



Performance Bonus Review

Interim report

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“The review will consider existing performance bonus arrangements and inform the development of a consistent principles based approach to the payment of bonuses across all Commonwealth agencies, providing clear guidance to the Boards and Accountable Authorities of Commonwealth entities and companies, ensuring a consistent approach across all Commonwealth agencies.”

– Assistant Minister Morton’s announcement, 13 November 2020.

Overview

On 12 November 2020, the Prime Minister wrote to the Assistant Minister to the Prime Minister and Cabinet agreeing to a review of existing performance bonus arrangements for SES-level Australian Public Service (APS) employees, as well as officials of corporate Commonwealth entities and Commonwealth companies (entities¹).

The Review is being conducted by a panel comprising: the Secretary of the Department of the Prime Minister and Cabinet, the Secretary of the Department of Finance and the Australian Public Service Commissioner.

The Review initially analysed data for the 2018-19 financial year using data from the Transparency Portal (transparency.gov.au), annual reports and a subsequent survey of 55 entities. The 2018-19 financial year was selected for analysis as the 2019-20 financial year was atypical and unlikely to yield representative data due to the impacts of the COVID-19 pandemic. The Review then conducted a comparative analysis between the 2018-19 and 2019-20 financial years.

Based on 2018-19 data, 74 Commonwealth entities were identified as paying performance bonuses (listed in Attachment A). Fifty-five² of these were in scope for the Review and requested to provide additional information on governance arrangements and policies. Key findings from the data analysis and survey information are:

- Performance bonuses are uncommon across Commonwealth employers and even less so in APS entities.
- Performance bonus arrangements are most frequently used by Government Business Enterprises (GBEs), regulatory entities and other entities that operate in the financial sector.
- Commonwealth entities use performance bonuses in a variety of ways.
- There are generally strong governance arrangements supporting performance bonus arrangements in the form of policy, multiple levels of decision-making and reporting.
- There are inconsistencies in how Commonwealth entities report bonuses and in their decision-making processes.

¹ For the purposes of this report, the common term ‘entities’ and ‘entity’ is used to denote Commonwealth entities (non-corporate Commonwealth entities and corporate Commonwealth entities) and Commonwealth companies, unless there is a need to specifically refer to one of these entity groups or types.

² Only 55 were asked further information due to a variety of factors. Entities not surveyed include those that clearly only paid bonuses to staff under the jurisdiction of the Remuneration Tribunal, do not normally pay bonuses to senior staff but a junior staff member acted at a higher level resulting in recording a bonus, if the employment instrument that paid the bonuses no longer exists and wasn’t replaced with another that includes bonuses, and the entity no longer exists due to a Machinery of Government change.

Comparative analysis of the reporting of bonuses paid in 2018-19 and 2019-20 validated these findings. Further, fewer entities reported paying bonuses in the 2019-20 reporting period, while numerous entities indicated in annual reports that they had taken decisions to restrain performance based payments.

This interim report makes two recommendations:

Recommendation 1 – draft guidance for accountable authorities should be developed in consultation with Commonwealth entities, taking into account the various governance arrangements of entities including that some entities operate in a commercial environment.

The guidance should be based on the underlying principles that:

- a. All Commonwealth entities have a responsibility to the Parliament and the Australian public and should act in line with community expectations, regardless of their level of independence from the Government
- b. Commonwealth entities should exercise rigour and restraint in using bonus payments
- c. Bonus payments should clearly align with an individual's performance and in doing so demonstrably deliver a public benefit.

Recommendation 2 – transparency should continue to be strengthened through ongoing enhancements to the Transparency Portal and refining guidance to increase accuracy and consistency of entity reporting.

Practices and themes

The Review considered central governance arrangements including reporting requirements and relationships with other jurisdictions. A summary is contained at Attachment B.

Prevalence of bonuses amongst senior staff

For the purposes of the Review, standard terms and definitions for senior staff were adopted from the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and related guidance:

- Key Management Personnel – Includes Secretaries, Chief Executive Officers (CEO), Deputy CEOs, Managing Directors, Senior Counsel, Company Secretaries, Chief Operating Officers. Staff under the Remuneration Tribunal’s jurisdiction may fall under this category.
- Senior Executives – An official other than Key Management Personnel, who is responsible for making decisions or having substantial input into decision making. This includes Senior Executive Service classifications under the *Public Service Classification Rules 2000*.
- Other Highly Paid Staff – Employees with total accrued remuneration packages above \$220,000 in 2018-19.

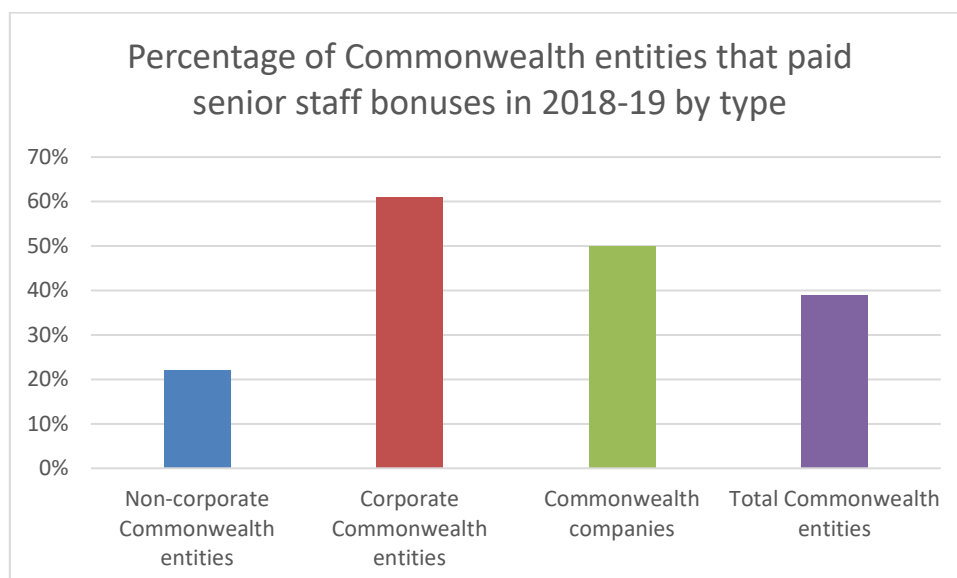
The Review found 74³ Commonwealth entities (39% of all Commonwealth entities) reported paying bonuses to Key Management Personnel, Senior Executives or Other Highly Paid Staff in 2018-19⁴.

