

**EXECUTIVE OFFICER REMUNERATION (GOVERNMENT ENTITIES)  
LEGISLATION AMENDMENT BILL 2015  
EXPLANATORY MEMORANDUM**

**OUTLINE**

The principal purposes of this Bill are to amend the *Salaries and Allowances Act 1975* and the statutes constituting the listed Government Trading Enterprises (GTEs) as follows:

- a) to provide a mechanism by which the setting of remuneration for chief executive officers (CEOs) of listed GTEs may be brought within the jurisdiction of the Salaries and Allowances Tribunal (the Tribunal); and
- b) where that jurisdiction is not, or ceases to be, activated, to require remuneration for a CEO to be determined on the recommendation of the Minister responsible for the relevant GTE.

**PART 1 – PRELIMINARY**

**Clause 1     Short title**

Cites the title of the Act – *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015*.

**Clause 2     Commencement**

Provides for Part 1 of the Act to come into operation on the day the Act receives the Royal Assent, and for the rest of the Act on the day after the Royal Assent.

**PART 2 – SALARIES AND ALLOWANCES ACT 1975 AMENDED**

**Clause 3     Act amended**

Specifies that the amendments contained in Part 2 of the Act are to the *Salaries and Allowances Act 1975* (the SSA Act)

**Clause 4     Section 4 amended**

Updates definitional references in section 4(1) of the SAA Act to the “Chairman” and “member” of the Tribunal to reflect the *Interpretation Act 1984* (in place of the *Interpretation Act 1918*).

**Clause 5      Section 7C inserted**

Inserts a new section 7C into the SAA Act to deal with CEO positions that are brought within the jurisdiction of the Tribunal.

Under the arrangement, the Tribunal is to be responsible for determining the minimum and maximum amounts of remuneration (that is, one or more remuneration bands) for an “executive officer” (that is, a CEO) in a “Government entity” (that is, a GTE listed in the new Schedule 2 to the Act and prescribed under the Salaries and Allowances Regulations). Such determinations are to be made in the normal way by the Tribunal and published in the *Government Gazette*.

It is to be noted that this approach largely mirrors the current arrangements under section 7A of the SAA Act, which deals with the remuneration of local government CEOs.

Under the proposed section 7C(4) the remuneration of a CEO covered by a contract in place immediately before their position is brought within the Tribunal’s jurisdiction (that is, by way of the listed GTE being prescribed under the Salaries and Allowances Regulations) remains unaffected by that jurisdiction for the remainder of their term of office.

It is to be noted that separate later provisions in the Bill provide that during this period (that is, during the balance of the person’s term of office) any adjustments to remuneration can only be made on the recommendation of the responsible Minister.

**Clause 6      Section 8 amended**

Specifies that the Tribunal must not allow more than a year to lapse between determinations made under the new section 7C.

This requirement is consistent with exercise of the Tribunal’s functions in relation to determinations affecting other officeholders under its jurisdiction.

**Clause 7      Section 10 amended**

Provides for the CEO of the Public Service department principally assisting in the administration of the *Financial Management Act 2006* (that is currently, the Under Treasurer) to nominate a person to advise the Tribunal in inquiries it may undertake in connection with a determination made under section 7C.

This follows the existing approach adopted in other areas of Tribunal inquiry, where under section 10(4) of the SAA Act, for example, the

Public Sector Commissioner has that function in relation to the holders of prescribed offices and offices in the Special Division of the Public Service, and the Director General, Department of Local Government and Communities, has the function in relation to local government CEOs and councillors.

**Clause 8 Section 10A amended**

Specifies that determinations made under the new section 7C are also subject to the provision which requires the Tribunal to have regard to government financial matters.

**Clause 9 Schedule 2 inserted**

Inserts new Schedule 2 into the SAA Act.

This Schedule lists in Column 1 the GTEs that may be brought within the Tribunal's jurisdiction (by way of prescription under the Salaries and Allowances Regulations). Column 2 sets out the CEO positions that are affected (including acting CEOs where the relevant constituting Acts provide for such appointments).

**PART 3 – AMENDMENTS TO OTHER ACTS**

**Division 1 – *Constitution Acts Amendment Act 1899* amended**

**Clause 10 Act amended**

Specifies that the amendments made in this Division are to the *Constitution Acts Amendment Act 1899* (CAA Act).

