

REMUNERATION TRIBUNAL

REVIEW OF THE OFFICE OF SECRETARY

REPORT - Part I

February 2010

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Preface

The Remuneration Tribunal has undertaken a comprehensive review of the work and remuneration arrangements of Secretaries.

There has not been such a review for many years - arguably the last was part of the 1974 Royal Commission on Australian Government Administration. There has, however, been a range of changes since then affecting the office.

The Report of the review will be presented in two parts. This part of the Tribunal's Report - Part I - refers to the review's range of activities and inputs to it, the most notable of which has been the work undertaken by the consulting firm Egan Associates. Part II will address specific remuneration recommendations and the pathway to their implementation.

Significant Offices

As a precursor to discussing any recommendations, it is appropriate to reflect on the significance of the office of Secretary.

Secretaries are at the very apex of the Australian Public Service. Prime Ministers and Ministers rely on them for the provision of public services and turn to them for strategic advice about the whole spectrum of domestic and foreign activities which define our nation, our security, our stability and our quality of life.

The work of Secretaries extends further than leading and managing the operations of specific departments because of the direct and indirect roles that they and their departments have in recommending and administering frameworks for the legal and regulatory regimes of the nation.

While some Secretaries have demonstrably wider portfolios than their colleagues - the Secretaries of the Department of the Prime Minister and Cabinet and the Department of the Treasury, for example - every Secretary handles a breadth of demands and responsibilities akin to those of the highest executive offices in the private sector. Notwithstanding this observation, the Tribunal will not be recommending remuneration parity between Secretaries and the private sector.

In framing its recommendations, the Tribunal is not attempting to comment on individual performance or on the departmental structure that government may from time to time decree. Rather, the Tribunal aims to create the structure necessary for the retention of officers of the calibre and capacity required to meet the extraordinarily complex demands of the office.

Australia has been well served over many decades by men and women of outstanding capacity as Secretaries - or Permanent Heads as they used to be. The Tribunal sees it as imperative so to structure the framework for remuneration of Secretaries that the offices of Secretary continue to attract and retain outstanding people.

Acknowledgments

The Tribunal expresses its thanks to the Department of Education, Employment and Workplace Relations for providing the resources to enable the commissioning of Mr Ric Smith AO, and Mr John Egan of Egan Associates, to undertake the work which underpins this Review. The Tribunal thanks Mr Smith and Mr Egan. Copies of their reports are included with this Report. The full report from Mr Egan is included on CD-ROM.

The Tribunal thanks all Secretaries for their contributions to this review - for their time given generously and for their written contributions which were all of great assistance to the Tribunal's better understanding.

The Tribunal also expresses its appreciation of the considerable contribution to the review made by the Tribunal's Secretariat. The Tribunal is particularly grateful to its Secretary, Mr Derren Gillespie, for his work in the commissioning, conduct and finalisation of the review.

I thank also my fellow Members of the Tribunal - Ms Janet Grieve and Mr John Allen - for their commitment and support.

John C. Conde, AO
President

February 2010

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Summary of the Tribunal's Conclusions

