuneration should be provided for out of session duties, a written submission must be made to the CE, DPC, who will determine whether such an arrangement is appropriate and, if so, what the level of remuneration should be.

- 9.12. Applications for remuneration for out of session duties should clearly identify how the out of session duties relate to the role of the board.
- 9.13. Remuneration for out of session duties cannot be paid without the approval of the relevant authority (see section 7).

## 10. Remuneration for subordinate entities (eg. subcommittees)

- 10.1. The default position is that there is no automatic entitlement to remuneration for members of subordinate entities of a parent board (eg. a subcommittee or working party). Exemptions to this rule may be granted by the CE, DPC, based on exceptional circumstances agreed between the responsible minister and the CE, DPC.
- 10.2. The CE, DPC, may determine any conditions or limitations on payments to members of subordinate entities.
- 10.3. The approval of the relevant authority is required before any payments can be made to members of subordinate entities (see section 7).
- 10.4. In the case of sessionally-paid boards: where a member of a parent board is appointed to a subordinate entity and attends a meeting of the latter, they are entitled to the remuneration approved for the subordinate entity.

## 11. Superannuation entitlements for board members

- 11.1. In accordance with the *Superannuation Guarantee (Administration) Act 1992* (Cth), employers are required to contribute a prescribed minimum amount to the superannuation fund account of all employees. The prescribed superannuation guarantee (SG) contribution rate will remain at 9.5% until July 2021 when it will increase gradually to 12% as follows:

<b>Start date</b>	<b>SG contribution rate</b>
2021-22	10%
2022-23	10.5%
2023-24	11%
2024-25	11.5%
From July 2025	12%

- 11.2. The ATO has determined that board members are considered to be employees for the purposes of the SG legislation. Accordingly, where an agency makes a payment to a board member, that agency is required to contribute a prescribed amount in accordance with the rates specified in section 11.1.

- 11.3. Agencies must make SG contributions to eligible employees aged 70 years or older. SG contributions are not payable to an employee under the age of 18 where they are working less than 30 hours per week.
- 11.4. The fact that a board member may be required by a private arrangement to pass on their board fees to their employer as detailed in section 8 will not remove the obligation to make compulsory superannuation contributions to the member.

### **Membership of the SA Government's Triple S Scheme**

- 11.5. Board members are eligible for membership of the Government's Triple S Scheme once they are paid any salary or fees. Once this occurs, and the individual concerned is a member of the Triple S Scheme, employer contributions at the SG rate must be paid to the Triple S Scheme for future payments of any amount.
- 11.6. SA Government employees who have been granted an exemption to receive board fees and who are eligible for the SG contribution are expected to receive their SG contribution through a Triple S account with Super SA. The member's existing Super SA account number must be provided to the executive officer and the relevant payroll area before the first payment is made to the member.

### **Other compliant superannuation funds**

- 11.7. Board members who are not SA Government employees may nominate any complying superannuation fund to receive their SG contribution. Details of the fund should be provided to the executive officer of the board and the responsible payroll area before the first payment is made to the member. Failure to nominate a preferred fund will result in the SG contribution being paid to a new account established for the member in the Triple S scheme. It is not possible for funds accumulated in a Triple S account to be rolled into another superannuation scheme until the member's term on the board or committee (and any other SA Government employment) has ended.

## **12. Salary sacrifice of government board remuneration**

- 12.1. Board members may only salary sacrifice into superannuation.
- 12.2. There is no limit on salary sacrifice for superannuation contributions to a complying fund.

### **Establishing a salary sacrifice arrangement**

- 12.3. Board members who want to salary sacrifice their remuneration must complete a salary sacrifice agreement. A form for such an agreement is available from the [DPC website](#).

- 12.4. In order for superannuation benefits paid in the form of a salary sacrifice arrangement to be exempt from income tax, the agreement must be “effective” within the meaning of taxation ruling [TR 2001/10](#). This means it must be prospective in nature (eg. established prior to the board member being paid remuneration).
- 12.5. The responsible agency must be satisfied that the superannuation fund nominated by the board member is a complying fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth) before agreeing to a salary sacrifice arrangement. If there is doubt, responsible agency can confirm the fund’s compliance via the ATO’s [Super Fund Lookup website](#). The Triple S Scheme is a compliant fund.
- 12.6. The responsible agency will deduct a one-off administration fee of \$44 from the board member to cover the cost of establishing and amending a salary sacrifice agreement.
- 12.7. It is the responsibility of board members to determine the taxation implications of funds salary sacrificed into a nominated superannuation scheme.

### **Salary sacrifice for government employee members of boards and committees**

- 12.8. Where the CE, DPC, has granted an exemption for a government employee to receive remuneration, a maximum of 50% of total annual earnings may be sacrificed for the range of benefit items contained in the [SAGSSA Agreement](#). However, as stated in section 12.2, there is no limit on salary sacrifice for superannuation contributions to a complying fund.

## **13. Reimbursement of necessarily incurred expenses**

- 13.1. Members required to travel a distance of greater than 40 kilometres one-way to attend meetings are entitled to costs necessarily incurred for meals and accommodation and:
  - where public transport is used: actual travel costs necessarily incurred; or
  - where a private motor vehicle is used: an allowance at the rate specified in [Commissioner’s Determination 3.2](#) (CD3.2). This is the same allowance that applies, as necessary, to public sector employees.
- 13.2. Claims for payment of travel, meal and accommodation expenses are to be made in accordance with CD3.2. A reference to a CE or employer in that document is to be read as a reference to the agency responsible for paying the board member.
- 13.3. Board members are entitled to reimbursement of expenses necessarily incurred in connection with their role as a board member. However, except as stated in section 13.1, reimbursement of expenses which are

clearly the member's responsibility, such as car parking and child care expenses, are not to be provided.