**Clause 11 Schedule V amended**

Inserts a new item in Schedule V Part 1 Division 2 of the CAA Act (in place of the reference to prescribed offices), which captures both Special Division and prescribed offices, as well as the new category of officeholder created by section 7C.

The provision has the effect therefore of broadening application of the disqualifying provisions of Part 1 Division 3 of the CAA Act not only to include the new category of officeholder created under section 7C, but also those senior officeholders in the Special Division who anomalously are not captured by the preceding item relating to senior executive officers (that is, members of the Senior Executive Service (SES) other than CEOs). For example, the positions of State Solicitor and

Parliamentary Counsel (not in the SES but included in the Special Division) will now be captured.

The provision furthermore makes it clear that the CEO of a prescribed GTE will be subject to the disqualifying provisions, regardless of the circumstance arising that their remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the GTE under the Salaries and Allowances Regulations.

## **Division 2 – *Electricity Corporations Act 2005* amended**

### **Clause 12 Act amended**

Specifies that the amendments made in this Division are to the *Electricity Corporations Act 2005* (EC Act).

### **Clause 13 Section 14 amended**

Inserts provisions to make clear that the power of the Board to determine remuneration for the CEO is subject to the new sections 15A and 15B.

It is to be noted that under section 3(1) of the EC Act, references to the CEO include any person acting in that office.

### **Clause 14 Sections 15A and 15B inserted**

Inserts new sections 15A and 15B.

Section 15A deals with remuneration arrangements for the CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015* Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 15B deals with remuneration arrangements for the CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the

GTE, then for the balance of that CEO's term of office any variation to the CEO's remuneration by the Board must be on the recommendation of the responsible Minister.

### **Division 3 – *Gold Corporation Act 1987* amended**

#### **Clause 15 Act amended**

Specifies that the amendments made in this Division are to the *Gold Corporation Act 1987*.

#### **Clause 16 Section 7 amended**

Inserts a provision to make clear that the power of the Board to determine remuneration for the CEO and the deputy CEO (who effectively acts as CEO in the former's absence or incapacity) is subject to the new sections 8A and 8B.

#### **Clause 17 Sections 8A and 8B inserted**

Inserts new sections 8A and 8B.

Section 8A deals with remuneration arrangements for the CEO and deputy CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO and the deputy CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015* Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 8B deals with remuneration arrangements for the CEO and deputy CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's or deputy CEO's remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the GTE, then for the balance of that CEO's or the deputy CEO's term of office any variation to the CEO's or deputy CEO's remuneration by the Board must be on the recommendation of the responsible Minister.

**Clause 18 Section 40 amended**

Inserts a provision to make clear that the power of the Board to determine remuneration for the managing director of the Mint (that is, the CEO) is subject to the new sections 41A and 41B.

**Clause 19 Sections 41A and 41B inserted**

Inserts new sections 41A and 41B.

Section 41A deals with remuneration arrangements for the CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015* Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 41B deals with remuneration arrangements for the CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the GTE, then for the balance of that CEO's term of office any variation to the CEO's remuneration by the Board must be on the recommendation of the responsible Minister.

**Clause 20 Section 51 amended**

Inserts a provision to make clear that the power of the Board to determine remuneration for the managing director of GoldCorp (that is, the CEO) is subject to the new sections 52A and 52B.

**Clause 21 Sections 52A and 52B inserted**

Inserts new sections 52A and 52B.

Section 52A deals with remuneration arrangements for the CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015*

Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 52B deals with remuneration arrangements for the CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the GTE, then for the balance of that CEO's term of office any variation to the CEO's remuneration by the Board must be on the recommendation of the responsible Minister.

#### **Division 4 – *Port Authorities Act 1999* amended**

##### **Clause 22 Act amended**

Specifies that the amendments made in this Division are to the *Port Authorities Act 1999* (PA Act).

##### **Clause 23 Section 14 amended**

Inserts provisions to make clear that the power of the Board to determine remuneration for the CEO is subject to the new sections 15A and 15B.

It is to be noted that under section 3(1) of the PA Act, references to the CEO include any person acting in that office.

##### **Clause 24 Sections 15A and 15B inserted**

Inserts new sections 15A and 15B.

Section 15A deals with remuneration arrangements for the CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015* Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 15B deals with remuneration arrangements for the CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the GTE, then for the balance of that CEO's term of office any variation to the CEO's remuneration by the Board must be on the recommendation of the responsible Minister.