This included 9 Commonwealth companies (50% of all Commonwealth companies), 43 corporate Commonwealth entities (61% of all corporate Commonwealth entities) and 22 non-corporate Commonwealth entities (22% of all non-corporate Commonwealth entities)⁵.

³ During the Review one entity was identified as having reported a bonus in error in 2018-19.

⁴ The Australian National University reports on a calendar year basis, rather than financial year. Data from the Australian National University has been drawn from the 2019 annual report.

⁵ See Attachment B for definitions of Commonwealth companies, corporate Commonwealth entities and non-corporate Commonwealth entities.



APS entities were less likely to pay bonuses than non-APS entities, with 26% of APS entities paying a bonus in 2018-19 compared to 60% of non-APS entities. 13% of dual staffing entities paid bonuses in 2018-19.

12 entities only paid bonuses to Principal Executive Offices⁶ or other staff remunerated by determinations made by the independent Remuneration Tribunal. Those arrangements fall outside of the scope of the initial 2018-19 analysis. A further 7 Commonwealth entities were also excluded from the initial analysis for a variety of reasons including one-off payments in lieu of salary progression⁷, employment instruments no longer existing providing bonus arrangements or the entity no longer existing due to a Machinery of Government change. These cohorts were included in the comparative analysis detailed later in this report which incorporated all reported data.

The remaining 55 Commonwealth entities and companies were surveyed for additional information on their bonus practices and policies. From analysis of the 55 Commonwealth entities and companies' survey responses, the Review found there were three approaches to senior staff bonus arrangements:

⁶ Principal Executive Offices are offices or appointments for particular positions as defined and determined under the *Remuneration Tribunal Act 1973*. See Attachment B for further detail on the Remuneration Tribunal.

⁷ These payments are provided under enterprise agreements to non-executive employees as an annual payment in lieu of an increment advancement in a salary scale because the employee has reached the top of that classification's pay range. These payments are typically a value less than 2% of base salary. These payments to non-executive employees were only captured as part of the Review because the recipients were typically also eligible for other temporary positional dependant payments (such as overseas posting or deployment entitlements), which increased total remuneration above the \$220,000 threshold for 'Other Highly Paid Staff'.

1. Minimal bonus use which is defined as those Commonwealth entities where less than 25% of senior staff received bonuses. 24% of the 55 entities had minimal bonus use, with 9% of senior staff in those entities receiving a bonus in 2018–19.
2. Moderate use which is defined as those Commonwealth entities where between 25% and 75% of senior staff received bonuses. 27% of the 55 entities had moderate bonus use, with 31% of senior staff in those entities receiving a bonus in 2018–19.
3. High use which is defined as those Commonwealth entities where more than 75% of senior staff received bonuses. 49% of the 55 entities had high bonus use, with 69%⁸ of senior staff in those entities receiving a bonus in 2018–19.

Attachment C provides a list of entities across the previous three categories.

Average bonuses for Key Management Personnel ranged from \$625 to \$428,172. The entities that gave the highest average bonuses to senior staff were:

1. Snowy Hydro Limited (GBE): the average bonus paid to Key Management Personnel was 46% of total remuneration and the average bonus paid to Other Highly Paid Staff was 21% of total remuneration (Snowy Hydro Limited did not report any Senior Executives who were not Key Management Personnel).
2. Australian Postal Corporation (GBE): the average bonus paid to Key Management Personnel was 41% of total remuneration, the average bonus paid to Senior Executives was 39% of total remuneration and the average bonus paid to Other Highly Paid Staff was 19% of total remuneration.
3. Future Fund Management Agency: the average bonus paid to Key Management Personnel was 39% of total remuneration and the average bonus paid to Other Highly Paid Staff was 34% of total remuneration (Future Fund Management Agency did not report any Senior Executives who were not Key Management Personnel).
4. NBN Co Ltd (GBE): the average bonus paid to Key Management Personnel was 27% of total remuneration, the average bonus paid to Senior Executives was 25% of total remuneration and the average bonus paid to Other Highly Paid Staff was 12% of total remuneration.
5. Commonwealth Superannuation Corporation: the average bonus paid to Key Management Personnel was 25% of total remuneration and the average bonus paid to Other Highly Paid Staff was 18% of total remuneration (Commonwealth Superannuation Corporation did not report any Senior Executives who were not Key Management Personnel).

⁸ This percentage is not >75% due to the methodology used. The methodology took averages from Key Management Personnel, Senior Executives and Other Highly Paid Staff groups to calculate what was considered to be >75% rather than a percentage of the total senior staff population. Each entity in the high use group had one or more of the three senior staff groups with >75% of staff receiving a bonus.

Rigour in awarding bonuses

In the private sector it is common for senior executives to have a variety of metrics which they are scored against when determining their performance for awarding a bonus. This often includes awarding a portion of the available bonus when the person has achieved some but not all of the metrics. In the Commonwealth public sector this is sometimes the case but entities also frequently provided performance bonuses in an ‘all or nothing’ arrangement. In the high bonus use group, 35% of senior staff who received a bonus achieved more than 75% of the maximum available bonus amount. This is compared to 80% in the moderate group and 53% in the minimal group. This may indicate a more rigorous process in assessing the quantum of available bonus at most high use entities.

Case study – WSA Co Ltd (GBE)

WSA Co Ltd use scorecards to determine senior staff bonuses which are based on company performance, overall results and alignment to company values. In 2018-19 senior staff achieved between 85 and 90% of their available bonuses. The company scorecard had five measures: safety record, employee engagement, community engagement, environmental performance and financial performance. All five measures were achieved.

Conversely, some entities award bonuses to anyone who is not underperforming. The employee only needs to meet standard performance levels rather than extraordinary or high performance to qualify for a bonus payment.

The majority of bonuses made up between 4% and 15% of total remuneration. Nine Commonwealth entities paid less than 4% and 10 Commonwealth entities paid more than 15%.

Governance

The most common authority for awarding bonuses (and determining other remuneration aspects) is the accountable authority⁹, often informed by a remuneration committee. Generally, the more an entity used bonuses, the better the governance arrangements.

81% of high bonus use entities had multiple levels of decision making in awarding bonuses, compared to 73% of moderate entities and 46% of minimal entities. 41% of high bonus use entities had a dedicated remuneration committee to support the relevant accountable authority.

The majority of Commonwealth entities and companies had policies that governed bonuses. Those that did not tended to have awarded bonuses to individuals based on contractual requirements and did not have bonuses as a standard part of their remuneration practices.

