



Remuneration Tribunal

Explanatory Statement: Remuneration Tribunal (Departmental Secretaries – Classification Structure and Terms and Conditions) Amendment Determination 2023

1. The *Remuneration Tribunal Act 1973* (the Act) establishes the Remuneration Tribunal (the Tribunal) as an independent statutory authority responsible for reporting on and determining the remuneration, allowances and entitlements of key Commonwealth office holders. These include Judges of Federal Courts and most full-time and part-time holders of public offices, including Specified Statutory Offices. An additional function of the Tribunal is to determine a classification structure for Principal Executive Offices and the terms and conditions applicable to each classification within the structure.

Consultation

2. Section 11 of the Act advises that in the performance of its functions the Tribunal:
 - may inform itself in such manner as it thinks fit;
 - may receive written or oral statements;
 - is not required to conduct any proceeding in a formal manner; and
 - is not bound by the rules of evidence.
3. The Tribunal normally receives submissions on remuneration from a portfolio minister, or a secretary, program manager or employing body (in respect of a Principal Executive Office) with responsibility for the relevant office(s). The Tribunal will normally seek the views of the relevant portfolio minister prior to determining remuneration for an office.
4. The Tribunal may reach a decision based on the information provided in the submission and other publicly available information such as portfolio budget statements, annual reports, corporate plans, legislation and media releases. On occasion it may wish to meet with relevant parties or seek further information from the relevant minister or person making the submission.
5. Amongst other relevant matters in deliberating on appropriate remuneration for an office the Tribunal informs itself on:
 - the main functions, responsibilities and accountabilities of the office;
 - the organisational structure, budget and workforce;
 - the requisite characteristics, skills or qualifications required of the office holder(s); and
 - the remuneration of similar, comparator, offices within its jurisdiction.

Compensation for loss of office

6. In October 2023, the Tribunal commenced a review of compensation for loss of office arrangements for the office of Departmental Secretary.

7. The Tribunal sought advice from the Australian Government Solicitor (AGS) and the Office of Parliamentary Counsel (OPC) to assist in its consideration of this matter.
8. On 17 November 2023 the Tribunal wrote to all Departmental Secretaries inviting comments on proposed amendments to section 25 of Remuneration Tribunal (Department Secretaries – Classification Structure and Terms and Conditions) Determination (No.2) 2023 (the Secretaries Determination).
9. The Tribunal received three responses to this request.
10. On 22 November 2023 the Tribunal wrote again to all Departmental Secretaries, thanking those who responded, addressing feedback provided, and clarifying the intent of the proposed amendments.
11. At its meeting of 23 November 2023, the Tribunal agreed to amend section 25 of the Secretaries Determination to insert exclusion events, which would in certain circumstances remove a Departmental Secretary’s eligibility for compensation for loss of office.

Retrospectivity

12. Any retrospective application of this determination is in accordance with subsection 12(2) of the *Legislation Act 2003* as it does not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) to that person’s disadvantage, nor does it impose any liability on such a person.

Exemption from sunseting

13. Under section 12, item 56 of the Legislation (Exemptions and Other Matters) Regulation 2015, an instrument required to be laid before the Parliament under subsection 7(7) of the *Remuneration Tribunal Act 1973* is exempt from the provisions of paragraph 54(2)(b) of the *Legislation Act 2003*.
14. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
15. As the Remuneration Tribunal makes new principal determinations annually, the principal instrument amended by this determination are unlikely to have any practical effect beyond the usual 10 year sunseting period. As such, the exemption from sunseting will not have a practical impact on parliamentary oversight of the relevant measures.

The power to repeal, rescind and revoke, amend and vary

16. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Details of the determination are as follows:

17. Section 1 specifies the name of the instrument.

18. Section 2 specifies when the instrument commences.
19. Section 3 specifies the authority for the instrument.
20. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
21. Schedule 1 sets out the amendments made to the instruments specified in Schedule 1.

SCHEDULE 1—AMENDMENTS

Remuneration Tribunal (Departmental Secretaries – Classification Structure and Terms and Conditions) Determination (No.2) 2023

22. Item 1 inserts a definition for the term 'exclusion event' in section 8.
23. Item 2 amends subsection 25(1) to remove the words "and the Commonwealth has not made the Secretary an offer of suitable alternative employment" and replaces with "and an exclusion event does not occur".
24. Item 3 inserts two new subsections after subsection 25(1) which provide a list of exclusion events which would remove a Departmental Secretary's eligibility for compensation for loss of office under section 25(1).
25. Item 4 amends subsection 25(2) to remove the reference to "subsection (1)" and replace with "paragraph (1A)(c)"
26. Item 5 repeals section 26 and inserts a new section 26 which provides that a Secretary who is not given 3 months' notice that the Secretary will not be reappointed to an office of Secretary at the expiration of the Secretary's current term is entitled to 3 months' reference salary, unless an exclusion event occurs.
27. Item 6 inserts application and transitional provisions in relation to items 1 to 5.

Authority: Division 4, Part II
Remuneration Tribunal Act 1973

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This determination amends the principal determination:

- Remuneration Tribunal (Departmental Secretaries – Classification Structure and Terms and Conditions) Determination (No.2) 2023

The determination:

- Inserts a list of exclusion events which would remove a Secretary's eligibility for compensation for loss of office.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Remuneration Tribunal