1. Secretaries are at the very apex of the Australian Public Service. Prime Ministers and Ministers rely on them for the provision of public services and turn to them for strategic advice about the whole spectrum of domestic and foreign activities which define our nation, our security, our stability and our quality of life.
2. Australia has been well served over many decades by men and women of outstanding capacity as Secretaries - or Permanent Heads as they used to be. The Tribunal sees it as imperative so to structure the framework for the remuneration of Secretaries that these offices continue to attract and retain outstanding people.
3. There are, presently, nineteen offices of Secretary in the Australian Public Service. They are all singular appointments.
4. No other public sector offices have the continuing, direct and intense exposure to the processes of government and the associated proximity to Ministers and their offices.
5. Each Secretary is subject to ongoing, detailed scrutiny and is more exposed to the vicissitudes of the Government of the day than any other federal public sector office.
6. A distinguishing feature of these offices is their flexibility. Governments can create and dissolve departments speedily; the jobs of Secretaries follow. The responsibilities of any one of them can be changed, rapidly and dramatically, through variation of the Administrative Arrangements Order. This feature, in our view, distinguishes the office of Secretary from every other federal public sector office.
7. An important part of the Review was the commissioning of Mr John Egan - an external adviser with extensive experience in reviewing senior executive roles in both the public and private sectors - to prepare a report on the work of Secretaries and to draw comparisons with senior private sector positions.
8. Overall, the advice from Egan Associates, reinforced by the Tribunal's own experience and judgement, leads to the conclusion that, although significant distinctions exist between public and private sector offices at senior levels, their core features - the demands, expectations, complexities and uncertainties - are of a similar order.
9. Egan Associates, having considered the various attributes of the office of Secretary, generally, and their weightings between the existing offices, settled on maintaining the existing two-level structure and set out a general statement of the "classification" for the office of Secretary.
10. Egan Associates' analysis identifies particular features of the offices of Secretary of the Department of the Prime Minister and Cabinet, and Secretary of the Department of the Treasury that, in its view, distinguish them from other offices of Secretary.
11. The Remuneration Tribunal agrees with Egan Associates' judgement that:

"....these two key Secretary roles represent the pinnacle of Government policy advice, straddling 'Whole of Government' issues in virtually every facet of their endeavour."

CLASSIFICATION for the office of SECRETARY

The position of Secretary has carriage of the significant policy and operational areas of Government. A Secretary has stewardship of a Department of Government and in that context, as its Chief Executive, has primary accountability for adapting policies and programs in accordance with the vision of the Government of the day. As the principal agent of Government in this respect the Secretary has a key leadership role, including a requirement to motivate others to change and adapt to the way in which the Government of the day seeks to develop and formulate its programs and ultimately implement those programs.

Positions of Secretary, while reflecting in part a 'Whole of Government' involvement, have been allocated to two distinct classification levels. It is acknowledged that all Secretaries undertake work requiring a high level of policy formulation reflecting a continuous global scanning of relevant issues for the Government of the day, often on a time horizon of three to seven years, though in some instances extending up to twenty years and beyond.

The position of Secretary at each classification level has a significant planning (visualisation) and stakeholder wide communication task that demands high level cognitive skills and strong emotional intelligence.

Executive positions at this level represent the most significant leadership roles in Government and the public sector generally in terms of policy diversity, level of investment, expenditure overview or revenue collection and/or operational demands embracing the most complex strategic, policy, administration and service delivery areas of the Australian Government's activities, both domestic and international.

12. Based on the assessment of individual offices of Secretary, the Tribunal proposes that the following Secretary offices be reclassified to join the incumbent offices of Secretary of the Departments of the Prime Minister and Cabinet, the Treasury and Defence, in Level 1:

- Secretary of the Department of Education, Employment and Workplace Relations
- Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs
- Secretary of the Department of Finance and Deregulation
- Secretary of the Department of Foreign Affairs and Trade
- Secretary of the Department of Health and Ageing

13. The allocation of offices between the two classification levels would be as follows:

Level 1
Prime Minister and Cabinet; Treasury; Defence; Education, Employment and Workplace Relations; Families, Housing, Community Services and Indigenous Affairs; Finance and Deregulation; Foreign Affairs and Trade; Health and Ageing
Level 2
Agriculture, Fisheries and Forestry; Attorney-General; Broadband, Communications and the Digital Economy; Climate Change; Environment, Water, Heritage and the Arts; Human Services; Immigration and Citizenship; Infrastructure, Transport, Regional Development and Local Government; Innovation, Industry, Science and Research; Resources, Energy and Tourism; Veterans' Affairs

14. This classification may be the subject of discussion on the basis of some Secretaries' views of the significance of their Minister's role, where their Departments are heading or of future responsibilities, but the Tribunal, fortified by the work of Egan Associates, recommends the allocation based on the extensive analysis undertaken in this present review.