## 14. Personal accident insurance

- 14.1. This section of the Circular applies to members of boards and committees defined in section 1.2, as well as any other State Government boards and committees that should, in the opinion of SAICORP, be covered.
- 14.2. In the event of a bodily injury or death to a member of a government board, trust or committee during their official duties (including travel to and from) members are covered for Personal Accident under the Government's insurance and risk management arrangements as administered by SAICORP, the insurance division of the South Australian Government Financing Authority.
- 14.3. The amounts payable will be equivalent to the benefits that would have been payable under the *Return to Work Act 2014*.
- 14.4. In the event of injury, Non-Medicare Medical Expenses incurred will be payable as set out below.

**Non-Medicare Medical Expenses** means:

- (a) expenses incurred within 12 months of sustaining an injury; and
- (b) expenses paid for Doctor, Physician, Surgeon, Nurse, Physiotherapist, Chiropractor, Osteopath, Hospital and/or Ambulance services for the following treatments:

- Medical
- Surgical
- X-ray
- Chiropractic
- Osteopathic
- Physiotherapy
- Hospitalisation
- Nursing

But excludes:

- Dental treatment, unless such treatment is necessarily required, to teeth other than dentures and is caused by injury, and
- Services for which the member is eligible to receive Medicare benefits.

### Conditions applying to Non-Medicare Medical Expenses

1. Any benefit payable is less recovery made from any Private Health Insurance Fund.
2. No benefit is payable in respect of the Medicare gap between payment made by Medicare and charges incurred.

## Deductibles

The appropriate agency shall be responsible for the:

- first week's payment of any loss of income claim
- first \$50 of any Non-Medicare Medical Expenses claim

- 14.5. Agencies must declare details of all boards, trusts and committees in the annual SAICORP questionnaire.

## 15. The Boards and Committees Information System (BCIS)

- 15.1. BCIS is a database developed to record the membership and remuneration details of government boards and committees. The database is held and maintained by the Cabinet Office, DPC.
- 15.2. Membership and remuneration details of government boards meeting the definition described in section 1.2 are required to be recorded on BCIS (except any subordinate entity of a board described in section 1.2).
- 15.3. Forms to add a new board to BCIS and to add a new member to BCIS are available from the [DPC website](#).

## 16. Publication of board and committee information

- 16.1. As part of the government's commitment to transparency, accountability and good corporate governance, the information recorded on BCIS is reported to Parliament annually as at the end of each financial year and published on the DPC website. Cabinet Office liaises with staff of ministers' offices to ensure that the information on BCIS is accurate as at 30 June of each year. Ministerial chiefs of staff are required to certify that the information presented to Parliament is a complete and accurate record to the best of their knowledge.

## 17. Privacy information for board members

- 17.1. In accordance with the government's Information Privacy Principles Instruction, issued as [PC Circular PC012](#), board members are advised that their personal details are collected for the purposes of inclusion on BCIS.
- 17.2. Further information is available on the form to add a new member to BCIS, available from the [DPC website](#).

## 18. Further information and Contact details

Table 2

Topic	Contact information
<b>PC Circular PC016</b>	Boards and Committees (Cabinet Office) Phone: 8429 5218 Email: <a href="mailto:DPCBoardsandCommittees@sa.gov.au">DPCBoardsandCommittees@sa.gov.au</a> Website: <a href="https://www.dpc.sa.gov.au/responsibilities/boards-and-committees">https://www.dpc.sa.gov.au/responsibilities/boards-and-committees</a>
<b>Cabinet submissions</b>	Cabinet Office <a href="https://www.dpc.sa.gov.au/responsibilities/cabinet-and-executive-council">https://www.dpc.sa.gov.au/responsibilities/cabinet-and-executive-council</a>
<b>Commissioner's Determination 3.2</b>	Office of the Commissioner for Public Sector Employment Email: <a href="mailto:publicsector@sa.gov.au">publicsector@sa.gov.au</a> Website: <a href="https://www.publicsector.sa.gov.au">https://www.publicsector.sa.gov.au</a>
<b>Insurance</b>	SA Financing Authority (SAFA) Insurance Email: <a href="mailto:SAFAInsurance@sa.gov.au">SAFAInsurance@sa.gov.au</a> Website: <a href="https://www.safa.sa.gov.au/Insurance/SAFA-Insurance">https://www.safa.sa.gov.au/Insurance/SAFA-Insurance</a>
<b>Privacy</b>	State Records of SA Website: <a href="https://www.archives.sa.gov.au/">https://www.archives.sa.gov.au/</a>
<b>Salary sacrifice</b>	Office of the Commissioner for Public Sector Employment <a href="https://www.publicsector.sa.gov.au/Employment/salary-sacrifice">https://www.publicsector.sa.gov.au/Employment/salary-sacrifice</a>
<b>Superannuation</b>	Contact your payroll area in the first instance. If further information is required, contact: Superannuation Policy Super SA Phone: 8226 9514

## 19. Document Control

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