

# 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. It has been revised and simplified following the Tribunal's 2018 PEO Review.

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

- the legislative framework;
- the operation of the PEO Framework, including employing body remuneration discretion, annual remuneration review arrangement and reporting arrangements to the Tribunal;
- consultation arrangements, particularly between the employing body and the PEO, and the involvement of relevant Minister(s); and
- incentive arrangements - the 'at risk' component of remuneration (performance pay).

### 2. Legislative framework

The *Remuneration Tribunal Act 1973* (the Act) sets out a range of powers in relation to the PEO structure. The key provisions are summarised as follows:

Section 3 sets out the definition of a PEO.

Section 3A sets out the powers of the Minister responsible for the Tribunal to:

- declare an office or appointment is a PEO
- assign the PEO to a specified classification within the classification structure determined by the Tribunal
- declare an assignment to be a temporary assignment
- fix the commencing remuneration for a PEO
- fix temporary commencing remuneration for an office.

*For each declaration under section 3A the Minister must consult the Tribunal*

Section 3B sets out the power of the Minister responsible for the Tribunal to declare an employing body for a PEO.

Section 5(2A) sets out the Tribunal's power to determine a PEO classification structure.

Section 7(3D) sets out the Tribunal's power to hold inquiries and determine terms and conditions (including remuneration and allowances) for a PEO.

Section 12C sets out the powers of employing bodies to determine terms and conditions (including remuneration and allowances) for a PEO consistent with those determined by the Tribunal.

### **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)

While the Chief Executives of Commonwealth companies are usually PEOs, other public offices may also be declared to be PEOs, for example where the flexibility offered by the PEO arrangements can be managed by a governing board properly, and/or where an incentive arrangement is a necessary feature of remuneration due to market factors.

### **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;
- the employing body responsible for the PEO; and
- that the office is assigned to a specified classification within the PEO classification structure determined by the Tribunal.

The Act also provides for the Minister to 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 employing body will generally be the governing body of the organisation, agency or entity to which the office holder is appointed - for example, a board or council.

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

### **6. 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 an incentive arrangement, or commencement of a new appointee) 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*

'Notification of Remuneration' (available on the Tribunal's website at [www.remtribunal.gov.au](http://www.remtribunal.gov.au)).

## **7. Tribunal reporting of PEO remuneration**

The Tribunal does not report publicly on the remuneration of specific PEOs given it does not determine the actual remuneration for the office. Any requests of this nature will usually be referred to the relevant agency. However it is appropriate that Ministers should be able to access information on the remuneration of PEOs in their portfolios. The Tribunal will provide such information to a Minister, on request.

It is noted that there is a number of executive remuneration annual reporting requirements under the *Public Governance, Performance and Accountability Act 2013*. Guidelines in relation to the arrangements for Commonwealth entities and Commonwealth companies can be found on the Department of Finance website [www.finance.gov.au](http://www.finance.gov.au)

## **The PEO Remuneration Framework**

### **8. Key elements of the 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:

- the classification structure comprises five classification Bands, incorporating a degree of salary overlap and providing a sound foundation for the appropriate classification of offices within the PEO structure, based on the relative scale and complexity of a job;
- the Tribunal determines, annually, the amount by which the salary Band limits are adjusted;
- the Minister sets the commencing remuneration of an office, on the advice of the Tribunal;
- the employing body makes subsequent adjustments to remuneration for the office, within the discretionary range consented to by the Tribunal; and
- remuneration is specified on a 'total remuneration' basis, and stipulates both the maximum proportion to be regarded as salary for superannuation purposes and the way superannuation is accounted for in total remuneration.

The latest classification structure can be found at [Attachment A](#).

### **9. The employing body's discretion**

The employing body's discretion to determine remuneration must be exercised within the Tribunal's framework:

- the Tribunal establishes a total remuneration **reference rate** (generally the commencing remuneration agreed by the Minister) for each PEO, which serves as the basis on which an employing body has the Tribunal's consent to exercise discretion in determining adjustments to remuneration;
- the Tribunal adjusts the reference rate for each PEO to reflect the outcome of its annual reviews and advises employing bodies of the

- new reference rate for each PEO for which the employing body determines remuneration;
- employing bodies have discretion to set remuneration for PEOs within the range from ten per cent below the reference rate to five percent above the reference rate except in the first twelve months of the PEO's appointment when the reference rate must not be exceeded without the Tribunal's express consent.
  - notwithstanding this flexibility, the employing body may not set a rate outside the total remuneration range for the relevant classification Band;
  - salary for superannuation purposes for members of defined benefits funds may be set by the employing body at a maximum of 73 per cent of total remuneration, unless the Tribunal has specifically consented to a higher proportion. For members of accumulation funds, the Tribunal has determined that ordinary time earnings (OTE) applies;
  - other benefits may be included within the total remuneration package determined by the employing body; and
  - incentive pay, where available, is in addition to total remuneration. The standard maximum level of 'at risk' pay is:
    - for Bands D and E – 20 per cent of total remuneration; and
    - for Bands A to C – 15 per cent of total remuneration.