15. The Tribunal will provide further details about the classification structure in the second part of the report arising from its review. However, it can be indicated, at this stage, that the proposed two-level classification structure will have the following features:

- the Remuneration Tribunal determining the initial allocation of Secretary offices between Levels, as well as subsequent shifts between Levels arising, for example, from changes in the Administrative Arrangements Order;
- the remuneration of offices of Secretary of the Department of the Prime Minister and Cabinet and Secretary of the Department of the Treasury being determined directly by the Remuneration Tribunal;
- the Secretary of the Department of the Prime Minister and Cabinet determining the placement of individual offices within each Level, in consultation with the President of the Remuneration Tribunal;
- adequate recognition of the range of roles and responsibilities within each Level (the Tribunal envisages proposing several pay points within each Level); and
- means of recognizing, in remuneration, the attributes of individual office holders as well as the attributes of their respective departments.

16. The Tribunal has expressed its firm view about the inadequacy of current remuneration levels for Secretaries previously.

17. Although the Tribunal's recommendations on remuneration have not yet been settled, they may be expected to address:

- an initial reasonable adjustment of remuneration for existing office-holders;
- a longer term remuneration structure entailing levels of remuneration which may be expected to be substantially above the current levels; and
- a transition path to the proposed remuneration structure contingent upon certain criteria being met, designed to ensure that there are no windfall gains (including in respect of superannuation) for current office-holders.

18. The Tribunal considers it evident that the responsibilities of the most significant of the offices of Secretary (the Secretary of the Department of the Prime Minister and Cabinet and the Secretary of the Department of the Treasury) extend beyond those of the principal offices of the economic regulatory agencies for which the Tribunal determines remuneration. The office of Governor of the Reserve Bank of Australia is a highly relevant comparator. The Tribunal considers that the responsibilities of the Governor are not greater than those of either the Secretary of the Department of the Prime Minister and Cabinet or the Secretary of the Department of the Treasury. In the Tribunal's judgement, each of these offices is more singular and demanding than any of the full-time public offices in the Tribunal's jurisdiction, and other senior federal public offices.

Other Conditions

19. The Tribunal considers that the current provisions relating to official travel, leave, removal and relocation assistance, and assistance for training and development, while capable of refinement, are generally appropriate and satisfactory. The Tribunal will, however, revisit these provisions once its role in determining remuneration and other conditions of appointment for Secretaries has been settled.

Termination and Redeployment

20. Setting aside dismissal for misconduct, the termination of an appointment as Secretary can be effected extremely quickly. As cause need neither be given, nor demonstrated, termination can be more expeditious, in fact, than in the private sector. In the Tribunal's

assessment, under the present arrangements for appointment and termination, too much of the risk lies with the Secretary.

21. The Tribunal's disposition is to recommend improving the present termination benefit provisions. However, the Tribunal considers that changes in these provisions go "hand in hand" with clarification of the basis upon which alternative employment arrangements are to be offered to a Secretary subject to the 'loss of office' provisions.

Remuneration of the Principal Offices of APRA, ASIC and ACCC

22. The Tribunal has acknowledged, previously, the importance of these agencies. Their responsibilities and those of the Reserve Bank are complementary and highly significant.

23. The Tribunal has no doubt that the responsibilities of the principal public offices of APRA, ASIC and ACCC are demonstrably greater than those of the Deputy Governor of the Reserve Bank of Australia. It need only be observed that, unlike the Deputy Governor, the holder of each of these offices is an agency head. The proper point of comparison, therefore, is the Governor.

24. The Tribunal will revisit the remuneration of the Principal Offices of APRA, ASIC and the ACCC once it has presented its final report on this review.

1. Introduction

1.1 This is the first of two parts of the Tribunal's Report of its review of Secretaries. The Tribunal has decided to present its Report in this way so that the features of these offices can be considered in isolation from the recommendations regarding appropriate remuneration.

1.2 This Part covers:

- the attributes of these offices;
- their present remuneration arrangements;
- the distinctions between them (including the Tribunal's conclusions about classification arrangements);
- the standing of these offices relative to other federal public offices; and
- their responsibilities relative to senior positions in the private sector.