⁹ An accountable authority is the person or group of persons responsible for and with control of each Commonwealth entity's operations, as defined under the PGPA Act.

Positions and roles with bonuses

Entities that perform certain functions or fall under particular portfolios are more likely to award bonuses, and accordingly certain positions/job families are more likely to attract bonuses.

Entity size appears to have no major influence on prevalence of bonuses, beyond that micro entities (less than 20 employees) are less likely to award senior staff bonuses.

The positions that attracted bonuses varied significantly across entities. The most common positions to attract bonuses were:

- CEO/Managing Director/Executive Director/General Manager
- other senior managers such as COOs, CFOs, CIOs, and General Counsels
- specialists such as investment managers, researchers, IT professionals and scientists.

The functions and roles of entities also impacted the likelihood of paying bonuses. Entities involved in policy development were less likely to pay bonuses than those that perform regulatory functions, operate in the financial sector or deliver infrastructure projects. Notwithstanding, such entities did not always limit performance payments to regulatory, financial or technical roles. Some have a culture of awarding performance pay to general program, policy and corporate roles in addition to their specialist roles.

During 2018-19, each of the Government Business Enterprises reported awarding bonuses to senior staff.

Changes between 2018-19 and 2019-20

Comparative analysis was undertaken using the reporting of bonus payments in 2018-19 and 2019-20 annual reports and on the Transparency Portal. As this information was provided to Parliament, and subsequently made public, it was taken at face value.

The analysis identified that 15 fewer Commonwealth entities paid bonuses in 2019-20 than in 2018-19.

Table 1 Comparison of the number of Commonwealth entities that paid bonuses in 2018-19 and 2019-20.

	Reporting cycle	Reporting cycle
Entity Type	2018-19	2019-20
Non-corporate Commonwealth entities	22 (total 99)	18 (total 98)
Corporate Commonwealth entities (including two Government Business Enterprises)	43 (total 71)	33 (total 71)
Commonwealth companies (including seven Government Business Enterprises)	9 (total 18)	8 (total 18)
Total	74 (total 188)	59 (total 187)

Note: Machinery of Government changes and the creation of new entities occurred between 2018-19 and 2019-20. This resulted in a net decrease of one entity during the period analysed.

There are a number of reasons for the change. Evidence suggests that Government directives and requests for restraint are likely to have been one driver of this change. There are other reasons, such as the expiry of enterprise agreements after 2018-19, with bonus payment provisions no longer included in new workplace determinations and enterprise agreements.

Case study – Defence Housing Australia

In 2018-19 Defence Housing Australia paid all Senior Executives and Other Highly Paid Staff bonuses, and all received 75% or more of the maximum available bonus. Bonuses formed a fixed part of remuneration for all employees, with senior staff receiving 15% of their salary as a bonus. As of January 2021, bonuses have been removed from senior executive and non-senior executive remuneration arrangements.

Three entities paid bonuses in 2019-20 after reporting no bonus payments in 2018-19. These new payments were made by the Australian Institute of Aboriginal and Torres Strait Islander Studies, National Capital Authority and the Australian Electoral Commission. The Indigenous Land and Sea Corporation reported a deferred bonus payment from 2018-19 in 2019-20. All nine Government Business Enterprises paid bonuses in 2019-20.

It is anticipated that there will be a further reduction in the number of entities that pay bonuses for the 2020-21 year. A desktop review of a sample of remuneration policies and practices statements in the 2019-20 annual reports of entities that paid bonuses found evidence that the timing of the Government's requests for remuneration constraint meant that many were unable to fully comply with the request in the 2019-20 financial year. Entities indicated that they had taken decisions to restrain remuneration, including performance based payments (bonuses), but in many instances contractual arrangements and other employment arrangements did not allow them to give effect to changes immediately. Those entities indicated that the changes would take effect in 2020-21 and beyond.

In March 2020 the Government announced a freeze in senior executive pay rises due to the COVID-19 pandemic. In August 2020 the Australian Public Service Commission issued guidance to Commonwealth entities on senior executive bonuses, where the core message was that entities should not be paying bonuses at this time unless there are exceptional circumstances or a contractual obligation. This messaging has likely influenced more recent bonus practices both reducing in prevalence and quantum.

Furthermore, in January 2021 the Finance Minister wrote to the accountable authorities of all corporate Commonwealth entities and companies expressing the Government's expectations in respect to the proper use of public monies and to be mindful of community expectations. Responses to this correspondence reflect the findings of this performance bonus review.

In addition, the Remuneration Tribunal is undertaking a review of compliance of remuneration arrangements for Principal Executive Offices.

Table 2 Comparison of the quantum of bonuses paid by personnel group in 2018-19 and 2019-20

	Reporting cycle	Reporting cycle
Personnel Group	2018-19	2019-20
Key Management Personnel	\$19.8m (56 entities)	\$14.9m (44 entities)
Senior Executive	\$8.9m (38 entities)	\$5.5m (31 entities)
Other Highly Paid Staff	\$48m (33 entities)	\$55.8m (24 entities)
Total	\$76.7m	\$76.2m

Note: Commonwealth companies are not required to report Senior Executive and Other Highly Paid Staff remuneration in their annual reports. The above figures exclude any bonus payments made by Commonwealth companies to these cohorts.

The quantum of reported bonuses paid remained stable over the two years despite 15 fewer entities, in net terms, paying bonuses.

This is largely attributed to Australia Post increasing the quantum of bonuses paid to Other Highly Paid Staff in 2019-20 to \$35.3 million, an increase of \$10.1 million on the previous year. These bonus payments represent almost half of the \$76.2 million total of bonuses reported in 2019-20. The total number of Other Highly Paid Staff

reported by Australia Post remained static over the two years – 493 in 2018-19 and 502 in 2019-20. It is noted that Australia Post did not pay bonuses to Key Management Personnel (including Senior Executives) in 2019-20.

Full detail of the comparative analysis is in Attachment D.

It should be noted that the data used for the comparative analysis does not include bonuses paid to Senior Executive and Other Highly Paid Staff of Commonwealth companies, of which there are 18. Remuneration reporting by Commonwealth companies is aligned to reporting requirements for Australian Stock Exchange listed companies, where only Key Management Personnel remuneration details are disclosed. The requirements of the PGPA Rule in respect to the reporting of executive remuneration deliberately precludes Commonwealth companies from disclosing remuneration details for Senior Executive and Other Highly Paid Staff for reasons of competitive neutrality for the recruitment and retention of staff (decision of the Joint Committee for Public Accounts and Audit – April 2019).