Note that some offices do not have access to additional incentive payments; some have consent to higher levels of incentives; and some have other specific arrangements such as limitations on the usual discretionary range. All variations such as these are advised to the employing body in writing.

The 'Notification of Remuneration' advice form has space for special arrangements to be included so that they can be checked against records of Tribunal consent at least once each year.

## **10. Applying the reference rate and discretionary range**

The reference rate set by the Tribunal 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 PEO remuneration framework.

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.

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 discretionary range around the reference rate for the office.

In determining the value of the employment package consistent with the Tribunal's remuneration framework, employing bodies are expected to exercise prudent business judgement, reflecting 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 (incentive pay, where available, is the appropriate mechanism for rewarding achievement against targets in a particular year or cycle);
- 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 reference rates set by the Tribunal for the office.

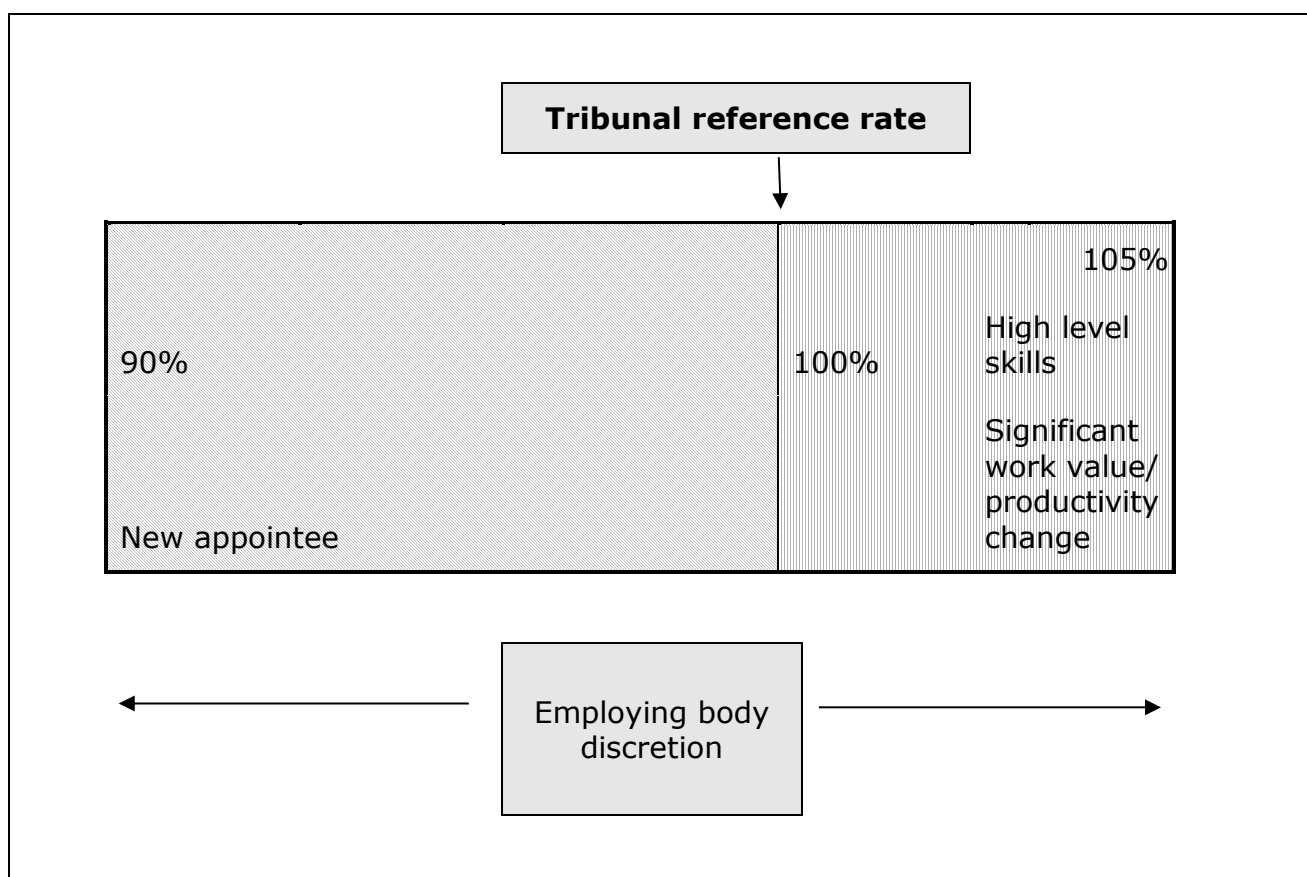
Employing bodies are able to take account of a new appointee's relative lack of familiarity with the responsibilities of a particular office by determining remuneration at up to 10 per cent below the reference rate. For the first twelve months of a new appointee's appointment, remuneration must not exceed the remuneration reference rate.