## **Division 5 – *Racing and Wagering Western Australia Act 2003* amended**

### **Clause 25 Act amended**

Specifies that the amendments made in this Division are to the *Racing and Wagering Western Australia Act 2003* (RWWA Act).

### **Clause 26 Section 20 amended**

Inserts a provision to make clear that the power of the Board to determine remuneration for the CEO is subject to the new sections 21A and 21B.

Because the definition of CEO in section 3(1) of the RWWA Act does not appear to include persons acting as CEO, a new provision is inserted to apply sections 15A and 15B also to acting arrangements.

### **Clause 27 Sections 21A and 21B inserted**

Inserts new sections 21A and 21B.

Section 21A deals with remuneration arrangements for the CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015* Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 21B deals with remuneration arrangements for the CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's remuneration is not subject to the Tribunal's jurisdiction as a



consequence of a pre-existing contract at the time of prescription of the GTE, then for the balance of that CEO's term of office any variation to the CEO's remuneration by the Board must be on the recommendation of the responsible Minister.

## **Division 6 – *Water Corporations Act 1995* amended**

### **Clause 28 Act amended**

Specifies that the amendments made in this Division are to the *Water Corporations Act 1995* (WC Act).

### **Clause 29 Section 13 amended**

Inserts provisions to make clear that the power of the Board to determine remuneration for the CEO is subject to the new sections 14A and 14B.

It is to be noted that under section 3(1) of the WC Act, references to the CEO include any person acting in that office.

### **Clause 30 Sections 14A and 14B inserted**

Inserts new sections 14A and 14B.

Section 14A deals with remuneration arrangements for the CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015* Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 14B deals with remuneration arrangements for the CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the GTE, then for the balance of that CEO's term of office any variation to the CEO's remuneration by the Board must be on the recommendation of the responsible Minister.

## **Division 7 – *Western Australian Land Authority Act 1992* amended**

### **Clause 31 Act amended**

Specifies that the amendments made in this Division are to the *Western Australian Land Authority Act 1992* (WALA Act).

### **Clause 32 Section 10 amended**

Inserts provisions to make clear that the power of the Board to determine remuneration for the CEO is subject to the new sections 11A and 11B.

Because the definition of CEO in section 4(1) of the WALA Act does not appear to include persons acting as CEO, a new provision is inserted to apply sections 11A and 11B also to acting arrangements.

### **Clause 33 Sections 11A and 11B inserted**

Inserts new sections 11A and 11B.

Section 11A deals with remuneration arrangements for the CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015* Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 11B deals with remuneration arrangements for the CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the GTE, then for the balance of that CEO's term of office any variation to the CEO's remuneration by the Board must be on the recommendation of the responsible Minister.

## **Division 8 – *Western Australian Treasury Corporation Act 1986* amended**

### **Clause 34 Act amended**

Specifies that the amendments made in this Division are to the *Western Australian Treasury Corporation Act 1986* (WATC Act).

### **Clause 35 Section 10 amended**

Inserts provisions to make clear that the power of the Board to determine remuneration for the CEO is subject to the new sections 8AA and 8AB.

Because the definition of CEO in section 3(1) of the WATC Act does not appear to include persons acting as CEO, a new provision is inserted to apply sections 8AA and 8AB also to acting arrangements.

### **Clause 36 Sections 8AA and 8AB inserted**

Inserts new sections 8AA and 8AB.

Section 8AA deals with remuneration arrangements for the CEO when the relevant GTE is not prescribed under the Salaries and Allowances Regulations. In those circumstances the remuneration of the CEO is to be determined by the Board on the recommendation of the responsible Minister. This applies from the commencement of the *Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2015* Part 3 to existing appointments as well as future ones. In the former case this does not necessitate redetermination by the Board of remuneration.

Section 8AB deals with remuneration arrangements for the CEO when the relevant GTE is prescribed under the Salaries and Allowances Regulations. In those circumstances the Board must set remuneration within the relevant range (or band) set by the Tribunal. Where the CEO's remuneration is not subject to the Tribunal's jurisdiction as a consequence of a pre-existing contract at the time of prescription of the GTE, then for the balance of that CEO's term of office any variation to the CEO's remuneration by the Board must be on the recommendation of the responsible Minister.