

# Remuneration Tribunal

## Guide to the Principal Executive Office (PEO) Structure

### 1. Purpose

The Guide has been developed by the Tribunal to assist employing bodies in meeting their responsibilities under the Tribunal's determination of the PEO structure.

The Guide outlines key aspects of the PEO structure, including:

- the arrangements arising from the 2005 review of the structure, in particular revised annual remuneration review arrangements, superannuation salary, performance pay and reporting arrangements to the Tribunal;
- consultation arrangements, particularly between the employing body and the PEO, and the involvement of relevant Minister(s); and
- guidance on performance remuneration.

### 2. Background

The current PEO framework, established in 2001, is intended to provide some flexibility in setting the remuneration of office holders in the structure, while maintaining broad levels of consistency within a framework set by the Tribunal.

The Government first created the PEO structure when it introduced reform measures for Government Business Enterprises (GBEs) in 1988. The designation of a Chief Executive as a PEO allowed the Board of a GBE to set remuneration for that office. Boards were expected, however, to consult the Tribunal before any remuneration changes were implemented.

The *Public Employment (Consequential and Transitional) Amendment Act 1999* varied the *Remuneration Tribunal Act 1973* (the Act) to make provision for the Tribunal to determine a classification structure for principal executive offices and for employing bodies to determine terms and conditions. In December 1999, the Tribunal created the PEO Classification Structure via a Determination. In May 2001 the Act was amended to strengthen the integrity of the PEO Structure, and to ensure that employing bodies were bound to operate within the framework set by the Tribunal, unless there was consent to depart from that framework.

In late 2004 the Tribunal embarked on a review of the PEO structure from the perspective that the PEO structure, and the associated terms and conditions, had been working effectively. The submissions to the review largely confirmed this assessment. Consistent with this, in finalising the review, the Tribunal maintained the existing five Band structure, and continued the linkage between productivity improvement and individual performance and PEO remuneration.

### 3. Definition of a PEO

The Act defines a ‘principal executive office’ to include certain named offices, and ‘any other office or appointment declared by the Minister...’. A list of the current PEOs is available on the Tribunal website - [www.remtribunal.gov.au](http://www.remtribunal.gov.au)

### 4. Establishment of a PEO

An office can be designated as a PEO through declarations made by the Minister responsible for the administration of the Act (the Minister).

If a portfolio Minister considers that a new or existing office is suitable for inclusion in the PEO structure, the portfolio Minister seeks the agreement of the Minister, who may declare that:

- a specified office or appointment is a PEO; and
- the office is assigned to a specified classification within the PEO classification structure determined by the Tribunal.

The Minister may also give notice of the commencing remuneration for the office.

Under the Act the Minister must seek the advice of the Tribunal for each declaration. The Tribunal also advises the Minister on commencing remuneration.

### 5. The Employing Body

The Minister also declares that a specified person, authority or body is the “employing body” for a particular PEO. The employing body may be the governing body of the organisation, agency or entity to which the office holder is appointed, (for example, a board or council), or a specified office, such as the Minister responsible for a particular agency or, for offices within the agency, the CEO of the agency.

The employing body is responsible for managing the employment relationship with the PEO.

The employing body for a PEO determines terms and conditions, including remuneration and allowances, applying to the office, under section 12C(1) of the Act. These terms and conditions cannot be inconsistent with the PEO framework determined by the Tribunal.

Generally offices are not moved to the PEO structure where an employing body cannot be specified and/or the application of a performance based remuneration scheme would be inappropriate because of factors such as a regulatory or quasi-judicial role, or independence from Government.

#### 5.1 Responsibility to notify the Tribunal

The employing body must notify the Tribunal, in writing, of a PEO’s terms and conditions:

- on a PEO’s commencement in the structure;
- when there is any variation to PEO remuneration, including payment of performance pay, with notification to be made within four weeks of such a variation; and
- at such other times as may reasonably be required by the Tribunal.

When advising the Tribunal of revised remuneration arrangements, employing bodies are encouraged to use the Tribunal’s *pro-forma* ‘Declaration of Remuneration’ (copy at **Attachment A**).

## 5.2 Reporting to the Minister

The Tribunal considers it appropriate that a Minister should be able to access information on the remuneration of PEOs in his or her portfolio. The Tribunal will provide such information to a Minister, on request.

## 6. The PEO Remuneration Framework

Under the Act, the Tribunal determines and maintains the classification structure and the associated terms and conditions for PEOs. The details of the classification structure, and associated terms and conditions, are set out in the Tribunal's PEO Determination (the Determination). In summary:

- 1) the classification structure comprises five classification Bands, incorporating a degree of salary overlap;
- 2) the Minister, on the advice of the Tribunal, sets the commencing remuneration of an office;
- 3) the Tribunal determines, annually, the amount by which the salary Band limits are to be adjusted;
- 4) once commencing remuneration has been set, the employing body is responsible for the subsequent fixing of remuneration, within the framework determined by the Tribunal; and
- 5) remuneration is specified on a 'total remuneration' basis (see 7.3 for explanation), with stipulations as to the minimum proportion to be taken as salary and the maximum proportion to be regarded as salary for superannuation purposes.