The Commonwealth companies which were not required to report these bonuses in annual reports, but are known to have paid bonuses to Senior Executives or Other Highly Paid Staff in 2018-19 based on additional information sourced directly from them, include:

- ASC Pty Ltd (GBE)
- Australian Institute for Teaching and School Leadership
- Australian Naval Infrastructure Pty Ltd (GBE)
- Australian Rail Track Corporation Limited (GBE)
- NBN Co Ltd (GBE)
- Snowy Hydro Limited (GBE)
- WSA Co Ltd (GBE)

More broadly, the reporting of remuneration details for Other Highly Paid Staff by corporate Commonwealth entities and non-corporate Commonwealth entities is based on a total accrued remuneration threshold. In 2018-19 the threshold was \$220,000 and in 2019-2020 it was \$225,000. Remuneration details, including bonus payments, of staff with accrued remuneration under these thresholds are not reported and is likely to be insignificant.

Finance guidance and activity

Executive remuneration reporting guidance

Finance executive remuneration reporting guidance will be reviewed and adjusted to make it clear that the requirements for annual report content set out in the PGPA Rule must be adhered to. Specifically, if a bonus payment is reported the description of remuneration policies and practices should set out the basis on which the payments were made. This reporting should be done in reference to the principles for the payment of bonuses and the accounting concept that a bonus is an ‘at risk’ short term performance based payment.

This follows the Review identifying some inconsistencies in the way entities determine what a bonus is and why bonuses are paid, for example, lump sum payments in lieu of an increment as previously described. The introduction of the executive remuneration reporting requirements by the Government in 2018-19, and the introduction of the Transparency Portal have helped bring such practices to light.

Annual report guidance

Annual reports are the primary vehicle for accountability to the Parliament and it is crucial that they are accurate and factual. The Transparency Portal allows data provided in annual reports to be readily accessed and analysed, with increasing evidence of the use of data drawn from this source by Parliamentarians, the media and academia.

The review found a small number of inconsistencies between what is reported in annual reports and what is uploaded on to the Transparency Portal. Finance is aware that this was the case following a review of the first round of executive remuneration reporting using the Transparency Portal (2018-19) and an ongoing review of reporting for 2019-20.

Finance is working with the provider of the digital annual reporting tool to improve and enhance functionality, including exploring the use of controls in data collection tables to restrict data input to set style and content, ensuring consistency of data input. This is being done together with consultations with entities providing feedback on Finance’s learnings from the 2019-20 round of reporting, and seeking feedback on the use of the digital reporting tool. The annual report guidance, which is refreshed annually, will reinforce the expectation that data input on to the Transparency Portal must be consistent with data in the tabled annual report.

Existing executive remuneration guidance is being reviewed to ensure remuneration reporting is consistent and accurate. This work takes into account the various governance arrangements of entities and the fact that many entities, in particular Government Business Enterprises, operate in a commercial environment.

Recommendations

The Review found inconsistencies in bonus use and reporting, underlying the need for underpinning guidance to support accountable authorities in their bonus arrangements.

This guidance will reinforce the Government's current expectations for bonus use within the Commonwealth is consistent with community expectations.

Recommendation 1 – draft guidance for accountable authorities should be developed in consultation with Commonwealth entities, taking into account the various governance arrangements of entities including that some entities operate in a commercial environment.

The guidance should be based on the underlying principles that:

- a. All Commonwealth entities have a responsibility to the Parliament and the Australian public and should act in line with community expectations, regardless of their level of independence from the Government
- b. Commonwealth entities should exercise rigour and restraint in using bonus payments
- c. Bonus payments should clearly align with an individual's performance and in doing so demonstrably deliver a public benefit.

Recommendation 2 – transparency should continue to be strengthened through ongoing enhancements to the Transparency Portal and refining guidance to increase accuracy and consistency of entity reporting.

Attachments

Attachment A: List of entities that paid bonuses in 2018-19

Attachment B: Central practices – the current governance

Attachment C: List of Commonwealth entities by bonus usage

Attachment D: Comparative analysis of bonuses paid by Commonwealth entities and companies (2018-19 and 2019-20 reporting cycle)

Attachment A: List of entities that paid bonuses in 2018-19

Airservices Australia	Commonwealth Superannuation Corporation
Anindilyakwa Land Council	Defence Housing Australia
Army and Air Force Canteen Service	Department of Defence
ASC Pty Ltd	Department of Foreign Affairs and Trade
Attorney-General's Department	Department of Home Affairs
Australia Council	Department of Industry Innovation and Science
Australian Broadcasting Corporation	Department of the Environment and Energy
Australian Centre for International Agricultural Research	Export Finance Australia
Australian Commission on Safety and Quality in Health Care	Federal Court of Australia
Australian Communications and Media Authority	Food Standards Australia New Zealand
Australian Competition and Consumer Commission	Future Fund Management Agency
Australian Digital Health Agency	Grains Research and Development Corporation
Australian Film Television and Radio School	Hearing Australia
Australian Fisheries Management Authority	Indigenous Business Australia
Australian Institute for Teaching and School Leadership Limited	Indigenous Land and Sea Corporation
Australian Institute of Marine Science	Inspector-General of Taxation
Australian Maritime Safety Authority	IP Australia
Australian National Audit Office	Moorebank Intermodal Company Limited
Australian National Maritime Museum	National Film and Sound Archive Australia
Australian National University	National Gallery of Australia
Australian Naval Infrastructure Pty Ltd	National Housing Finance and Investment Corporation
Australian Nuclear Science and Technology Organisation	National Library of Australia
Australian Pesticides and Veterinary Medicines Authority	National Museum of Australia
Australian Postal Corporation	National Portrait Gallery of Australia
Australian Prudential Regulation Authority	NBN Co Limited
Australian Rail Track Corporation Limited	Northern Australia Infrastructure Facility
Australian Reinsurance Pool Corporation	Northern Land Council
Australian Securities and Investments Commission	Office of Parliamentary Counsel
Australian Signals Directorate	Professional Services Review Scheme
Australian Sports Commission	Reserve Bank of Australia
Australian Strategic Policy Institute	Royal Australian Navy Central Canteens Board
Australian Taxation Office	Screen Australia
Australian War Memorial	Snowy Hydro Limited
Clean Energy Finance Corporation	Special Broadcasting Service Corporation
Coal Mining Industry (Long Service Leave Funding) Corporation	Sydney Harbour Federation Trust
Commonwealth Grants Commission	Tourism Australia
Commonwealth Scientific and Industrial Research Organisation	WSA Co Ltd

Attachment B: Central practices – the current governance

Commonwealth entities and companies

There are three types of *Public Governance, Performance and Accountability Act 2013* (PGPA Act) entities: non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies.