The Tribunal expects that after twelve months PEOs would be performing at the level expected for the office and be paid at the reference rate. Performance consistently above those expectations, demonstrating superior skill, experience and development of the role, would support remuneration above the reference rate.

Once the remuneration of a PEO has been determined at the upper range limit, an employing body will subsequently be able to increase it further only by up to the same percentage increase as the Tribunal's annual adjustment of the reference rate for the office. 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.

Should an employing body consider that some additional scope for adjusting remuneration 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.

**Figure 1: Operating Total Remuneration Range**



### **11. 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 PEO structure.

It is a matter for individual Ministers and relevant employing bodies within their portfolios to consider the extent to which the responsible Minister is to be consulted in relation to remuneration strategy and decisions by the employing body.

Remuneration proposals from an employing body to the Tribunal seeking consent to determine remuneration outside the framework, or seeking a change to the reference rate for an office, would generally be expected to be accompanied by the views of the relevant Minister.

Where changes to the roles and responsibilities of an office result from changes to legislation or policy, the Tribunal should be advised of the changes and where appropriate a submission should be made regarding future remuneration for the office.

If reclassification to a different Band within the structure is proposed, the portfolio Minister will need to seek the approval of the Minister responsible for the Tribunal. The Tribunal should be included in any such proposal and correspondence, as the Minister is required to seek its advice.

Guidelines on submissions to the Tribunal are available on the Tribunal's website and assistance is available from the Tribunal's Secretariat.

## **12. Incentive pay – *only applicable to those PEOs with access to an 'at risk' component***

Where a PEO is entitled to receive incentive pay, it is to be made available in accordance with these Guidelines.

Performance based remuneration is not a device to provide salary supplementation to office holders. It should not be applied or administered in this way.

The 'at risk' component provides a mechanism to focus executives on achievement of challenging short term targets and strategic initiatives, aligned to business objectives.

In the public sector context, fixed pay is usually a larger proportion of attainable remuneration than in the private sector, and 'at risk' pay is generally limited to short term incentives. Longer term incentives, where used, take the form of deferred short term incentives rather than the shareholder alignment mechanisms available in the private sector. Where the Tribunal has consented to a higher maximum attainable 'at risk' component than the standard rates included in the determination, it may also expect some level of deferred vesting dependent on the achievement of longer term objectives.

In that context, the Tribunal expects employing bodies to establish a robust and transparent incentive arrangement in which both short term targets and sustained performance are recognised and rewarded and retention of high performing executives is encouraged.

Employing bodies should set out their performance expectations clearly, including target and stretch objectives, periods for review and the nature and level of consultation that will take place in the performance assessment processes. Clearly established performance assessment arrangements ensure accountability and transparency of incentive payment decisions.

- The Tribunal expects employing bodies to determine behavioural gateways to be assessed as a pre-condition to participation in the incentive arrangements and also assess the office holder's contribution to: both short and long-term financial and operational outcomes;
- strategic objectives and deliverables identified in government expectations, stakeholder engagement and business planning processes;
- achievement of development and growth outcomes, supporting the longer term goals and objectives of the organisation; and
- meeting any legislative requirements of the office.

They should incorporate, as far as is practicable, verifiable measures for assessing achievement of specified targets, along with qualitative measures of performance. With a balanced scorecard framework and a rigorous assessment process, employing bodies can determine the level of incentive payment to be made within the prescribed limit for the relevant Band.

The employing body is not required to consult with the Tribunal in relation to incentive pay awarded to an office holder, but should notify the Tribunal of decisions relating to incentive payments.

Note that the remuneration used to calculate incentive pay is the total remuneration that applied to the office holder on the last day of the performance assessment period, not that which applies on the day when the incentive pay is approved.

### **13. Transparency of remuneration decisions**

Employing bodies are expected to comply with legislated executive remuneration reporting requirements. Employing bodies should anticipate that shareholders and the community will expect executive remuneration arrangements to demonstrate high standards of transparency, reasonableness in levels of remuneration, and incentive arrangements that reflect sustained performance.