### 6.1 Key outcomes of the PEO Review

The PEO Review implemented a number of changes to the operation of the PEO structure. In summary:

- 1) commencing in 2005-06, the Tribunal has established a total remuneration **reference rate** for each PEO which will serve as the basis on which an employing body will be able to exercise discretion in determining remuneration;
- 2) each financial year, the Tribunal will adjust its reference rate for each PEO to reflect the outcome of its annual review. It will advise employing bodies of the new reference rate for each of the PEOs for which the employing body determines remuneration;
- 3) discretion for adjustments above the total remuneration reference rate, other than for new appointees (subject to the Tribunal's advice in respect of individual offices), is up to an additional 5 per cent above the reference rate for a PEO;
- 4) except where the employing body obtains the Tribunal's approval, for the first twelve months of a new appointee's appointment, total remuneration must not exceed the reference rate;
- 5) an employing body is able to determine total remuneration at up to 10 per cent below the reference rate;
- 6) notwithstanding this flexibility, the employing body may not set a rate outside the total remuneration rate for the relevant classification Band;

- 7) an employing body is no longer required to seek the Tribunal's approval for any increase where the total remuneration of a PEO exceeds \$300,000;
- 8) salary for superannuation purposes increased from 70 per cent to 73 per cent of total remuneration;
- 9) the notional employer superannuation component in total remuneration increased from 15 per cent to 15.4 per cent (consistent with employer contributions as required under the new Public Sector Superannuation Scheme accumulation plan);
- 10) the maximum 'at risk' performance pay for Bands D and E increased from 15 per cent to 20 per cent of total remuneration; the performance pay maximum for other Bands remains at 15 per cent; and
- 11) provision of scope for business use of a vehicle to be recognised where a car is costed against the salary package.

## **7. The Framework in Operation**

### **7.1 The Classification Structure**

The five Band (A to E) classification structure provides a useful guide to the relative scale and complexity of a job, and a sound foundation for the appropriate classification of offices on entry to the PEO structure. The structure provides a mechanism for providing differing terms and conditions between Bands and enables broad consistency in classification between offices with a range of attributes, while affording scope for considerable refinement through setting remuneration.

### **7.2 The role of the employing body**

In determining the value of the employment package consistent with the Tribunal's remuneration framework, employing bodies, which have a central role in setting terms and conditions for a PEO, are expected to exercise prudent business judgement commensurate with the responsibilities and accountabilities of the PEO.

Relevant considerations will include (but not necessarily be restricted to):

- the work value, role and responsibilities of the office or appointment;
- that improvements in pay and conditions should be linked to productivity gains;
- the ability of an employing body to recruit and retain persons with the necessary qualities and skills; and
- other relevant factors such as adjustments to the remuneration rates for the PEO classification structure.

### **7.3 Total Remuneration**

The PEO structure incorporates a 'total remuneration' approach. Total remuneration represents the total value of all cash and non-cash benefits available to the office holder.

Rather than specifying the base cash salary alone, total remuneration encompasses the total cost of salary and allowances, lump sum payments and other benefits (including employer superannuation contributions, motor vehicle, spouse accompanied travel) which provide a personal benefit to the PEO.

Importantly, total remuneration does not include performance pay, certain allowances including travelling allowances as specified in the Determination, payment in lieu of recreation or long service leave and compensation for early loss of office. Total remuneration is defined in Part 1 of the Determination.

In the Tribunal's view, the total remuneration approach provides greater transparency of remuneration and allows greater flexibility for an office holder to tailor remuneration components to suit individual circumstances.

#### **7.4 Arrangements for the adjustment of remuneration by employing bodies**

In order to address the potential for unintended shifts in relativities between PEOs and other offices in the Tribunal's jurisdiction, the Tribunal sets a "reference rate" for each PEO's total remuneration. This rate is adjusted annually by the percentage determined by the Tribunal as part of its annual review.

The reference rate anchors the remuneration range within which employing bodies are able to determine remuneration. The Tribunal considers the reference rate to be the point of balance between an inexperienced appointee, on the one hand, and an office holder who, through experience, demonstrated competence and the informed and active exercise of the full and developed scope of the appointment, clearly justifies remuneration above the reference rate. In other words, the Tribunal regards the reference rate established for each office to be the appropriate level of remuneration for an experienced and competent office holder.