Non-corporate Commonwealth entities

Non-corporate Commonwealth entities account for over half of all Commonwealth entities. They are legally and financially part of the Commonwealth and are either:

- departments of state
- parliamentary departments, or
- listed entities prescribed by legislation

A non-corporate Commonwealth entity is generally established if it will:

- need direct accountability to the Parliament, including through parliamentary committees
- be primarily budget funded
- need to be subject to policies of the Australian Government
- raise relevant money or perform regulatory activities under a law of the Commonwealth
- need to be classified as part of the general government sector.

Government policies automatically apply to non-corporate Commonwealth entities. Enabling legislation can override government policy in the event of a conflict.

Corporate Commonwealth entities

A corporate Commonwealth entity is a body corporate that has a separate legal personality from the Commonwealth. A corporate Commonwealth entity can enter into contracts and own property separate from the Commonwealth while still a part of the Australian Government.

Corporate Commonwealth entities have enabling legislation that establishes the scope of their activities and generally a multi-member accountable authority (such as a board of directors). Examples of corporate Commonwealth entities include:

- the National Library of Australia
- the Australian Broadcasting Corporation
- Airservices Australia.

A corporate Commonwealth entity is generally established if:

- the entity will operate commercially or entrepreneurially
- a multi-member accountable authority will provide optimal governance for the entity
- there is a clear rationale for the assets of the entity not to be owned or controlled by the Australian Government
- the entity requires a degree of independence from policies and direction of the Australian Government.

A level of financial autonomy from the government (and policies of the government) may be suitable for an entity that needs to operate commercially and does not receive a substantial proportion of its funding from the Australian Government. A commercial focus may include the need to hold money on its own account, to borrow or invest money or to have the power to engage staff outside the *Public Service Act 1999*.

The PGPA Act does not give ministers a general power to direct the activities of a corporate Commonwealth entity. It does give broad powers to require the entity to provide information about its activities. Corporate Commonwealth entities are generally not required to comply with policies of the Australian Government except where there is:

- a direction from the responsible Minister under the enabling legislation
- a government policy order.

Commonwealth Companies

A Commonwealth company is a company established under the *Corporations Act 2001* (Corps Act) that the Commonwealth controls. It is legally separate from the Commonwealth. The Commonwealth can solely or partly own a Commonwealth company. The PGPA Act provides a separate Commonwealth companies framework (from Commonwealth entities) that recognises their primary obligations under the Corps Act. Examples of Commonwealth companies include:

- Aboriginal Hostels Limited
- Australian Sports Foundation Limited
- NBN Co Limited.

A Commonwealth company is generally established if:

- the entity will primarily conduct commercial or entrepreneurial activities and will generate profits for distribution to its members
- the entity will operate in a commercial or competitive environment (at arm's length from government)
- the Australian Government is going to sell the entity in the short to medium term.

The members (shareholders or guarantors) form companies by registration under the *Corporations Act 2001*. Once created, a company has the power to enter into transactions, borrow money and operate without further permission from its members.

Common issues when using company structures, include:

- Lack of scrutiny as there is no formal opportunity for parliamentary scrutiny before a company is established. The objects of a company may be amended by its members without parliamentary scrutiny and a company can borrow and invest money without government approval.
- Budget funding that may impact the company's ability to enter into multi-year agreements if they rely on annual funding from the government. Lack of funding certainty may affect their ability to pay debts when they fall due.
- Public perception where there may be an assumption that there is a government guarantee for the operations of a Commonwealth company in the event of its failure.
- Taxes where a company is generally liable to pay Commonwealth, state and territory taxes and charges, whereas enabling legislation may exempt a statutory body from these taxes and charges.

Government Business Enterprises

A *Government Business Enterprise* (GBE) is an additional classification that is prescribed in the *Public Governance, Performance and Accountability Rule 2014* for either a corporate Commonwealth entity or a Commonwealth company. Currently there are 9 Commonwealth entities that are prescribed as GBEs, 7 are Commonwealth companies and 2 are corporate Commonwealth entities. A GBE is a commercially-focussed government owned business that is established to fulfil a Commonwealth Government purpose.

Public Sector Workplace Relations Policy 2020

The new policy was announced on 13 November 2020 and applies to all Australian Public Service (APS) and non-APS Australian Government entities and Members of Parliament Staff. Government Business Enterprises and the Reserve Bank of Australia are to apply the policy to the extent practicable, commensurate with their commercial and competitive circumstances and the intent of Government policy. The policy continues the prior no-enhancement principle that limits an entity adding any new remuneration elements in excess of the annual remuneration cap.

Existing bonus arrangements that are based on percentage of base salary would only increase in-line with the adjustment to base salary.

The new policy strengthens SES (and equivalent) scrutiny and accountability by introducing:

- A requirement for an entity to provide specific information on SES remuneration on request. This in part provides the APSC a power to scrutinise entity SES remuneration policies if there are compliance concerns.
- An additional requirement that an entity head certify that it will manage its SES remuneration arrangements in accordance with the policy.

Senior executive wage freeze

On 25 March 2020, Senator the Hon Mathias Cormann, the then Minister for Finance, wrote to the Australian Public Service Commissioner on behalf of the himself and the Hon Greg Hunt MP, then Minister Assisting the Prime Minister for the Public Service and Cabinet, seeking a stay on increases to senior executive wages due to the challenges evolving from the COVID-19 pandemic. The Commissioner wrote to all Departmental Secretaries and Agency Heads on 26 March 2020, advising of the Government's clear expectation that they suspend increases to all senior executive remuneration, entitlements, and allowances. Departmental Secretaries were requested to communicate this decision to all entities in their portfolios. This freeze remains ongoing as at March 2021.

Senior executive bonus guidance

On 19 August 2020, the Australian Public Service Commission issued guidance to Commonwealth entities on awarding bonuses during the COVID-19 pandemic. The guidance communicates the Government's expectations that entities employ all discretion available for restraint in awarding bonuses consistent with Government and community expectations.