1.3 The second part of the Tribunal's Report will set out remuneration recommendations for these offices. Suffice it to say, with respect to remuneration, that the Tribunal considers that:

- present remuneration levels are less than they should be, relative to other federal public offices; and
- the present two levels of remuneration for the current two levels of Secretary do not reflect properly the differences in the scope of the responsibilities among these nineteen offices.

1.4 In the Tribunal's judgement, the unique nature of the work of Secretaries and the central role of these offices in public administration are not well understood and even less frequently acknowledged. The Tribunal's report is intended to go some way towards addressing these deficiencies.

There are, presently, nineteen offices of Secretary in the Australian Public Service. They are all singular appointments.

Each is at the very apex of public sector positions in terms of its dimensions, complexity, scope and challenge.

No other public sector offices have the continuing direct and intense exposure to the processes of government and the associated proximity to Ministers and their offices.

Each Secretary is subject to ongoing, detailed scrutiny and is more exposed to the vicissitudes of the government of the day than any other federal public sector office.

A distinguishing feature of these offices is their flexibility.

Governments can create and dissolve departments speedily; the jobs of Secretaries follow. The responsibilities of any one of them can be changed, rapidly and dramatically, through variation of the Administrative Arrangements Order.

Government relies heavily upon Secretaries, and their departments, in responding to the uncertainties and shocks that bear upon the community and the country - whether it be a tsunami; the collapse of a major provider of child care; or a global financial crisis.

This feature, in our view, distinguishes the office of Secretary from every other federal public sector office.

1.5 The Australian Government provides a very wide range of services nationally to, and internationally on behalf of, the Australian community.

1.6 State/Territory and local governments also provide services to the community, complementing, in general terms, those provided by the federal government. However, their services have neither the reach nor the breadth of those provided by the federal government.

1.7 Australian Government services are delivered through numerous and widely diverse bodies, including departments; statutory and non-statutory bodies; companies; and incorporated associations¹.

1.8 Departments are the most significant of these bodies. They are at the core of government.

1.9 Their existence stems directly from the Constitution.

1.10 The relevant constitutional provisions also underpin the distinctive roles and responsibilities of Ministers of State, on the one hand, and departments of State (and, consequently, Secretaries) on the other.

1.11 Section 64 of the Constitution refers to Ministers and departments as follows:

“The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen’s Ministers of State for the Commonwealth.”

1.12 By Section 56 of the *Public Service Act 1999*, whenever a department of State is established by the Governor-General, an office of Secretary of that department is also created²:

“56 Creation of offices of Secretary

(i) On the establishment of a Department, an office of Secretary of that Department is established by force of this subsection.

(ii) On the abolition of a Department, the office of Secretary of that Department is abolished by force of this subsection.”

1.13 There are, presently, nineteen departments and, consequently, nineteen Secretaries.

1.14 The number of departments, and their responsibilities, and, consequently the number of Secretaries, can and does vary considerably and rapidly. This is an essential and important feature of public administration at the federal level.

1.15 Indeed, this flexibility has been identified as a key attribute of the departmental organisational form:

Departmental structures are also more flexible than bodies created by statute. The work they perform may be, and has been, subject to rapid alteration if required by the Government of the day. Indeed, departments themselves can be created and abolished at the discretion of the Governor-General, acting on advice of the Prime Minister,

¹ The Department of Finance and Deregulation’s ‘**List of Australian Government Bodies and Governance Relationships as at 1 October 2009**’ provides details of the statutory and non-statutory bodies, companies, incorporated associations and trusts that the Australian Government controls or has an interest in.

<http://www.finance.gov.au/financial-framework/governance/list-of-australian-government-bodies.html>

² Appendix 1 provides some additional background.

*whereas the enabling legislation of a statutory body usually requires amendment to change the body's purposes or structure.*³

1.16 The Tribunal agrees with this observation - first made in the report of the 1974 Royal Commission on Australian Government Administration.

Some Dimensions of the Australian Public Service

1.17 The Australian Public Service Commission produces, each year, a comprehensive suite of reports on the Australian Public Service⁴.