### **14. Notional employer superannuation contribution**

Employing bodies are responsible for determining the 'salary for superannuation purposes' for office holders who are members of defined benefit superannuation schemes, up to a maximum of 73 per cent of total remuneration, unless specific consent is given to a higher maximum percentage.

The notional employer superannuation contribution rate, for the purposes of calculating components of total remuneration for an office holder who is a member of a Commonwealth defined benefit scheme, is deemed to be 15.4 per cent of the office holder's superannuation salary. However, employing bodies may deduct a lesser amount where the employing body holds an actuarial opinion or documentary evidence that the relevant defined benefit 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 who are members of accumulation superannuation schemes, the minimum employer superannuation contribution will be the amount required to avoid a charge under the *Superannuation Guarantee (Administration) Act 1992*. The Tribunal has determined that OTE applies to those PEOs. This provides a cap on the level of employer contributions required (the 'maximum contribution base') and PEOs can make additional contributions through salary packing arrangements if they choose to do so.

### **15. Leave**

The Tribunal has determined basic levels of leave entitlements that apply to PEOs. The administration of leave, and determination of leave other than that included in the determination, is a matter for employing bodies. Employing bodies may not grant additional annual leave or long service leave.



## **16. Travel, loss of office and other matters determined by the Tribunal**

Where the Tribunal has determined a matter, or provided specific consent for the employing body to determine a matter, the employing body has no further discretion on that matter.

## **17. Background**

The PEO framework is intended to provide some flexibility in setting the remuneration of office holders, while maintaining broad levels of consistency within the classification structure and terms and conditions 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 PEOs, 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 2005, following an extensive review, the Tribunal established the framework and discretionary arrangements that have continued since that time.

The Tribunal's 2019 PEO Review confirmed that the structure and associated terms and conditions have been working effectively. Consistent with this, in finalising the review, the Tribunal maintained the five Band structure, and

- continued the linkage between agency productivity improvement, individual achievement and PEO remuneration;
- updated the remuneration ranges for each classification; and
- updated these guidelines.

## **18. Further Information and Contacts**

- PEO Determination (Attachment B).
- [Notification of Remuneration](#).
- Remuneration Tribunal's homepage: <https://www.remtribunal.gov.au/>
- Remuneration Tribunal Secretariat Telephone: (02) 6202 3930.

**Remuneration Tribunal  
25 March 2020**

## Attachment A

### New PEO Band structure

<b>Band</b>	<b>Proposed Range</b>	<b>Rationale</b>
E	From \$570,000	The most senior offices, including heads of large agencies with commercial responsibilities
D	\$400,000 - \$650,000	Heads of agencies with significant size and complexity, equating to Austrade, NDIA and Bureau of Meteorology, or requiring significant, high value expertise
C	\$300,000 - \$460,000	Roles with at least the breadth and complexity of responsibilities of a Deputy Secretary, including heads of medium-sized agencies and specialists with high value expertise
B	\$220,000 - \$345,000	Heads of small agencies or agencies with limited scope, specialists operating in limited environments
A	Up to \$240,000	Specialists with specific functions, sometimes operating across jurisdictions but with limited scope

## Attachment B



# Remuneration Tribunal (Principal Executive Offices—Classification Structure and Terms and Conditions) Determination 2020

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

Dated 25 March 2020

John Conde AO  
President

Heather Zampatti  
Member

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**Part 1—Preliminary****1 Name**

This instrument is the *Remuneration Tribunal (Principal Executive Offices—Classification Structure and Terms and Conditions) Determination 2020*.

**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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument	25 March 2020.	25 March 2020

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 When this instrument takes effect**

This instrument takes effect at the start of 25 March 2020.

**4 Authority**

This instrument is made under subsection 5(2A) of the *Remuneration Tribunal Act 1973*.

**5 Determination supersedes previous determination**

This instrument supersedes the *Principal Executive Office—Classification Structure and Terms and Conditions—Determination 2019*.

**6 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.

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This instrument sets out the classification structure for principal executive offices.

A principal executive office is an office or appointment:

- (a) set out in the definition of *principal executive office* in subsection 3(1) of the Act; or
- (b) declared by the Minister to be a principal executive office under subsection 3A(1) of the Act.

The Minister may assign a principal executive office to a classification within the classification structure (see subsection 3A(2) of the Act), may fix the commencing remuneration for a principal executive office (see subsections 3A(4) and (5) of the Act) and may declare an employing body for a principal executive office (see section 3B of the Act).

