



Department of
**Jobs, Tourism, Science
and Innovation**

Rewarding Innovative public sector employees

IP Policy: Agency Toolkit



About this document

This guide is part of the **Intellectual Property Toolkit for WA Government Agencies**.

Rewarding Innovative Public Sector Employees: Version 1 - August 2023

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In summary...

REWARDING INNOVATION



Western Australian public sector employees who create original, significant, inventive and valuable IP contribute to the State's prosperity. Agencies may recommend that an employee is recognised for their outstanding achievements.

WA Government agencies have discretion to implement policies to reward outstanding achievements by employees who develop significant, inventive and valuable intellectual property.

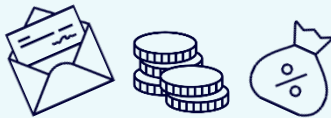
OPTIONS FOR REWARD

MONETARY REWARDS

Set out by WA Government IP Policy

Lump sum cash payment

Periodic fixed payments



NON-MONETARY REWARDS

Determined by WA Government Agency

Public acknowledgment & recognition

Additional team resources

Research time or opportunities

Study programs & professional development



PAYMENT OF MONETARY REWARDS

Section 8 of the WA Government IP Policy sets out the requirements for the provision of monetary rewards to WA public sector employees.

KEY PRINCIPLES



The payment of monetary rewards is a discretionary decision of the Treasurer (or delegated Minister).



Monetary rewards may be considered where IP commercialisation results in exceptional net revenue.



Monetary rewards to WA public sector employees are paid as Act of Grace payments under the *Financial Management Act 2006* (WA).

ELIGIBILITY CRITERIA

Agencies may recommend monetary rewards for a person who:

- Is a permanent or fixed term WA public sector employee;
- Demonstrates outstanding and extraordinary achievement; and
- Made a direct and significant contribution to the creation of original and valuable IP.



1 Introduction

The development of intellectual property (IP) by employees of Western Australian Government agencies can contribute to the achievement of positive outcomes for the agency, State and the broader community. Typically, organisations such as universities and research institutions provide rewards or bonuses based on the commercial success of their employees' innovations. It is recognised that providing appropriate recognition and reward can support a culture of innovation and attract and retain talented employees.

1.1 WA Government IP Policy Position Statement

The WA Government IP Policy (IP Policy) encourages agencies to recognise and where appropriate reward outstanding achievements of employees who develop significant, inventive and valuable IP. The high level position statement is included below:

Employee recognition for IP Creation

The successful commercialisation of significant and valuable IP can facilitate increased research and development, support the innovation ecosystem and provide economic benefits for the State.

WA public sector employees who create original, significant, inventive and valuable IP contribute to the State's prosperity.

Agencies may recommend that a WA public sector employee be recognised for their outstanding achievements and extraordinary outcomes.

Providing appropriate recognition or reward encourages a culture of innovation and will help attract and retain talented employees.

Rewards to employees who meet the eligibility criteria are wholly at the discretion of the Treasurer or delegate Minister.

A reward must not be given as an entitlement or included in the terms and conditions of employment.

Rewards need to be balanced against community expectations.



IMPORTANT

The implementation of Section 8 of the WA Government IP Policy relating to employee recognition for IP development is at the discretion of individual WA Government agencies.



About this guide

The type of reward will determine the process used by an agency and the approval requirements. This guide is intended for agencies who elect to implement an employee rewards policy and includes information about:

- options for monetary and non-monetary rewards;
- developing reward policies and procedures; and
- developing monetary reward packages.



WA Government IP Toolkit

The [flowchart](#) at the end of this guide provides an overview of the employee rewards process.

2 Developing an agency rewards policy

Agencies may develop their own guidelines, procedures and policies to provide for **non-monetary rewards** for innovative WA public sector employees.

The requirements for the payment of any **monetary rewards** are set out in Section 8 of the IP Policy. Agencies should ensure that any internal policies and procedures provide sufficient detail to support the implementation of these requirements.