1.18 From the perspective of the Tribunal's review, relevant features of the Australian Public Service (APS) as at 30 June 2009, include:

- total staff, of 162,009 (2006 - 146,198; 2007 - 155,419; 2008 - 159,789)
- of whom 150,155, were "ongoing"
- more than half (86,291) were women
- 2845 were Senior Executive Service (SES) employees
- departments vary in size; the smallest had 218 and the largest 20,819 ongoing staff
- of the 10 largest APS agencies, 6 were departments;
- APS staff worked in some 80 agencies apart from departments, but within the scope of the portfolios centred upon those departments.

The Responsibilities of Secretaries

1.19 Standard measures - financial and staffing resources - of the scale of an organisation indicate that many of the individual departments and agencies within the Australian Public Service are amongst the most significant organisations in Australia. The scale of the challenges of those responsible for managing such public sector organisations is also significant.

1.20 However, such standard measures - particularly in the public sector - do not reflect adequately the importance or intensity of the work of the most senior officials in the organisations concerned.

1.21 The importance of the role of the Department of the Prime Minister and Cabinet - with its engagement in key whole-of-government issues and its responsibility for advising the Prime Minister - is self-evident. It undertakes these responsibilities with some 600 staff. The Department of the Treasury, with some 1000 staff, provides advice to government across the full spectrum of economic matters and leads the development of economic reforms.

1.22 The Tribunal has no doubt that the roles and responsibilities of Secretaries make these offices amongst the most demanding senior positions in Australia.

³ Governance Arrangements for Australian Government Bodies [DoF&D; August 2005; p30]
<http://www.finance.gov.au/financial-framework/governance/docs/Governance-Arrangements-for-Australian-Government-Bodies.pdf> ; after the 1975 Royal Commission on Australian Government Administration (RCAGA)

⁴ The Australian Public Service Commission's current reports - including the State of the Service 2008-2009; and Australian Public Service Statistical Bulletin 2008-2009 - are available at:
<http://www.apsc.gov.au/>

2. Background to the Review

2.1 The Tribunal's approach to the setting of remuneration for public offices could properly be described as conservative - even cautious. This is attributable, in part, to the standing of the offices themselves. As the Tribunal observed in its 2005-2006 Annual Report:

"The prestige associated with appointment to a high public office entails acceptance, on the part of appointees, of less remuneration than might apply to a comparable job in the private sector."

2.2 It has been the case, invariably, that the remuneration of public offices is not only less than that of comparable jobs in the private sector but very much less, setting aside entirely the excesses in private sector remuneration that emerged in recent years.

2.3 Although restraint in setting the remuneration of senior offices in the public sector may enjoy public and political support, it is attended by significant longer term risks. The principal difficulty is that the quality of government will suffer as a consequence of the inability to attract, and retain, individuals of the calibre necessary to manage the large, complex and significant functions and organisations that are a feature of the public sector. As the Tribunal also observed in its 2005-2006 Annual Report:

"..... the public sector must be able to engage highly capable people if the many and diverse functions of government are to be performed effectively, particularly where appointments are made for relatively short periods - three to five years - and the prospect of renewed appointment uncertain. It would be to the disadvantage of government were the remuneration of senior offices to lose touch with developments in remuneration more generally."

The Senior Executive Service

2.4 While there is scope for rational debate, and diverse views, about appropriate relativities between public offices and comparable positions in the private sector, variations in remuneration between different elements of the public sector itself, and their respective rates of change, provide clear signals about inconsistencies and inadequate reward for risk and responsibility. In this regard, the Tribunal has been mindful for some time of movements in the remuneration of the Senior Executive Service (SES) employees in the Australian Public Service.

2.5 The Tribunal referred to SES remuneration in its 2005-2006 Annual Report, stating then:

"The Senior Executive Service is the senior management group of the Australian Public Service. It is not uncommon for SES officers to be the direct reports of office holders whose remuneration is determined by the Tribunal, or is subject to its advice. The Tribunal has noted movements in the remuneration of SES offices in recent years with interest. There appears to have been a continuing and not insignificant reduction in the relativities between SES remuneration and the remuneration of senior office holders."