Under section 12C of the Act, the employing body for a principal executive office may determine the terms and conditions (including remuneration and allowances) that apply to the office. The terms and conditions must not be inconsistent with this instrument, except with the written consent of the Tribunal (see subsection 12C(2) of the Act).

This instrument is set out as follows:

- Part 2 provides for the classification structure and related matters, including the table of bands of remuneration (see Table 2A);
- Part 3 deals with superannuation;
- Part 4 deals with vehicles and vehicle parking;
- Part 5 deals with allowances, including allowances for relocation, accommodation and reunion;
- Part 6 deals with official travel, and applies the official travel determination to PEOs;
- Part 7 deals with leave of absence;
- Part 8 deals with compensation for early loss of office.

**8 Definitions**

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) employing body;
- (b) principal executive office;
- (c) Tribunal.

In this instrument:

*Act* means the *Remuneration Tribunal Act 1973*.

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**agency**, of a PEO, means:

- (a) the agency to which the PEO is attached; or
- (b) if the PEO is not attached to an agency—the portfolio Department.

**APS employment** means employment as an APS employee.

**band** means a classification set out as a band of total remuneration in an item of Table 2A.

Note: Subsection 3A(2) of the Act provides for the Minister to assign a principal executive office to a classification within the classification structure.

**benefit** means:

- (a) any non-monetary benefit provided at the employer's expense to or for the benefit of a PEO as a personal benefit, including:
  - (i) a vehicle (see section 22); and
  - (ii) vehicle parking (see section 23); and
- (b) any other benefit received by way of remuneration packaging (see section 18).

**CSS** (short for Commonwealth Superannuation Scheme) has the same meaning as in the *Superannuation Act 1976*.

**DFRDB** (short for Defence Force Retirement and Death Benefits) means the scheme established by the *Defence Force Retirement and Death Benefits Act 1973*.

**employer superannuation contribution** for a PEO means:

- (a) if the PEO is a member of the CSS, PSS, DFRDB or MSBS—the value attributed to the employer superannuation contribution under subsection 21(1), (2), (3) or (4); or
- (b) if the PEO is a member of PSSAP—the amount worked out under paragraph 21(5)(b); or
- (c) if the PEO is a member of another superannuation fund—the amount worked out under subsection 21(6).

Note 1: A PEO's employer superannuation contribution is part of the PEO's total remuneration (see the definition of **total remuneration** in this section).

Note 2: Superannuation contributions made as a result of remuneration packaging do not form part of a PEO's employer superannuation contribution (see section 18).

**fringe benefits tax** means fringe benefits tax (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*).

**MSBS** (short for Military Superannuation and Benefits Scheme) has the same meaning as **Scheme** has in the *Military Superannuation and Benefits Act 1991*.

**office locality**, in relation to a PEO, means the geographic locality of the PEO's usual place of work on official business.

**official travel determination** means the *Remuneration Tribunal (Official Travel) Determination 2019* (or any determination that supersedes that determination).

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**PEO** (short for principal executive officer) means the holder of a principal executive office.

**performance pay** means an amount of at-risk pay awarded on the basis of performance and paid as a lump sum.

**PPR locality** (short for principal place of residence locality) has the meaning given by subsection 25(1).

**PSS** (short for Public Sector Superannuation Scheme) has the same meaning as **Public Sector Superannuation Scheme** has in the *Superannuation Act 1990*.

**PSSAP** (short for Public Sector Superannuation Accumulation Plan) has the same meaning as in the *Superannuation Act 2005*.

**reference salary** means the PEO's total remuneration, less the amount of the employer superannuation contribution for the PEO.

**superannuation salary**, for a PEO who is a member of the CSS, PSS, DFRDB or MSBS, is the amount determined under section 20.

**Table 2A** means the table in section 12 setting out the classification structure for principal executive offices.

**total remuneration** means the total value, calculated at the total cost to the employer, of:

- (a) salary and allowances; and
- (b) lump sum payments; and
- (c) the employer superannuation contribution; and
- (d) benefits;

but does not include:

- (e) performance pay under section 19; or
- (f) allowances under Part 5; or
- (g) travel expenses and allowances under the official travel determination (see Part 6 of this instrument); or
- (h) payment in lieu of recreation or long service leave under Part 7; or
- (i) compensation for early loss of office under Part 8.

## **9 Advice to the Tribunal**

A PEO's employing body must notify the Tribunal in writing of the PEO's terms and conditions as soon as practicable after any change (including the initial determination), but no later than 4 weeks after the date of the decision by the employing body, and at such other times as may reasonably be required by the Tribunal.