Issues to be considered when developing an agency rewards policy may include:

- the type of rewards that may be offered (both monetary and non-monetary);
- how the reward process will be initiated, for example nomination by agency executive;
- the eligibility criteria for non-monetary rewards;
- guidance for determining an appropriate reward in the circumstance;
- who will be empowered to approve employee rewards;
- any requirements to establish a review panel or seek independent advice;
- any obligations for the employee receiving the reward, for example any requirements to seek independent legal and financial advice (including taxation advice) regarding the impact of the reward; and
- the process for approval of any rewards.

Agencies should be aware that the payment of monetary rewards to employees can be a divisive issue within an organisation and financial rewards should only be considered for the most outstanding innovators. Agencies must have grievance mechanisms in place to address any complaints by employees regarding the provision of financial rewards in accordance with Public Sector Commission Standards.

A monetary reward may also be paid to relevant parties as part of an agreed benefit sharing arrangement. It is important to note that the provision of both monetary and non-monetary rewards for the development of IP is discretionary. An agency is not legally obligated in any way to pay a financial reward or provide any other benefit to an employee who has contributed to the creation of an IP asset in connection with their employment by the State.

Rewards are not to be given to contractors, consultants, persons in the judicial arm of Government or persons on boards, councils or committees (unless those persons are otherwise public sector employees).



WA Government IP Toolkit

The [Agency Employee Rewards Policy Checklist](#) can assist agencies developing a rewards policy.



2.1 Options for non-monetary reward

An agency may adopt a non-monetary rewards framework for employees who create or develop operationally valuable IP. This approach can be particularly suitable where IP development is a core function of the agency and can be used to recognise the importance of collaboration and teamwork in the development of IP. Non-monetary rewards provided to employees should be recorded by the agency.

Options for non-monetary reward may include¹:



Public acknowledgment and recognition.



Time or opportunities to engage in further research and resources to support this work.



Funded study programs and professional development opportunities.

3 Monetary rewards

Section 8 of the IP Policy sets out the considerations and eligibility requirements for the payment of monetary rewards².

3.1 Key requirements under WA Government IP Policy

The key threshold requirements under the IP Policy are:



Monetary rewards may be considered for eligible employees where the successful commercialisation of State owned IP rights has resulted in extraordinary outcomes and exceptional net revenue.



Agencies may recommend that an employee receive a monetary reward where they have made a direct and significant contribution to the original development of significant, inventive and valuable IP.



The decision to provide a monetary reward to a public sector employee is the decision of the Treasurer or relevant delegated Minister on the recommendation of an agency.

3.2 Options for monetary reward

A monetary reward may include:

- lump sum cash payments; and
- periodic payment of a fixed amount over a set number of instalments.

¹ WA Government Intellectual Property Policy (2023), p. 25.

² Ibid, p.26.

3.2.1 Sharing benefits

Agencies may also consider the payment of monetary rewards via benefit sharing with eligible employees. Benefit sharing involves the allocation of shares of net revenue from the commercialisation of IP to various parties, including public sector employees, by agreement.

The IP Policy outlines a suggested approach to the sharing of net proceeds from the successful commercialisation of IP providing for a one third division share between relevant parties. Benefit sharing arrangements are usually developed as part of the commercialisation process and agencies should consider the individual circumstances of each commercialisation opportunity, the merits of different benefit sharing arrangements and the relevant legal requirements for payment of monetary rewards.



Further information

- [WA Government IP Policy](#): Section 6 – Commercialisation: Sharing Benefits³
- [Guide for Commercialising WA Government IP](#).