2.6 The APS Statistical Bulletin 2008-09 indicates that at 30 June 2009 there were some 150,000 'on-going' employees in the Australian Public Service, of whom around 2800 were SES employees. Of this senior management group, some 110 were SES Band 3 employees - each usually referred to as a 'Deputy Secretary' - distributed across 19 departments and responsible to a Secretary.

Secretaries' Remuneration

2.7 In May 2006, the Tribunal wrote to then Secretary of the Department of the Prime Minister and Cabinet, drawing attention to changes in remuneration relativities between SES employees and Secretaries.

2.8 The Tribunal stated that the data indicated that:

"..... over the period 2000-2005, the compound annual increase in median SES Band 3 total remuneration was a little over 6% pa. Over the same period, the total remuneration of upper level departmental secretaries increased at a compound annual rate of a little under 4.4% pa. This sustained differential appears to have eroded the relativity established as a result of the Tribunal's review in 1999 and 2000. On the figures available to us, median SES Band 3 total remuneration in 2000 was some 64% of that of an upper level departmental secretary; on 2005 figures, the proportion appears to be some 70%."

2.9 S61 of the *Public Service Act 1999* invests the Prime Minister with the responsibility for determining the remuneration of Secretaries. In making any such a determination, the Prime Minister is required to seek the Tribunal's advice and, as the legislation puts it, "take that advice into account". In practice, the Prime Minister of the day writes to the Tribunal each year seeking its advice on possible changes to the remuneration arrangements of Secretaries, and the Tribunal responds.

2.10 In seeking the advice of the Tribunal in 2006, the then Prime Minister, the Hon John Howard MP, referred to the Tribunal's May 2006 letter and stated:

"As far as remuneration is concerned, I accept the view that increases in secretaries' remuneration have not kept pace with the increases awarded to SES officers and have fallen significantly behind comparable positions in the private sector."

2.11 Notwithstanding the adverse changes in relativities that had occurred, the Prime Minister decided that it was not an appropriate time to adjust the remuneration of Secretaries.

2.12 In its response to the Prime Minister's June 2007 request for advice about the remuneration of Secretaries, the Tribunal again referred to the apparent adverse shifts in remuneration relativities between Secretaries and senior SES employees, and proposed that a review be undertaken:

"In the Tribunal's view, it is important that the overall value of the secretaries' remuneration package should be informed by movements in appropriate elements of the executive remuneration market, without being driven by them."

"The Tribunal last reviewed the remuneration of departmental secretaries in January 1999. In our view, it would be appropriate to review the remuneration of these offices and certain associated offices in the Tribunal's determinative jurisdiction....."

2.13 The Prime Minister responded in the following terms:

"I note your advice that the Tribunal has not reviewed the remuneration of departmental secretaries since 1999. In the circumstances, I agree that it would be appropriate for the Tribunal to conduct a review of the remuneration of secretaries....."

2.14 Following the federal election on 24 November 2007, the Hon Kevin Rudd MP became Prime Minister and the Hon Julia Gillard MP became the Deputy Prime Minister. In her capacity as Minister for Employment and Workplace Relations, the Deputy Prime Minister also became the Minister responsible for the *Remuneration Tribunal Act 1973*. The Tribunal wrote to the Minister, shortly after her appointment, outlining the Tribunal's work, current and planned at that time, including its proposed review of the remuneration of Secretaries.

2.15 In September 2007, the Shadow Minister for Public Administration and Accountability, Senator Penny Wong, had given a speech to the Institute of Public Administration Australia, in which she outlined Labor's approach to public administration. In that speech, the Shadow Minister mentioned the following policy commitments:

"..... Labor will move away from a performance pay arrangement for agency heads and departmental secretaries, and restore the jurisdiction of the Remuneration Tribunal to fix pay and conditions of agency heads and secretaries."