## **10 Agency policies**

A PEO's employing body may elect to apply to the PEO the same policies and practices as the body does for other employees, except where they are not in accordance with this instrument.



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**11 Guidelines**

The Tribunal may issue written guidelines from time to time to assist employing bodies in the administration of this instrument.

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The following table sets out the classification structure for principal executive offices.

<b>Column 1</b>	<b>Column 2</b>
<b>Classification</b>	<b>Total remuneration range</b>
PEO band A	up to \$240,000
PEO band B	\$220,000 to \$345,000
PEO band C	\$300,000 to \$460,000
PEO band D	\$400,000 to \$650,000
PEO band E	from \$570,000

**13 Remuneration**

A PEO's employing body must determine the value for the following components of the PEO's remuneration, consistently with this instrument:

- (a) total remuneration;
- (b) performance pay;
- (c) any allowances under Part 5.

Note 1: Under subsection 3A(4) of the Act, the Minister may fix the commencing remuneration for a principal executive office by giving a notice to the employing body. The employing body's initial determination of remuneration must be consistent with the notice.

Note 2: Under subsection 12C(2) of the Act, a PEO's employing body must not determine terms and conditions inconsistent with this instrument, unless the Tribunal provides written consent. The Tribunal intends to provide written advice to employing bodies each financial year setting out the extent to which any pay variations may occur without further consideration by the Tribunal, and provide consent for employing bodies to act in keeping with that advice.

**14 Setting remuneration**

In determining the value of the terms and conditions for a PEO, the PEO's employing body is expected to exercise prudent business judgement commensurate with the responsibilities and accountabilities of the office.

Relevant considerations include (but are not limited to) the following:

- (a) the work value, role and responsibilities of the office;
- (b) that improvements in pay and conditions should be linked to productivity gains;
- (c) the ability of the employing body to recruit and retain persons with the necessary qualities and skills;

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- (d) other relevant factors such as adjustments to the remuneration rates for the principal executive office classification structure.

### **15 Adjustment of remuneration**

- (1) Total remuneration determined by a PEO's employing body may not be varied, except with the written consent of the Tribunal.
- (2) If a variation is consented to, the total remuneration determined by the employing body must not be outside the range for the PEO's band set out in Table 2A.

### **16 No retrospectivity**

A PEO's employing body may not backdate any variation in the PEO's remuneration.

### **17 Part-time work**

- (1) If a PEO's employer approves the PEO to perform the duties of the office on a part-time basis, the superannuation salary, total remuneration and performance pay are to be calculated on a pro-rata basis in accordance with the proportion of full-time hours worked.
- (2) If the proposed hours are less than 60% of the full-time hours, prior agreement of the Tribunal to the remuneration level is required.

### **18 Remuneration packaging**

- (1) Subject to this Part and Part 3, a PEO may elect to receive the benefit of the PEO's remuneration as salary or a combination of salary and benefits if:
  - (a) the election is consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office; and
  - (b) providing the benefit would not result in a cost to the employer (including in relation to any fringe benefits tax) that would not be incurred if the PEO received the remuneration in the form of salary.
- (2) To avoid doubt, a superannuation contribution made as a result of an election by a PEO under subsection (1) does not form part of the employer superannuation contribution for the PEO.

### **19 Performance pay**

- (1) Unless the Tribunal has consented to the removal of any entitlement to performance pay, a PEO's employing body may establish a performance pay scheme under which the PEO may be paid a lump sum based on assessment of the performance of the PEO over a 12-month cycle.

*Maximum*

- (2) The maximum amount available for a 12-month cycle must not exceed:
  - (a) for an office in band A, B or C—15% of total remuneration; or

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(b) for an office in band D or E—20% of total remuneration.

*Guidelines*

- (3) Performance pay must operate in accordance with any written guidelines issued by the Tribunal from time to time.

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## Part 3—Superannuation

### 20 Superannuation salary

- (1) The *superannuation salary* of a PEO who is a member of the CSS, PSS, DFRDB or MSBS is the amount determined by the PEO's employing body.
- (2) The amount must not be more than 73% of the PEO's total remuneration.

### 21 Employer superannuation contribution

#### *Commonwealth Superannuation Scheme*

- (1) For a PEO who is a member of the CSS:
  - (a) the PEO's annual rate of salary for the purposes of the CSS is the PEO's superannuation salary; and
  - (b) for the purposes of paragraph (a) of the definition of *employer superannuation contribution* in section 8, the value attributed to the employer superannuation contribution for the PEO is an amount equal to 15.4% of the PEO's superannuation salary.

Note: For the *superannuation salary* of a PEO who is a member of the CSS, see section 20.