APS Executive Remuneration Management Policy 2016

The APS Executive Remuneration Management Policy 2016 is administered by the Australian Public Service Commission and applies to staff employed under the *Public Service Act 1999*. The policy is designed to maintain remuneration relativity between APS employees (primarily SES) and Secretaries, and support the Public Sector Workplace Relations Policy 2020. The policy notes performance pay and bonuses may form a part of a senior executive's total remuneration but does not provide any direction or parameters around the quantum or arrangements.

Remuneration Tribunal

Certain positions, including entity heads, have remuneration and conditions set by the Remuneration Tribunal. The Principal Executive Offices Guidelines states that incentive pay can be given to Principal Executive Offices with access to an 'at risk' component of remuneration at a rate of 20% of total remuneration for Bands D and E and 15% for Bands A to C. When assessing incentive pay for office holders, entities should incorporate verifiable and qualitative measures on a balanced scorecard.

The Remuneration Tribunal also publishes the Performance Remuneration Guidelines. These guidelines include that it is expected that entities discuss performance pay with the relevant Minister and that at the start of a 12 month cycle a written criteria should be established with the office holder. When considering the office holder's performance they will be scored as unsatisfactory (no bonus), competent (generally no bonus but if individual performance was high but circumstances beyond control affected entity performance then a bonus could be given), superior (bonus awarded) or outstanding (maximum available bonus awarded).

Reporting arrangements for remuneration and bonuses

Public Governance, Performance and Accountability Act 2013 and Public Governance, Performance and Accountability Rule 2014

The PGPA Rule was amended in 2019 to improve the transparency of Commonwealth executive remuneration arrangements (including bonuses) and to standardise how the remuneration of Key Management Personnel, Senior Executives and Other Highly Paid Staff is disclosed by entities in annual reports. This amendment implemented the recommendations of the PGPA Review (see further information below). The information reported in annual reports (and available on the transparency portal) is information about remuneration for:

- Key Management Personnel on an individual basis
- Senior Executives (on an average basis grouped on bandings)
- Other Highly Paid Staff (on an average basis based on bandings starting at 220,000 for 2018-19).

Under the PGPA Rule, Commonwealth companies are only required to report the information for Key Management Personnel.

The total remuneration reported is the sum of the following (calculated on an accrual basis):

- a) base salary
- b) bonuses
- c) other benefits and allowances
- d) superannuation contributions (made by the employer)
- e) long service leave
- f) other long-term benefits
- g) termination benefits.

The PGPA Rule also requires the disclosure of executive remuneration policy and practices, including the governance arrangements under which those policies and practices operate and the basis on which their remuneration has been determined.

The Department of Finance provides guidance on the executive remuneration reporting requirement for annual reports in:

- Resource Management Guide No. 138 – Commonwealth entities Executive Remuneration Reporting Guide for Annual Reports; and
- Resource Management Guide No. 139 – Commonwealth companies Executive Remuneration Reporting Guide for Annual Reports.

Corporations Act 2001

The *Corporations Act 2001* applies to Commonwealth companies, with different reporting requirements depending on if the company is limited by shares (Government Business Enterprises) or by guarantee. Section 300A requires companies limited by shares to include a remuneration report that provides detailed information about Key Management Personnel remuneration, however section 300B does not require companies limited by guarantee to provide the same level of detail. This explains the greater level of transparency available for Government Business Enterprises compared to other Commonwealth companies (or other Commonwealth entities more broadly).

Attachment C: List of surveyed Commonwealth entities by bonus use groups

High use group (27 Commonwealth entities)

- Airservices Australia
- ASC Pty Ltd
- Attorney-General's Department
- Australian Broadcasting Corporation
- Australian Commission on Safety and Quality in Health Care
- Australian Competition and Consumer Commission
- Australian Naval Infrastructure Pty Ltd
- Australian Postal Corporation
- Australian Prudential Regulation Authority
- Australian Rail Track Corporation Limited
- Australian Securities & Investments Commission
- Clean Energy Finance Corporation
- Commonwealth Grants Commission
- Commonwealth Scientific and Industrial Research Organisation
- Commonwealth Superannuation Corporation
- Defence Housing Australia
- Export Finance Australia
- Future Fund Management Agency
- Grains Research and Development Corporation
- Hearing Australia
- National Gallery of Australia
- National Housing Finance and Investment Corporation
- NBN Co
- Northern Australia Infrastructure Facility
- Reserve Bank of Australia
- Snowy Hydro Limited
- WSA Co Ltd

Moderate use group (15 Commonwealth entities)

- Australia Council
- Australian Institute of Marine Science
- Australian Institute for Teaching and School Leadership
- Australian Maritime Safety Authority
- Australian National Audit Office
- Australian National Maritime Museum
- Australian Nuclear Science and Technology
- Australian Pesticides and Veterinary Medicines Authority
- Australian Reinsurance Pool Corporation
- Coal Mining Industry (Long Service Leave Funding) Corporation
- Department of Industry, Science, Energy and Resources
- Northern Land Council
- Professional Services Review
- Special Broadcasting Service
- Tourism Australia

Minimal use group (13 Commonwealth entities)

- Army Airforce Canteen Services
- Australian Digital Health Agency
- Australian National University
- Australian Signals Directorate
- Australian Sports Commission
- Department of Defence
- Federal Court of Australia
- Indigenous Business Australia
- Indigenous Land and Sea Corporation
- Intellectual Property Australia
- Moorebank Intermodal Company Limited
- Royal Australian Navy Central Canteens Board trading as Navy Canteens
- Sydney Harbour Federation Trust

Attachment D - Comparative analysis of bonuses paid by Commonwealth entities and companies

(2018-19 and 2019-20 reporting cycle)

(a) Commonwealth companies are not required to report Senior Executive or Other Highly Paid Staff remuneration details, including bonuses in annual reports and the Transparency Portal.