3.3 Minimum eligibility requirements⁴

Eligibility for a monetary reward is as follows:

- the employee is engaged on a permanent or fixed-term basis;
- the employee has made a direct and significant contribution to the creation of original IP rights (and not simply modifications, adaptations and improvements of existing IP rights);
- there has been outstanding and extraordinary achievement by the employee far exceeding that generally expected from a person with the same or similar duties;
- the creation of significant, inventive (not simply innovative) and valuable State owned IP by the employee;
- extraordinary outcomes; and
- the successful commercialisation of the State owned IP rights resulting in exceptional net revenue for the State.

4 Developing a rewards proposal

Agency policies and procedures should provide for the assessment of potential rewards and development of a reward proposal where an employee is recommended for a reward.

The information below is intended as a guide only. Agencies should refer to and follow their internal policies and procedures to develop an appropriate employee rewards proposal.

Figure 1: Overview of recommended financial rewards process



³ WA Government Intellectual Property Policy (2023), p.19.

⁴Ibid, p.26.



4.1 Determine an appropriate reward

The agency policy should provide guidance for the assessment of potential rewards and development of the package. Issues that may be relevant to this decision include the:

- commercialised value of the IP asset (actual or realised);
- revenue obtained from the IP's commercialisation;
- costs associated with the IP's commercialisation; and
- degree of innovation and invention by the employee and their level of involvement in the development and commercialisation of the IP.

In developing an appropriate rewards proposal the agency may:

- invite the employee to suggest an option for reward; and/or
- consult with an appropriate expert or establish an independent review panel.

The agency is encouraged to seek legal advice where a benefit sharing arrangement is proposed or the rewards package is complex.

4.2 Employee responsibilities

Employees nominated for a reward should seek their own independent advice regarding any potential legal, financial or taxation implications should they receive any proposed monetary reward.

The agency's reward policy may require an employee to submit a declaration or other evidence to support that appropriate advice has been obtained prior to approving the rewards package.

4.3 Develop a business case

Once an appropriate reward package has been developed, it is recommended that the business area prepare a formal proposal for review by the agency's nominated decision maker.

Matters to be addressed in the business case may include:

- An outline of the IP including its development and commercialisation.
- Details of the employee to be rewarded and their contribution to the development of the IP.
- Details of the proposed rewards package.
- The rationale for recommending the proposed rewards package, including any external advice obtained.
- Full details of the proposed rewards package.
- Payment schedules or terms of any proposed contractual agreements.



WA Government IP Toolkit

The [Employee Reward Business Case Outline](#) may be used as a guide for agencies to develop their own specific template.



5 Payment of reward

Any monetary rewards should be paid from the net revenue from the commercialisation of the relevant IP.

5.1 Mechanism for reward payments

Any monetary rewards for eligible employees are to be paid as Act of Grace payments under section 80 of the *Financial Management Act 2006* (the FMA). The procedures for Act of Grace payments are set out in *Treasurer's Instructions 319 – Act of Grace payments*.

Note: The Act of Grace Payment mechanism is also used where the agency has entered into a benefit sharing arrangement that provides for share of net commercialisation revenue with an IP creator (when the creator of the IP is a WA public sector employee).

Treasurer's Instruction 319 – Act of Grace Payments (extract only)

BACKGROUND

A payment made under section 80 of the Act is referred to as an act of grace payment.

Even when payment would not otherwise be authorised by law or necessary to meet a legal liability, the Treasurer has the power to authorise payment to a person if satisfied that it is appropriate to do so because of special circumstances.

The Treasurer has also delegated the power to authorise act of grace payments of up to \$250,000 to Ministers of the Crown under section 74(1).

TREASURER'S INSTRUCTION

- (1) When recommending that the Treasurer or a Minister authorise an act of grace payment under section 80 of the Act, an agency must provide adequate justification in writing as to why it is appropriate to make the payment.*
- (2) An agency shall maintain a register of all act of grace payments made by it.*
- (3) An agency shall disclose all act of grace payments made by it during a reporting period in the annual report of the agency.*

GUIDELINES

Approval process for act of grace payments

The Act does not define what constitutes 'special circumstances' for the purposes of section 80.