#### *Public Sector Superannuation Scheme*

- (2) For a PEO who is a member of the PSS:
  - (a) the PEO's basic salary for the purposes of the PSS is the PEO's superannuation salary; and
  - (b) the amount of the PEO's recognised allowances for the purposes of the PSS is nil; and
  - (c) for the purposes of paragraph (a) of the definition of *employer superannuation contribution* in section 8, the value attributed to the employer superannuation contribution for the PEO is an amount equal to 15.4% of the PEO's superannuation salary.

Note: For the *superannuation salary* of a PEO who is a member of the PSS, see section 20.

#### *Defence Force Retirement and Death Benefits*

- (3) For a PEO who is a member of the DFRDB:
  - (a) the PEO's annual rate of salary for the purposes of the DFRDB is the PEO's superannuation salary; and
  - (b) for the purposes of paragraph (a) of the definition of *employer superannuation contribution* in section 8, the value attributed to the employer superannuation contribution for the PEO is an amount equal to 15.4% of the PEO's superannuation salary.

Note: For the *superannuation salary* of a PEO who is a member of the DFRDB, see section 20.

#### *Military Superannuation and Benefits Scheme*

- (4) For a PEO who is a member of the MSBS:

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- (a) the PEO's annual rate of salary for the purposes of the MSBS is the PEO's superannuation salary; and
- (b) for the purposes of paragraph (a) of the definition of *employer superannuation contribution* in section 8, the value attributed to the employer superannuation contribution for the PEO is an amount equal to 15.4% of the PEO's superannuation salary.

Note: For the *superannuation salary* of a PEO who is a member of the MSBS, see section 20.

*Public Sector Superannuation Accumulation Plan*

- (5) For a PEO who is a member of PSSAP:
  - (a) the PEO's superannuation salary for the purposes of the *Superannuation (PSSAP) Trust Deed* is the PEO's ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*); and
  - (b) for the purposes of paragraph (b) of the definition of *employer superannuation contribution* in section 8, the employer superannuation contribution for the PEO is 15.4% of the PEO's ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*).

*Other superannuation funds*

- (6) For a PEO who is a member of any other superannuation fund, the employer superannuation contribution is the minimum contribution that would, under section 23 of the *Superannuation Guarantee (Administration) Act 1992*, reduce the charge percentage for that PEO to nil.

*No cash in lieu*

- (7) The value attributed to the employer superannuation contribution under this section is referable to a non-salary component of total remuneration and may not be the subject of an election to take an equivalent amount of salary instead.

## **Part 4—Vehicles**

### **22 Vehicles**

- (1) If a PEO:
  - (a) accepts an offer of a vehicle owned or leased by the PEO’s agency for private use; or
  - (b) has access to a vehicle owned or leased by the PEO’s agency for private use;the actual cost of the vehicle to the agency (including fringe benefits tax), less a reasonable amount (if any) reflecting business usage patterns, is taken to be a benefit.
- (2) For the purposes of subsection (1):
  - (a) if the annual business kilometres are less than 5,000—the business usage amount is to be based on the “cents per kilometre” method; or
  - (b) if the annual business kilometres are 5,000 or more:
    - (i) any business usage amount is to be assessed on log book records for at least a 12 week representative period; and
    - (ii) the percentage of business use to total kilometres travelled per year is to be applied to the total cost of the vehicle.

### **23 Vehicle parking**

If a PEO accepts an offer of a car park at Commonwealth expense, the actual cost (including fringe benefits tax) of the car park to the agency is taken to be a benefit.

## **Part 5—Allowances**

### **24 Geographic relocation**

A PEO's employing body may approve reimbursement of expenses (other than ongoing expenses) incurred by the PEO on geographic relocation following appointment as a PEO, in accordance with agency policies and procedures.

### **25 Accommodation allowance**

- (1) A PEO's employing body may, with the written consent of the Tribunal, determine that the PEO is eligible to receive an accommodation allowance (subject to expenditure and to any conditions specified in the Tribunal's consent) while the PEO has a principal place of residence in a locality (the *PPR locality*) other than the office locality.

#### *Commercial accommodation*

- (2) For the purposes of subsection (1), if the PEO is in commercial accommodation in the office locality, the following are qualifying accommodation costs:
  - (a) the costs of the commercial accommodation;
  - (b) settling-in costs (including one-off utility connection costs);
  - (c) if the commercial accommodation does not include cooking facilities—the cost of meals.

#### *Private, non-commercial accommodation*

- (3) For the purposes of subsection (1), if the PEO is in private, non-commercial accommodation (such as the home of a family member or friend) in the office locality, the costs of the private, non-commercial accommodation are qualifying accommodation costs.

