



Encouraging Innovation by Government Employees

Procedures for the payment of monetary rewards to innovative Government employees

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1. INTRODUCTION

These procedures have been developed to provide direction to Government Agencies in the payment of monetary rewards to innovative Government employees under the Government Intellectual Property Policy 2003 (the IP Policy). On the issue of incentives the IP Policy provides:

“Creativity and Innovation resulting in the creation of valuable or useful IP with Government Resources is encouraged and incentives are provided to Government employees where appropriate, noting that monetary rewards should only be paid from revenue received from the Commercialisation of the IP and can only be paid with the approval of Executive Council.”

The ability to provide innovative Government employees with rewards for developing or creating commercially valuable IP assets in the course of their work will provide an important incentive to be innovative and to comply with the IP Policy and may increase the profile of innovators in the public sector.

The provision of rewards also acknowledges that other organisations such as universities and research institutions provide rewards or bonuses based on the commercial success of their employees’ innovations, and should assist in the retention of valued staff.

Government Agencies can put in place mechanisms for the provision of non-monetary rewards to employees who create or develop operationally valuable IP including recognition and public acknowledgment. For further information on non-monetary incentives or rewards agencies should contact the Department of Consumer and Employment Protection or the Public Sector Management Division of the Department of the Premier and Cabinet.

2. WHO MAY RECEIVE A REWARD UNDER THE IP POLICY?

Monetary rewards under the IP Policy must only be paid when Government receives an income from the successful sale or commercialisation of a Government owned IP asset and must only be paid to people who are:

A. *Government employees.*

For the purpose of these Procedures this will include all Government employees, whether permanent or on fixed term contracts, or seconded from another agency or organisation, and persons ordinarily considered to be Government employees (including statutory office holders).

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

B. *Outstanding innovators.*

Rewards should not be paid every time an employee creates or further develops valuable IP. For instance, commercially valuable IP can sometimes be created through the application of repetitive or routine processes involving little creativity or inventiveness on the part of the creator. It is unlikely that persons creating IP assets in such a way will be eligible to receive rewards.

C. *Directly involved in the creation or further development of the IP.*

Rewards should only be paid to employees who make a significant direct contribution to the development of the asset. This can include, developing the innovative design of the assets which are then created by others. Rewards should not be paid to people for involvement in the commercialisation of IP assets unless that involvement constitutes further outstanding innovative development of the IP or the creation of new IP.

IP assets can be created by one person or a team of people and *rewards can be paid to an individual or individuals in a group*. Individuals in that group should only receive a reward if they meet the criteria addressed above. Members in such a group who are eligible to receive a reward must be treated fairly and equitably.

3. FORM OF REWARDS

Monetary rewards to innovative Government employees under the IP Policy can take several different forms and have characteristics including:

- (a) lump sum cash payments;
- (b) percentage of revenue or royalties (or calculated by reference to revenue - see note below) which can be capped at a maximum amount, for a set number of years or for an indefinite period;
- (c) periodic payment of a fixed amount for a set number of instalments;
- (d) periodic payment of differing amounts over a set number of instalments (eg: decreasing amounts over a fixed number of years);
- (e) payments which cease on the termination of the innovator's employment or some other event; and
- (f) a combination of fixed and revenue based payments.

4. FACTORS RELEVANT TO THE CHOICE AND LEVEL OF REWARD

Factors relevant to the choice and level of reward to be provided to innovative Government employees include:

- (a) actual or realised commercial value of the IP asset;
- (b) whether the commercialisation is completed (ie: an outright sale of the asset or where there is no reasonable expectation of further income from the commercialisation of the asset) or whether the Government Agency may grant further licenses or receive more revenue from the asset's commercialisation (such as a continuing royalty flow);
- (c) amount of revenue obtained from the commercialisation of the IP asset;
- (d) cost of the asset's development;
- (e) cost of commercialising the asset;
- (f) proportion of work done in the asset's development subsequent to the work of the innovator;
- (g) difference between pay levels and reward structures in Government and the private sector or between public sectors;

- (h) novelty or inventiveness of the intellectual property created; and
- (i) degree of innovation by the employee.

Before selecting the type and level of rewards the likely and potential revenue to be received from the commercialisation of the asset must be ascertained as best as possible.

When rewards are calculated by reference to revenue only the costs associated with the protection and commercialisation of the asset rather than its development costs should be deducted from revenue received. This is because IP assets are not generally developed by Government Agencies for the purpose of commercialisation and therefore the development costs should be considered to be sunk costs.

5. SOURCE OF FUNDS FOR PAYMENT OF REWARDS

Rewards must only be paid under the IP Policy when the Government Agency receives revenue from the commercialisation of the IP asset. If the Government Agency has its own fund into which the revenue is paid then the rewards are to be paid from that fund. If the Government Agency has net appropriation arrangements with Treasury under s23A of the *Financial Administration and Audit Act 1985* (FAA Act) it should seek to have the arrangements varied so that it may utilise the retained revenue for the purpose of paying rewards.

Note: Unless specifically authorised to do so by legislation, Government Agencies must first pay any revenue from commercialisation of an IP asset into the authority's own fund or the Consolidated Fund before paying any reward to an employee. (s64 Constitution Act 1889).

6. THE APPROVAL AND GRANTING OF REWARDS

Decisions on payment of rewards to innovative Government employees must be made by the relevant Minister on recommendation of that person's employer. The Minister's discretion must be exercised in an open and accountable manner. Any payment must only be made once all relevant approvals including by Executive Council, have been obtained.

Government Agencies should ensure that they are capable of determining their maximum contingent liability for payment of rewards. If rewards are to be calculated as a percentage of revenue received and paid under the proposed mechanism, the maximum contingent liability must be no more than \$50,000 (see section 6.1 below).