An agency must consider the circumstances and assess the reasonableness and validity of each request for act of grace payments before recommending that the Treasurer or a Minister authorise payment under section 80.

An agency should seek advice from the State Solicitor's Office or guidance from Treasury if, in a particular case, it is uncertain:

- (i) whether it is appropriate to make a payment; or*
- (ii) about the quantum of a payment,*

Where a request for an act of grace payment is not directly attributable to actions of an agency, or the matter is considered to be contentious, complex or uncertain, the agency should refer the matter to Cabinet ahead of seeking authorisation.

When an agency recommends that a Minister other than the Treasurer authorise an act of grace payment, it must ensure that the Minister authorises the payment "under delegated authority from the Treasurer".

Note: *The above information is an extract only and is current as of February 2023. See the [Department of Treasury Financial Administration Bookcase](#) for the most up to date information.*



6 Record keeping and reporting requirements for monetary rewards

6.1 Rewards register

Agencies are required to maintain a register of all financial rewards paid to employees⁵. At a minimum it is suggested that the register include the following information:

- Details of the recipient of the reward including their name, position title, level and salary.
- A brief description of the IP asset created by the employee.
- Details of the reward package including the nature of reward (for example, lump sum payment, share of revenue etc.) and its monetary value.
- Details of any terms and conditions for the payment reward, for example, the reward is only to be paid while employed by the agency or public service, schedule for periodic payments.

6.2 Reporting requirements

An agency is required to disclose all monetary rewards paid to employees during a reporting period in its annual report⁶.

7 Supporting resources

Flowcharts

- [Overview of employee rewards process](#)

Templates and checklists

- [Agency employee rewards policy development checklist](#)
- [Employee reward business case outline](#)