#### *Exclusions*

- (4) Assistance is not payable under this section while the PEO lives in premises owned by the PEO in the office locality.
- (5) A PEO is not eligible to access travel allowance entitlements under the official travel determination in the PPR locality or the office locality while the PEO remains eligible to receive assistance under this section.

### **26 Reunion travel**

- (1) A PEO's employing body may, with the written consent of the Tribunal, determine that the PEO may receive travel costs (subject to any conditions specified in the consent) for travel back to the PPR locality for the purpose of family reunion.
- (2) If the employing body is satisfied that the workload and responsibilities of the principal executive office prevent the PEO from travelling to the PPR locality for reunion purposes, the costs of reunion travel by the PEO's partner, or a child or children of the PEO or of the PEO's partner, who resides at the PEO's principal



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place of residence, can be funded under subsection (1) (subject to any conditions specified in the Tribunal's consent).

- (3) Travel by a person other than the PEO funded in accordance with subsection (2) must be at economy class, and only for direct travel between the PPR locality and the office locality.

**27 Remote localities**

If the Tribunal provides written consent, a PEO's employing body may determine that the PEO is eligible to receive benefits or allowances in recognition of the geographic remoteness of the office locality (subject to any conditions specified in the consent).

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## **Part 6—Official travel**

### **28 Official travel**

The official travel determination applies to principal executive offices, subject to any exclusions or limitations in this instrument.

### **29 Travel tier**

- (1) For the purposes of the official travel determination, the travel tier for a principal executive office is that advised by the Tribunal to the employing body for the office.
- (2) If no such advice is provided:
  - (a) travel tier 2 applies to offices in bands A, B and C; and
  - (b) travel tier 1 applies to offices in bands D and E.

## **Part 7—Leave**

### **30 Leave of absence**

- (1) A PEO is entitled to the following types and amounts of leave of absence:
  - (a) absence without loss of pay on public holidays that are observed by the Australian Public Service in the location in which the PEO is based;
  - (b) paid annual leave of 4 weeks per year of full-time service;
  - (c) paid long service leave as prescribed under the *Long Service Leave (Commonwealth Employees) Act 1976*;
  - (d) other paid and unpaid leave, including sick and carers leave, at the discretion of the employing body.

Note: A PEO may also be eligible for paid and unpaid leave under the *Maternity Leave (Commonwealth Employees) Act 1973*.

- (2) The payment in lieu of annual leave and long service leave, on cessation, is to be calculated based on the PEO's reference salary.

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## Part 8—Compensation for early loss of office

### 31 Entitlement to compensation for loss of office

- (1) A PEO is entitled to compensation for loss of office if the PEO's appointment is terminated prior to the expiry of the term of the PEO's appointment, unless an exclusion event occurs.
- (2) The compensation payable is calculated on the basis of one-third of 1 month of reference salary for each month of service remaining in the term of the PEO's appointment with:
  - (a) a minimum payment of 4 months of reference salary; and
  - (b) a maximum payment of a year of reference salary.
- (3) The Commonwealth may calculate service remaining by excluding any period of Commonwealth service in alternative employment to be performed during the remaining term of the appointment where the alternative employment commenced immediately after the termination. The Commonwealth may require the PEO to sign a release in return for the payment.

#### *Exclusion event*

- (4) An **exclusion event** is any of the following events:
  - (a) the PEO resigns or retires;
  - (b) the PEO serves the PEO's full term of appointment;
  - (c) the PEO's appointment terminates prematurely for reasons of misbehaviour or unsatisfactory performance;
  - (d) the PEO's appointment terminates prematurely because the PEO is not able to perform the duties of the office because of physical or mental incapacity;
  - (e) the PEO:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with the PEO's creditors; or
    - (iv) makes an assignment of the PEO's remuneration for the benefit of the PEO's creditors;
  - (f) the PEO is offered suitable alternative employment (including in a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) or Commonwealth entity (within the meaning of that Act)).
- (5) Without limiting paragraph (4)(f), an offer of suitable alternative employment is taken to have been made to the PEO if the PEO is:
  - (a) on leave without pay or some other form of authorised absence from APS employment; and
  - (b) able to resume that employment following the termination of the PEO's appointment.

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**32 Comprehensive coverage**

This Part deals comprehensively with the subject of payments related to a PEO ceasing to hold office, regardless of the basis upon which the PEO ceases to hold office.

## **Schedule 1—Repeals**

### *Principal Executive Office—Classification Structure and Terms and Conditions—Determination 2019*

#### **1 The whole of the instrument**

Repeal the instrument.