



Remuneration Tribunal (Departmental Secretaries—Classification Structure and Terms and Conditions) Amendment Determination 2023

We, the members of the Remuneration Tribunal, make the following determination.

Dated 24 November 2023

John Conde AO
President

Heather Zampatti
Member

Stephen Conry AM
Member

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules	1
	Schedule 1—Amendments	2
	<i>Remuneration Tribunal (Departmental Secretaries—Classification Structure and Terms and Conditions) Determination (No. 2) 2023</i>	<i>2</i>

1 Name

This instrument is the *Remuneration Tribunal (Departmental Secretaries—Classification Structure and Terms and Conditions) Amendment Determination 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under Division 4 of Part II of the *Remuneration Tribunal Act 1973*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

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

1 Section 8

Insert:

exclusion event has the meaning given by subsections 25(1A) and (2).

2 Subsection 25(1)

Omit “and the Commonwealth has not made the Secretary an offer of suitable alternative employment”, substitute “, and an exclusion event does not occur”.

3 After subsection 25(1)

Insert:

Exclusion events

- (1A) An *exclusion event* is any of the following events:
- (a) the Secretary’s appointment is terminated under subsection 59(1) of the *Public Service Act 1999* before the end of the Secretary’s term of appointment, and before that termination:
 - (i) under paragraph 41(2)(m) of that Act, the Australian Public Service Commissioner inquired, in accordance with section 41A of that Act, into an alleged breach of the APS Code of Conduct (within the meaning of that Act) by the Secretary; and
 - (ii) the Commissioner found that the Secretary breached the APS Code of Conduct; and
 - (iii) the Commissioner made a finding in relation to the Secretary’s conduct, as set out in subsection (1B) of this section;
 - (b) the Secretary’s appointment is terminated under subsection 59(1) of the *Public Service Act 1999* before the end of the Secretary’s term of appointment, and before that termination:
 - (i) under the *National Anti-Corruption Commission Act 2022*, the National Anti-Corruption Commissioner conducted a corruption investigation into the conduct of the Secretary; and
 - (ii) the investigation report under section 149 of that Act included an opinion that the Secretary had engaged in corrupt conduct of a serious or systemic nature; and
 - (iii) the investigation report included a recommendation to terminate the appointment of the Secretary;
 - (c) the Commonwealth makes the Secretary an offer of suitable alternative employment.
- (1B) For the purposes of subparagraph (1A)(a)(iii), the Commissioner made a finding that the Secretary’s conduct:

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- (a) constituted any one or more of the following:
 - (i) sexual harassment;
 - (ii) bullying at work (within the meaning of subsection 789FD(1) of the *Fair Work Act 2009*);
 - (iii) an improper use of the Secretary's duties, status, power or authority to gain a benefit or advantage (whether financial or otherwise) for themselves or any other person; or
 - (b) is likely to constitute an offence against a law of the Commonwealth, a State or a Territory that is punishable by imprisonment.

Offers of suitable alternative employment

4 Subsection 25(2)

Omit "subsection (1)", substitute "paragraph (1A)(c)".

5 Section 26

Repeal the section, substitute:

26 Notice of a decision not to reappoint

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.

6 After Part 9

Insert:

Part 10—Application and transitional provisions

36 Application provisions

- (1) The amendments of this instrument made by the *Remuneration Tribunal (Departmental Secretaries—Classification Structure and Terms and Conditions) Amendment Determination 2023* apply in relation to any termination of the appointment of a Secretary that occurs after the commencement of that determination.
- (2) To avoid doubt, the amendments apply even if a report under section 41A of the *Public Service Act 1999*, or an investigation report under section 149 of the *National Anti-Corruption Commission Act 2022*, is given in relation to the conduct of a Secretary before that commencement.