6.1 Rewards to be paid as Act of Grace Payments

Rewards can only be paid as Act of Grace payments through the mechanism that existed before the enactment for section 58B of the FAA Act, ie with the approval of the Executive Council

At the time of the release of these procedures payments under the s58B mechanism can be for no more than \$50,000 (regulation 25 of the *Financial Administration Regulations 1986*) and rewards paid in accordance with these procedures must not exceed that amount. If a reward is paid as a periodic payment, such as one linked to a percentage of the revenue received from the commercialisation of an innovation, the approval must clearly indicate that it is for a total amount of no more than \$50,000.

If a reward linked to a percentage of revenue received is granted under the proposed mechanism and the amount of revenue from an IP asset's commercialisation later exceeds

expectations, whereby the percentage of revenue would exceed the approval's limit of \$50,000, it is possible to seek the approval of Executive Council to extend the reward past \$50,000. In such circumstances the approval of Executive Council must be sought and obtained before paying an employee more than \$50,000.

Government Agencies should note that the Treasurer's consent may be required if the authority wishes to pay the reward from retained revenues under a net appropriation agreement under s23A of the FAA Act. Unless the agreement already permits payment of such rewards it may be necessary to vary that agreement to permit the use of retained revenues for that purpose.

6.2 Agency Specific Procedures

Government Agencies that regularly develop, manage and commercialise IP may wish to develop and put in place agency-specific procedures or policies to provide additional guidance in relation to the provision of rewards. Authorities can also establish a committee to investigate the payment of rewards to staff and make recommendations on the payment of rewards. Any agency-specific procedures or policies must be consistent with these procedures and must not limit the decision maker's discretion.

Agency-specific procedures or policies can address issues including:

- (a) the manner in which the provision of a reward is instituted, ie: by application or nomination;
- (b) issues confined to the agency that are relevant to when rewards should be provided;
- (c) the type of rewards to be offered;
- (d) details on the establishment and constitution of the agency's IP rewards committee;
- (e) details of non-monetary rewards that may be available; and
- (f) when and how to recognise and acknowledge innovators.

6.3 Preparation of a Rewards Report

Government Agencies must prepare a report to outline the proposed reward, the reasoning behind its provision and its calculation. The report must contain sufficient information to enable the Director General, board or other employer and the Minister to make an informed recommendation and decision respectively. The report must provide the following information:

- (a) details of the recipient of the reward (position, role, level, salary, length of service);
- (b) details of the IP asset the employee created (or if created by a team, the extent of the recipient's contribution);
- (c) the monetary value of the reward (to the extent it can be calculated ie: the amount paid to employee or the estimated cost to the agency of provision of the reward);
- (d) the nature of the reward (lump sum, periodic, fixed or calculated by reference to revenue etc);

- (e) the manner of calculation of the reward (eg: by reference to amount of revenue raised through the commercialisation of that asset – royalty equivalent, is the royalty equivalent capped at a maximum amount); and
- (f) the terms and conditions of the reward (eg: paid only while employed by the agency, in the public service, periodic payment for a fixed duration).

The report should be prepared by the person or group of persons within the Government Agency who are assigned with the responsibility of managing the agency's IP assets. The report will not only assist in making the decision in relation to the payment of rewards but will also be invaluable for audit purposes.

6.4 General

If a monetary reward is to be paid to a public sector innovator by a series of instalments rather than a lump sum cash payment, the Government Agency should execute a deed of gift to make the employee's reward a legally enforceable entitlement. Government Agencies must ensure that their obligation to pay a reward under such a deed does not exceed the terms of the approval given (note the \$50,000 limit above at 6.1).

A reward must not be given as an entitlement or included in the terms and conditions of a Government employee's employment (including Enterprise Bargaining Agreements). The payment of an agreed reward by instalments may however be linked to the continuation of the innovator's employment.

Tax implications must be carefully considered by the Government Agency and potential recipient of the reward in advance of payment of reward. Government Agencies must not provide advice to the reward recipient as the recipient's tax position is a matter for the recipient to determine by getting his or her own advice.

In providing rewards, Government Agencies are encouraged to consider issues such as the potential for the payment of rewards to be divisive within the authority. It is suggested that problems can be avoided by ensuring rewards are only granted in outstanding cases. Government Agencies must have grievance mechanisms in place to address any complaints by staff in relation to the provision of rewards in accordance with the Public Sector Standards in Human Resource Management issued by the Public Sector Standards Commissioner.

7. REWARDS REGISTER

Government Agencies must maintain a register of rewards provided to employees containing such information as contained in rewards reports (refer to 6.3 above). It is suggested that Government Agencies may find it useful or convenient to link the rewards register to their IP asset register.

8. PROMOTION AND DISSEMINATION OF REWARDS PROCEDURES

Government Agencies should advise all staff of the availability of rewards under the IP Policy and should provide them with access to these procedures and any agency-specific policies or procedures developed by the Government Agencies in relation to the provision of rewards.

9. REVIEW

A review of these procedures is proposed to take place as part of the review of the Government Intellectual Property Policy 2003 which is to commence in 2007. To assist in this process Government Agencies are requested to report to the Government Intellectual Property Policy Council on rewards that are paid. Reports can be addressed to:

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10. FURTHER INFORMATION

Useful publications, including the Government Intellectual Property Policy and Best Practice Guidelines, the Intellectual Property Manual and Information Sheets are available for download on the IP webpages: www.ip.indtech.wa.gov.au

Further information in relation to the IP Policy or assistance in the implementation of the IP Policy can be obtained from the Principal Policy Officer, Intellectual Property who can be contacted at ipsp@indtech.wa.gov.au or on 9222 5514.