The Tribunal's adjustment of the reference rate does not determine the actual remuneration of a PEO. The employing body needs to make a formal determination of total remuneration, consistent with the Tribunal's remuneration framework. Where an employing body proposes to set remuneration either above or below the reference rate, that decision will need to be based on relevant considerations, including work value and productivity and be consistent with the range limit around the reference rate for the office.

The previous requirement to seek the Tribunal's approval for any increase where the total remuneration of a PEO exceeds \$300,000 no longer applies.

##### *7.4.1 Upper Limit of Discretion*

The Tribunal has established a remuneration range, around the reference rate. The range is subject to the total remuneration limits that apply to each Band.

An employing body is able to determine total remuneration at up to 5 per cent more than the reference rate advised by the Tribunal for that financial year, to recognise the higher level of skills and work value change which office holders with greater experience may bring to a position over time.

Once the remuneration of a PEO has been determined at the range limit, an employing body will subsequently be able only to determine up to the same percentage increase as the Tribunal's annual adjustment of the reference rate for the office concerned. In other words, an employing body will have no further discretion to increase remuneration, once it has determined remuneration at the available range limit (that is, 5 per cent above the reference rate) until the reference rate is increased by the Tribunal in subsequent financial years.

Should an employing body consider that some additional scope for adjusting remuneration upwards for an office is justified, it would need to seek the Tribunal's agreement. Any submission to the Tribunal in this regard will need to specify clearly the factors considered to justify a departure from the remuneration range for the office.

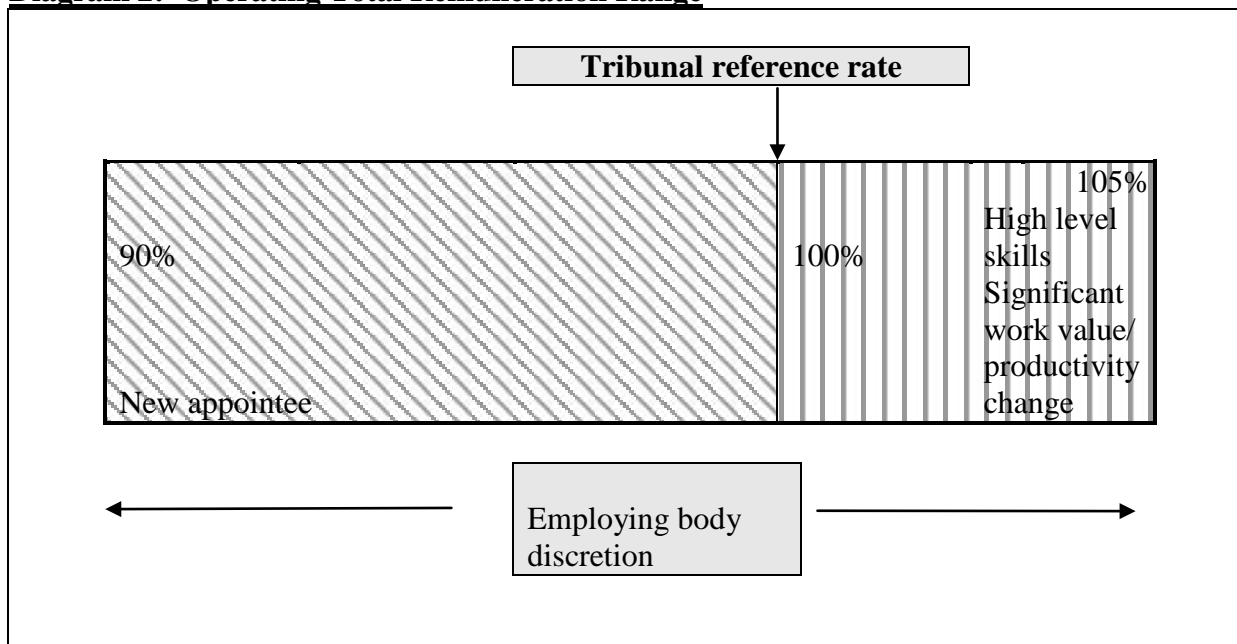
#### 7.4.2 Lower Limit of Discretion

Employing bodies are able to determine remuneration at up to 10 per cent below the reference rate, enabling account to be taken of a new appointee's relative lack of familiarity with the responsibilities of a particular office.

This means that where, for example, an employing body considers that total remuneration for a new appointee should be set at a rate up to 10 per cent less than the reference rate for the office, it will be able to do so without seeking the Tribunal's approval. For the first twelve months of a new appointee's appointment, remuneration must not exceed the total remuneration reference rate – see 7.6 of this Guide.

Consistent with the approach outlined in the last paragraph of 7.4.1 above, should an employing body consider further scope for adjusting remuneration downwards is justified, it will need to obtain the Tribunal's approval.