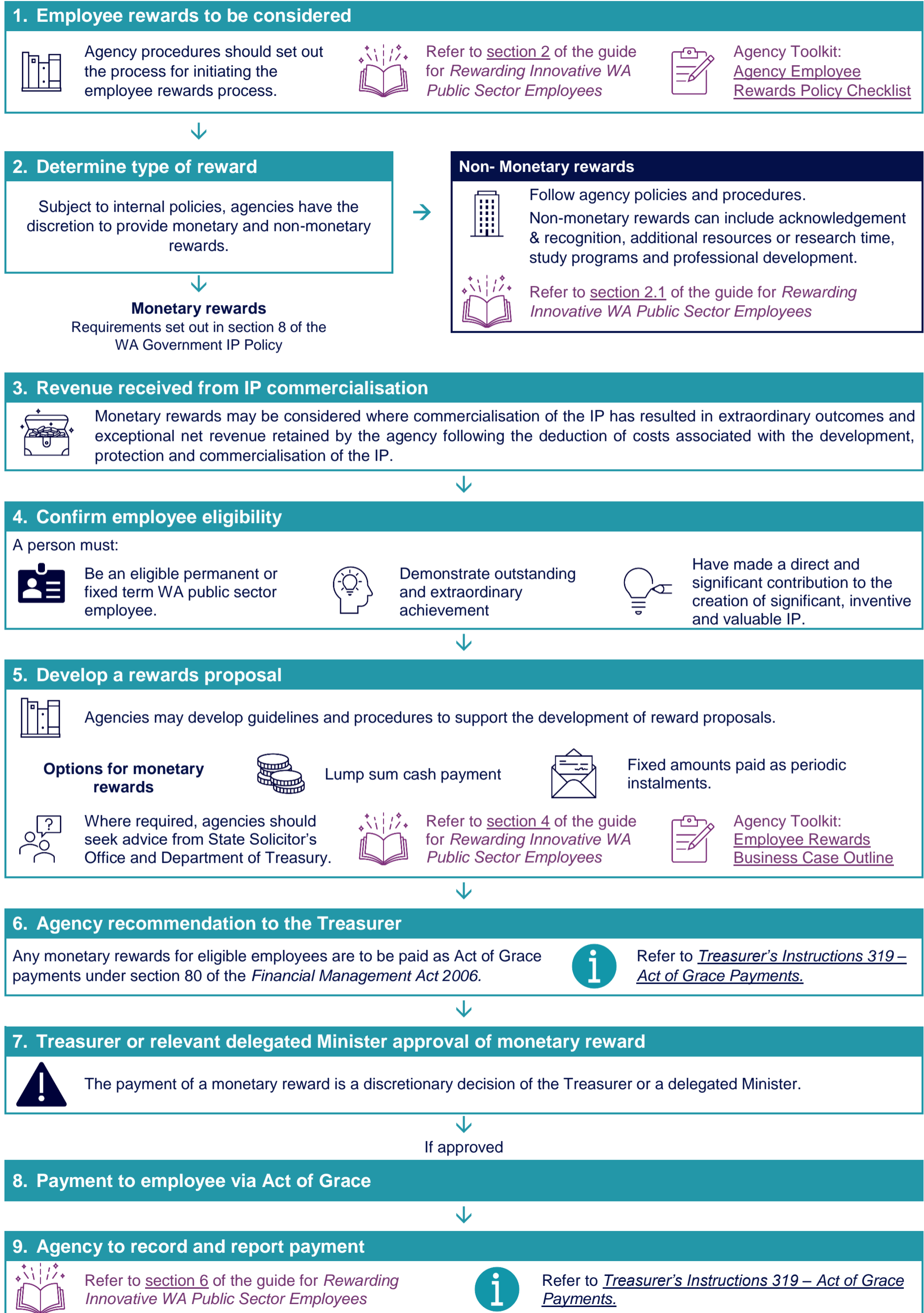
Agency guides

- [Managing WA Government IP](#)
- [Ownership of WA Government IP](#)
- [Commercialising WA Government IP](#)

⁵ Treasurer's Instruction 319 – Act of Grace Payments - [Financial Administration Bookcase](#)

⁶ Ibid.

Flowchart: Overview of employee rewards process





Agency Employee Rewards Policy Checklist

About this checklist:

This checklist is a guide to assist WA Government agencies developing policies and procedures for the reward of innovative employees who contribute to the creation of new IP assets.

How will the rewards process be initiated?

The policy outlines:

- How the rewards process is initiated and by whom?

For example: recommendation of the head of the business unit to the CEO, nomination by the employee's line manager to a senior officer.

- When an employee reward will be considered?

For example: during the development of the commercialisation proposal, once commercialisation has been completed and the agency has received revenue.

Who is eligible for reward consideration?

The policy set outs the circumstances where an employee may be eligible to receive a:

- Non-monetary reward.
- Monetary reward (see note below)

The agency's policy for monetary rewards must be consistent with the eligibility requirements under the WA Government IP Policy which include:

1. The employee is engaged on a permanent or fixed-term basis;;
2. The employee has made a direct and significant contribution to the creation of original IP rights (and not simply modifications, adaptations and improvements of existing IP rights);
3. There has been outstanding and extraordinary achievement by the employee far exceeding that generally expected from a person with the same or similar duties;
4. The creation of significant, inventive (not simply innovative) and valuable State owned IP by the employee;
5. Extraordinary outcomes; and
6. The successful commercialisation of the State owned IP rights resulting in exceptional net revenue for the State.

What are the rewards available?

The policy sets out:

- Non-monetary reward options available for consideration.
- Monetary reward options available under WA Government IP Policy: Section 8.

How is the reward package developed?

The policy:

- Identifies who is responsible for developing the rewards package.

For consideration: Will the agency include a rewards panel in the process?



- Includes guidance for the assessment of potential reward and development of the package.

For example: factors considered when determining appropriate type of reward, requirement to consult with the employee, options for seeking independent advice.