Figure 1: Key Management Personnel bonuses paid in 2018-19 and 2019-20 by entity

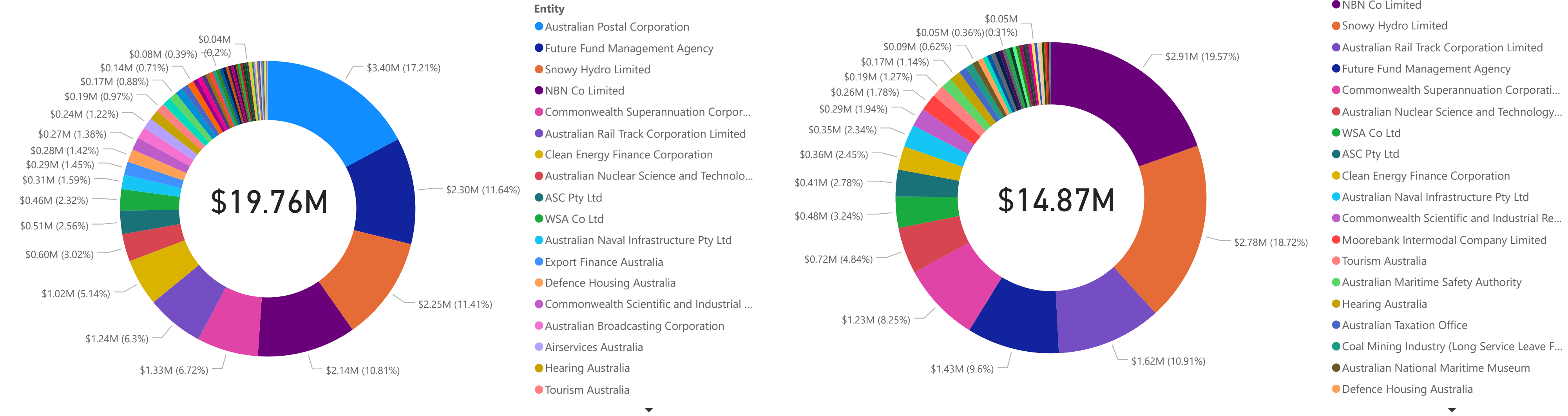


Figure 2: Senior Executive bonuses paid in 2018-19 and 2019-20 by entity

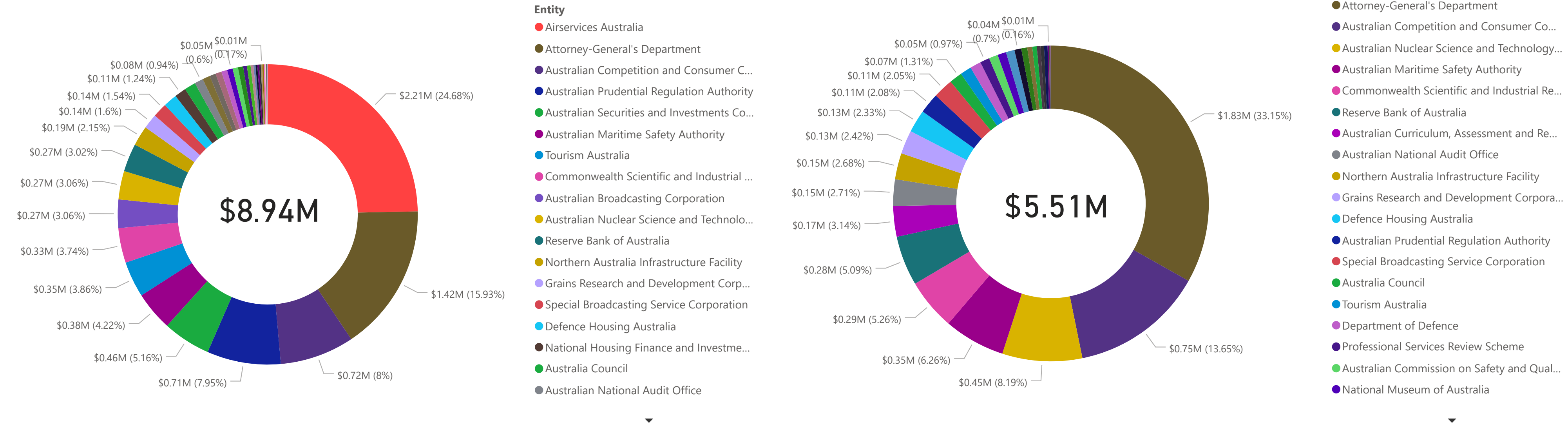
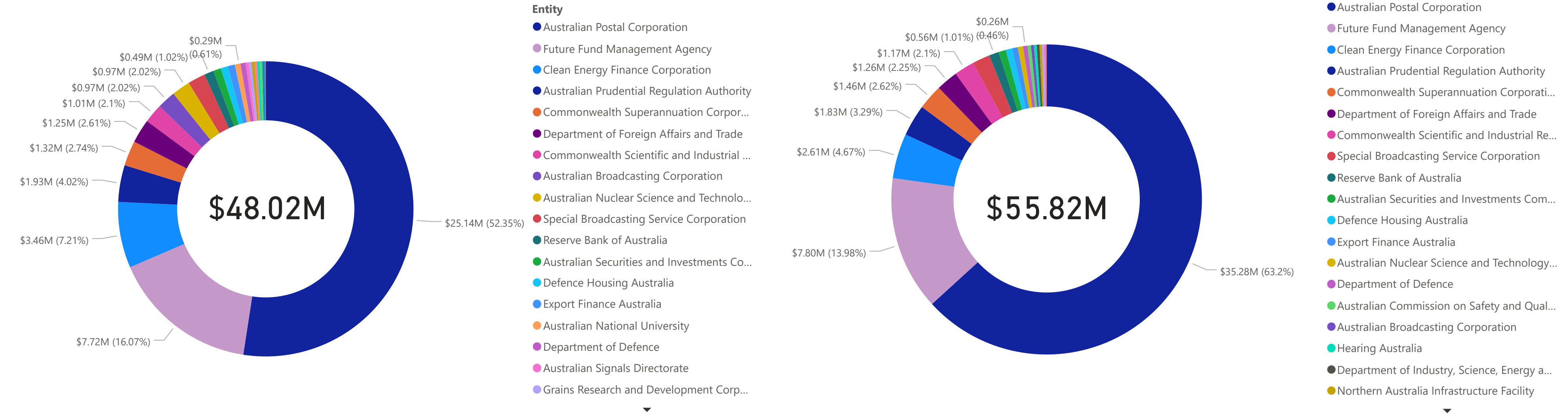


Figure 3: Other Highly Paid Staff bonuses paid in 2018-19 and 2019-20 by entity



Count of entities by entity type and type of bonus paid, 2018-19 & 2019-20

(a) Commonwealth companies are not required to report Senior Executive or Other Highly Paid Staff remuneration details, including bonuses in annual reports and the Transparency Portal.