**Diagram 2: Operating Total Remuneration Range**



#### 7.5 Basis for pay increases

The Tribunal's Determination provides that in setting remuneration, relevant considerations include:

*'Work value, role and responsibilities of the office or appointment; and*

*Improvements in pay and conditions should be linked to productivity gains'.*

In providing scope for discretion, the Tribunal expects that employing bodies will give careful consideration to the basis on which remuneration is adjusted. Such decisions will need to ensure that improvements in pay and conditions are linked to productivity gains, and be distinct from any factor which might be taken into account in performance pay.

## 7.6 New appointees

The scope for additional remuneration above the total remuneration reference rate is directed towards reflecting the higher level of skills which office holders, with experience, may bring to a position over time. Accordingly, for the first twelve months of a new appointee's appointment, remuneration must not exceed the total remuneration reference rate. Any proposed exceptions will require the Tribunal's written agreement and would need to specify, clearly, the factors considered to justify a departure from the remuneration range for the office.

Starting a new appointee at the minimum rate allows the employing body the flexibility to increase remuneration by up to 10 per cent during the first twelve months, provided the reference rate is not exceeded during this period. After the first twelve months, the Tribunal expects that employing bodies will determine total remuneration at the reference rate for the office as a minimum.

## 7.7 Consultation when Remuneration is Reviewed

The Tribunal considers it beneficial for employing bodies to discuss remuneration matters with the relevant PEO. Such consultation is consistent with the establishment of more direct relationships on terms and conditions, one of the essential features underpinning the establishment of the PEO structure.

The Tribunal considers that the views of the Minister will normally be a relevant consideration in settling remuneration and assessing performance. The Tribunal therefore expects that, where an employing body is not a Minister, the relevant Minister and the employing body will establish a protocol for fully informed consultation about PEO remuneration matters, including performance management. The Tribunal recognises that, in a limited number of cases, such consultation may be inappropriate. The Tribunal may consult Ministers about remuneration proposals that it receives.

## 7.8 Reporting

Employing bodies are required to advise the Tribunal of any variation in terms and conditions, including the approval of a performance payment, and to do so within four weeks of such variation.

The Tribunal considers it is appropriate that a Minister should be able to access information on the remuneration of PEOs in his or her portfolio. The Tribunal will provide such information to a Minister, on request.

## 7.9 Performance pay – only applicable to those PEOs entitled to receive performance pay

The Tribunal has increased the maximum level of performance pay for offices in the top two classification Bands (D and E) to 20 per cent of total remuneration. The maximum available to Bands A, B and C remains at 15 per cent.

Where a PEO is entitled to receive performance pay, it is to be made available in accordance with the *Performance Remuneration Guidelines* issued by the Tribunal from time to time (see **Attachment B**). The salary used to calculate performance pay is the total remuneration (TR) that applied to the officer on the last day of the performance assessment period, **not** that which applies on the day that the performance pay is approved. The employing body is not required to consult with the Tribunal in relation to performance pay that is paid to an office holder within the prescribed limit for the relevant Band.

Performance pay must be paid in accordance with the Guidelines, which state that:

*“Performance based remuneration is not a device to provide salary supplementation to office holders. It should not be applied or administered in this way. Rather, it is a way of recognising performance that is over and above what is reasonably expected of the office holder performing their duties competently.”*

## **7.10 Superannuation Salary**

Salary for superannuation purposes has been increased from 70 per cent to 73 per cent of total remuneration, unless the Tribunal has consented to a higher percentage at the time of translation or movement of a particular office holder into the PEO structure.

## **7.11 Notional Employer Superannuation Contribution**

The notional employer superannuation contribution has increased from 15 per cent to 15.4 per cent of the superannuation salary. This increase is consistent with the employer contribution rate as required under the Public Sector Superannuation Scheme accumulation plan.

The employer superannuation contribution rate for an office holder who is a member of a Commonwealth defined benefit scheme will be deemed to be 15.4 per cent for the purposes of assessing remuneration. However, for members of defined benefit schemes, employing bodies may deduct a lesser amount where the employing body holds an actuarial opinion or documentary evidence that the fund only requires the lesser amount of contribution from the employing body, with the difference able to be returned to the relevant PEO.

For PEOs covered by accumulation superannuation schemes, the actual employer superannuation contributions will be deducted from total remuneration.

## **7.12 Vehicles**

The Tribunal has introduced scope for business use of a vehicle to be recognised where a car is available for business purposes and consequently costed against the salary package. Relevant provisions are outlined in the Determination.

## **8. Further Information and Contacts**

- PEO Determination.
- Tribunal’s Statement on the 2005 PEO Review.
- Declaration of Remuneration (Attachment A).
- Performance Remuneration Guidelines (Attachment B).
- Remuneration Tribunal’s homepage: [www.remtribunal.gov.au](http://www.remtribunal.gov.au)
- Remuneration Tribunal Secretariat Telephone: (02) 6202 3930.

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