If the policy provides options for the establishment of a rewards panel, include guidance regarding:

- The role and membership of the panel.
- The circumstances where matters will be referred to the panel for consideration.

For example: to consider a particular type of reward or where a proposed package exceeds a specified value.

Recommended inclusion:

- The policy requires the employee to seek their own independent legal and financial advice.

How is the proposed reward package approved?

The policy sets out the process for agency approval of the rewards package including:

- The nominated approver of the package.

For consideration: the agency may wish adopt a tiered approach where the approving officer may vary depending on the nature or value of the proposed rewards package.

- Any documents to be prepared.

For example: business case or report, contractual agreements or deeds.

The decision to provide a monetary reward to a WA public sector employee is discretionary and may only be made by the Treasurer or the relevant delegated Minister.

Agencies should refer to *Treasurer's Instruction 319 – Act of Grace payments* for information about the approval process.

Record keeping and reporting requirements

The policy:

- Provides for the establishment of a rewards register.
- Outlines the information to be included in the register.

At a minimum it is suggested that the register include the following information:

- Details of the reward recipient including their name, position title, level and salary.
- A description of the relevant IP asset.
- Details of the reward package including the nature of reward (lump sum payment, share of revenue etc.) and the monetary value.
- Details of any terms and conditions for the payment reward, for example paid only while employed by the agency or public service, schedule for period payments.



How will disputes be managed?

It is recommended that the agency include a process for managing any grievances or disputes that may arise regarding:

- the decision to nominate or reward a particular employee or group of employees;
- the terms of any proposed rewards package;
- decisions not to reward employees nominated for consideration or to offer a non-monetary reward only.

Matters addressed in the policy may include:

- How a dispute resolution process will be initiated.
- Who is responsible for resolving disputes and any nominated decision makers.
- The matters that will and will not be considered.
- The procedure for dealing with any dispute.

For example: informal or formal meeting with parties, mediation with independent party.

- Any options to appeal a decision.

Remember to take into consideration the agency's existing grievance and HR dispute resolution policies and procedures. Refer to Public Sector Commission Standards.



Employee Reward Business Case Outline

- The following is intended as a guide for agencies to develop an appropriate business case proposal for employee rewards⁷.
- Where a monetary reward is proposed, agencies should also refer to [Treasurer's Instruction 319 – Act of Grace payments](#) for further information on procedure.

Background about IP

- Background information about the IP developed by the nominated employee, including details of any relevant research partnerships or funding arrangements.
- Details of the IP's commercialisation including the pathway used and net revenue received (or expected).

Employee details

- Details about the nominated employee confirming their contribution to the development of IP and eligibility to receive a reward. For example:
 - Include information demonstrating the employee is an eligible WA public sector employee.
 - Details of the employee's role and work duties.
 - Details of the employee's contribution to the development of the IP asset and confirmation that these contributions were in the course of their WA public sector employment.
 - Confirm that the employee is not subject of any current disciplinary action.

Proposed rewards package

- Provide full details of the rewards proposal including:
 - the type of reward proposed.
 - the total value of the proposed reward.
 - the rationale for recommending the proposed rewards package, including any specific considerations.
- Include details about how the proposal was developed. For example:
 - any negotiation or consultation with the employee to determine an appropriate reward.
 - any external advice obtained regarding the proposal.
 - confirmation that the employee has sought their own independent financial and legal advice.
- Payment schedules or terms of proposed contractual agreements required to support the proposed reward package.

Recommendations and approvals

- Any agency-level approvals required by internal rewards procedures and guidelines.
- The required decision making authority and procedure for approval of the reward.

IMPORTANT: All Act of Grace payments are discretionary and subject to the decision of the Treasurer or delegated Minister.

⁷ Content adapted from Queensland Government (2007) *Attachment to Rewards for Creating Commercially Valuable Intellectual Property*.



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