It is **good governance** to develop a policy for dealing with remuneration consultants and for the board to approve the policy. This Guide is intended to outline the issues to consider when doing so. Irrespective of the provisions of the policy, the policy must be subject at all times to the requirements of the corporations legislation.

The policy should also always be tailored to the requirements of the entity concerned. Current practice concerning the use or otherwise of external remuneration consultants will vary significantly from company to company and the terms of the policy will depend on the interaction between the board, remuneration committee, management and external consultants (if any). It is important to develop a policy that is specific to the company and addresses the matters below.

**Legal and regulatory context**

The Corporations Act requires that the engagement of a remuneration consultant that provides remuneration recommendations on key management personnel (KMP) must be approved by the board or remuneration committee. The remuneration consultant must provide the recommendation directly to the non-executive directors or the remuneration committee rather than to company executives. The remuneration consultant must include with their recommendation a declaration as to whether their remuneration recommendation is made free from undue influence by members of KMP to which the recommendation relates. In addition, the board must disclose (in its annual directors’ report disclosures):

- a statement that a remuneration recommendation was made by the consultant, including the amount and nature of consideration payable;
- a statement whether the remuneration consultant provided other kinds of advice during the period, and disclose the nature and amount of consideration payable for that other advice;
- information about the arrangements the company made to ensure that the making of the remuneration recommendation would be free from undue influence by members of KMP to which the recommendation relates; and
- a statement about whether the board is satisfied that the remuneration recommendation was made free from such undue influence, and the board’s reasons for being so satisfied.

For the purposes of the legislation, a **remuneration recommendation** is a recommendation about either the quantum of remuneration and/or the elements of remuneration for KMP, subject to the exclusions set out in the applicable regulations. An external advisor who provides a company with a **remuneration recommendation** is a remuneration consultant for the purposes of the legislation. A **remuneration recommendation** does not include information about the operation of the law, accounting principles, actuarial principals and practice; the provision of facts or general information relevant to all employees of the company; or a recommendation of a kind prescribed in the regulations.

A company should consider the circumstances in which external remuneration advice may be sought and create a policy which should cover:

- to whom does the policy apply?
- when does the policy apply?
- how is remuneration advice from external consultants to be received?
- what internal documentation process is required to ensure compliance with the law?

**In what circumstances does the entity seek external remuneration advice?**

A company needs to assess and have clarity concerning the following:

- in which circumstances do the board and management currently seek remuneration data or advice, if at all?
• with which external advisers do the board and management interact in relation to remuneration data or advice?
• is external advice sought on remuneration, or market data only?
• does the advice relate to remuneration (or elements of remuneration) for one or more members of the key management personnel?

Depending on the remuneration services provided by the external adviser, the services may or may not be classified as a remuneration recommendation and accordingly the adviser may or may not be a remuneration consultant under the legislation. For example:
• if the consultant is providing only market data or ‘facts’, the services may not be classified as a remuneration recommendation, or if the consultant is assisting with the design of a short-term incentive plan that applies to all employees of the company they also may not be classified as a remuneration consultant.
• if the consultant provides a recommendation on the quantum of one or more KMP’s remuneration package and/or the structure of that package, they will be classified as a remuneration consultant and the advice will be a remuneration recommendation.

In addition, there are a variety of issues to consider when deciding which external adviser to engage as a remuneration consultant. For example:
• whether the remuneration committee and the management are required to engage separate advisers such that a remuneration consultant engaged by the remuneration committee to provide remuneration recommendations cannot provide any services to management;
• the engagement by a company of its an external auditor to provide a remuneration recommendation may raise issues of actual or perceived impairment of auditor independence
• the engagement of an external adviser to provide a remuneration recommendation where that external adviser already provides substantial services to the company, will require consideration to perceived or actual undue influence, as well as the implementation of an internal compliance program that reviews and records all engagements with the external adviser in question, which may be demanding on internal resources. Engaging a different external adviser may be easier than implementing such an onerous compliance program.

To whom does the policy apply?
Within a company there may be a number of people seeking remuneration advice or data from external parties, such as the human resources manager or other employees.

It is important to ensure that all employees interacting with external remuneration consultants understand that the policy applies to all those interacting with external remuneration advisers.

Clarity of instructions is paramount in ensuring that remuneration recommendations are not sought or received unless specifically requested in appropriate circumstances. It is important that external remuneration consultants are required to provide remuneration recommendations in writing to the board or the remuneration committee and not verbally, and that they understand they have an obligation to provide such advice only as requested and only in the form requested. This obligation should be a condition of the engagement.

It is good governance to implement a process for reviewing and approving all engagement documents with external remuneration advisers, to ensure that the wording is suitable. For example, the human resources manager or other employees may contact external remuneration consultants to seek information to assist in the design of a short-term incentive plan that applies to all employees, including the KMP. In such circumstances, it is possible that the human resources manager or other employees are under the impression that they are seeking market data only. However, the terms of engagement may be worded such that they are seeking a remuneration recommendation.

It is also possible that, without a process in place for reviewing and approving all engagement documents with external remuneration advisers, external remuneration consultants could inadvertently supply remuneration opinion, advice or recommendations, in the belief that they are being helpful, when no such advice is being requested.
When does the policy apply?

Where a remuneration recommendation has been provided, the disclosure requirements for the company apply to the full financial year and to all advice and recommendations received from the external remuneration consultant during that period.

As KMP may change throughout the financial year, it is useful for an entity to consider any employees who are potential KMP when seeking information from external remuneration advisers, as the employees in question may acquire KMP status throughout the financial year. Given that the timing of their acquisition of KMP status cannot be known in advance, it is prudent to ensure that any information sought by management on remuneration in relation to such individuals is market data or only and does not constitute remuneration recommendations.

How is remuneration advice from external consultants to be received?

The policy needs to set out how a remuneration recommendation from external remuneration consultant is to be received. Each entity will need to decide:

- whether every single engagement (even where a remuneration recommendation is not being provided) needs to be reviewed by the remuneration committee to ensure that no undue influence has been exerted by a KMP — such a process may not be practical or manageable
- which engagements must be reviewed by the remuneration committee if not all are subject to their assessment
- who is reviewing the engagements that do not go before the remuneration committee to ensure that remuneration advice or recommendations relating to KMP are not being sought or received
- how it can provide assurance to the remuneration committee and board that processes are in place to ensure that remuneration recommendations are free from undue influence by the KMP to which the remuneration relates.

Internal documentation process

It is good governance to develop guidelines or protocols which consider the following issues:

- how the chairman of the remuneration committee provides instructions on seeking external remuneration advice and recommendations relating to KMP
- detailing the engagement letter to external remuneration consultants with clear instructions from the remuneration committee
- whether to prepare a list of instructions, either given or received from the remuneration committee, so that there is a clear record for the board
- whether written instructions are provided by the remuneration committee to direct the secretariat to seek external advice so that there is no ambiguity as to what management is authorised to do
- whether certifications will be sought by management from KMP to provide to the board that the KMP have not exerted any undue influence on remuneration advice received in relation to KMP, so that the board can make the required disclosures and rely on the compliance procedures in place with confidence
- how employees may seek external remuneration advice and when such advice can be sought and received
- how the company engages with external remuneration consultants on other non-remuneration-related services — there may be a prohibition on such engagements
- how the remuneration committee charter will reflect the process and policy in relation to engaging external remuneration consultants
- where remuneration recommendations have been made, what the process will be to capture the fees associated with obtaining the recommendations.