Figure 4: Types of entities paying any bonus in 2018-19 and 2019-20

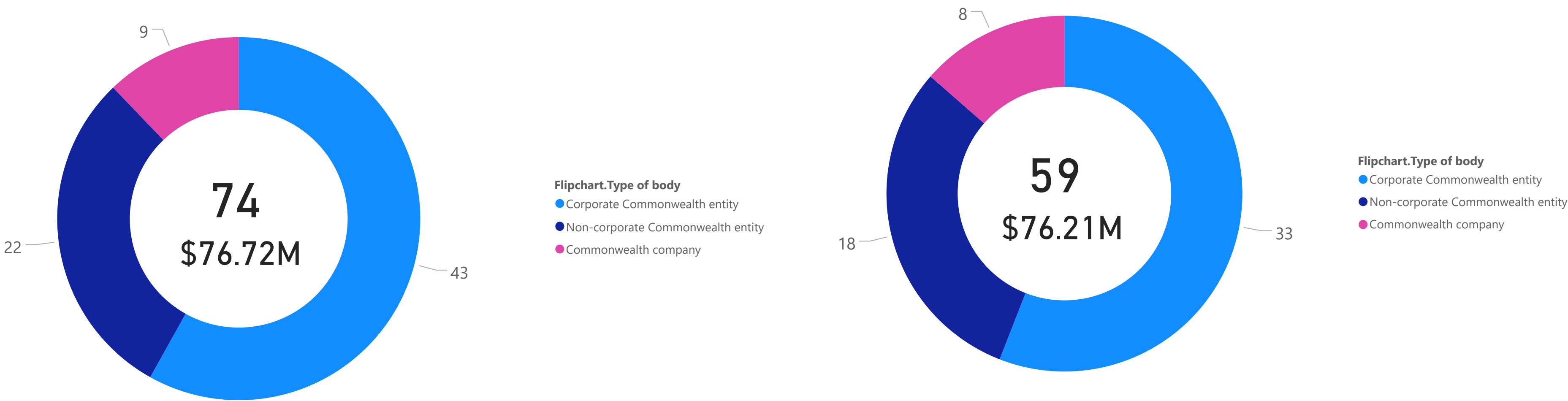


Figure 5: Types of entities paying Key Management Personnel bonuses in 2018-19 and 2019-20

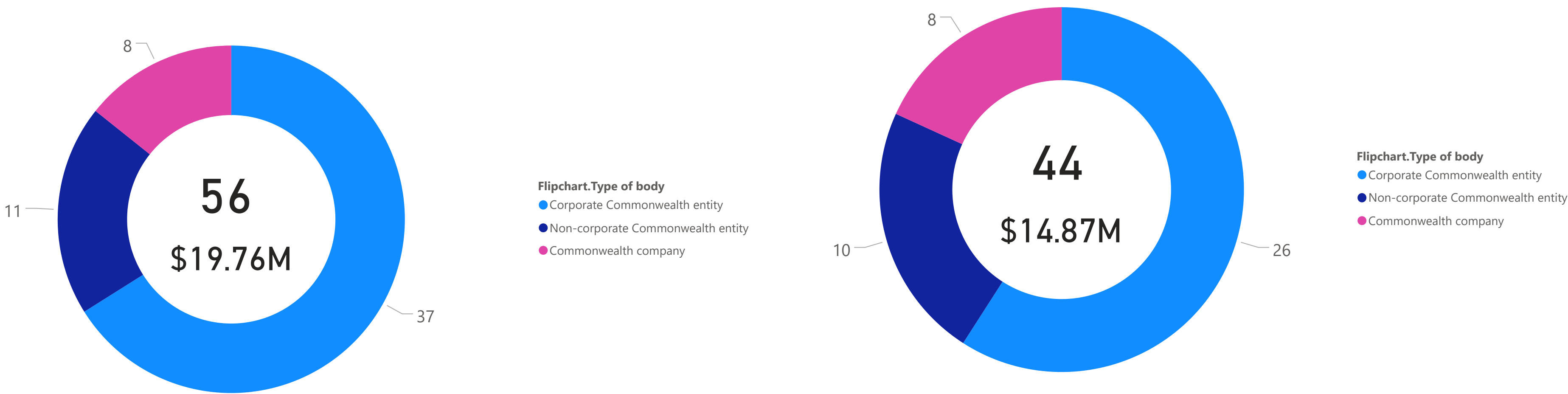


Figure 6: Types of entities paying Senior Executive bonuses in 2018-19 and 2019-20

(b) The Australian Institute for Teaching and School Leadership Limited voluntarily reported 2 Senior Executive bonuses totalling \$5000 in the 2018-19 annual report which have been excluded from Figure 6.

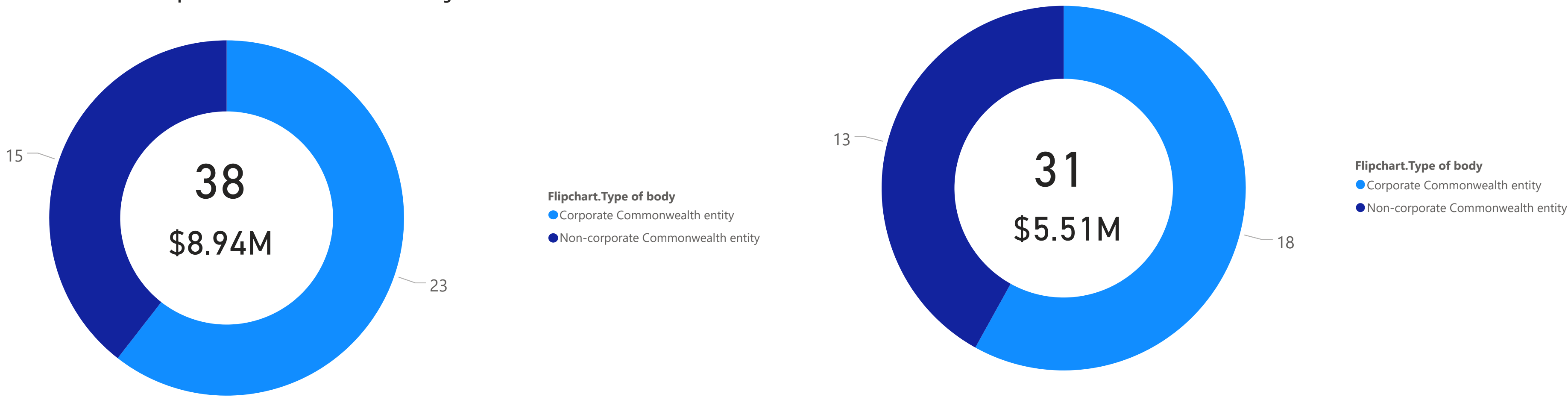


Figure 7: Types of entities paying OHPS bonuses in 2018-19 and 2019-20