2.16 The Prime Minister, the Hon Kevin Rudd MP, wrote to Tribunal in May 2008 seeking its advice about the abolition of performance pay for Secretaries. The Prime Minister's letter indicated his awareness of the Tribunal's review of Secretaries and went on to observe:

"In relation to the review requested by the former Prime Minister, my preference would be for that to be completed after a full examination of remuneration levels and trends in the public sector across all Australian jurisdictions. It is there, rather than in comparisons with the private sector, that I believe the most useful information will emerge".

2.17 In its response, the Tribunal indicated that it would *"....also take into account information derived from public bodies outside the core public service."*

2.18 The Tribunal determines remuneration for a wide range of offices in the federal public sector. The scope of its jurisdiction is evident from the determinations published on the Tribunal's website¹. The following table drawn from Tribunal Determination 2009/18, shows the current total remuneration for the Chairpersons of three of the most senior full-time federal public offices:

Australian Prudential Regulation Authority (APRA)	\$621,230
Australian Securities and Investments Commission (ASIC)	\$545,730
Australian Competition and Consumer Commission (ACCC)	\$545,730

2.19 In its 2007-2008 Annual Report, the Tribunal adverted to the Statement that it had issued in conjunction with its decision, of 15 June 2008, on the annual adjustment to be applied to offices in its jurisdiction. The Statement included the following observations:

"For several years, the Tribunal has been conscious of movements in the remuneration of the Senior Executive Service (SES) of the Australian Public Service (APS). APS remuneration survey data published to the end of 2006 show that SES remuneration had increased by between 5% per annum and 6% per annum for each of the previous eight years. More recent data indicate that this trend continued in

¹ The Tribunal's website - <http://www.remtribunal.gov.au/> - provides on-line access to copies of all determinations made since 1998.

2007. Such movements are of particular import because many of the office holders for whom the Tribunal determines remuneration have APS SES officers working with, and for, them. The shifts in remuneration relativities that have occurred over a sustained period at these senior levels are, in the Tribunal's view, inconsistent with the responsibilities of the offices concerned and should be redressed."

2.20 The following table - reproduced from the Statement issued by the Tribunal on 24 September 2009 - shows that the Tribunal's long-standing concerns about movements in the SES remuneration, relative to adjustments in the remuneration of public offices, including Secretaries, continue to be justified.

Median SES Total Remuneration (excluding performance pay)												
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Compound Annual Increase
SES3	173410	179757	194309	202884	210725	229147	250607	260983	276446	293404	315007	6.15%pa
SES2	144773	148365	160882	166041	171672	187959	203410	210861	220691	233566	248133	5.54%pa
SES1	120952	123649	132287	135541	139948	154097	164981	170416	177857	185606	196880	4.99%pa

2.21 These sustained movements suggest to the Tribunal that, in the absence of specific action, such tensions may continue.

2.22 The Tribunal determines the remuneration of the principal federal public offices within a relatively coherent and consistent framework. No like framework governs the setting of SES remuneration. Although the remuneration of SES employees appears to have a "market" component, the market is largely confined to the Australian Public Service itself and is, therefore, self-referencing.

2.23 The end result has been a steady bidding-up between departments and agencies, constrained, to a certain extent, by the effective 'cap' established by the remuneration determined by the Tribunal for the most senior public offices. In the absence of a greater degree of consistency across the Australian Public Service, the Tribunal is concerned that quite justifiable movements in the remuneration of the most senior public offices will be followed by greater but less studied movements in SES remuneration, as has been occurring in recent years.

2.24 In this regard, the Tribunal has noted the observation in the October 2009 discussion paper issued by the Advisory Group on the Reform of Australian Government Administration, about the effects of discrepancies in remuneration and the lack of maintenance of a consistent classification system across the Australian Public Service. In the Tribunal's view, in the absence of action to address these problems, it will continue to be difficult to ensure an appropriate balance between remuneration, on the one hand, and responsibility on the other.

3. The Tribunal's Approach

3.1 Although they are the most significant offices in the Australian Public Service, the work of Secretaries has not been reviewed for many years.

3.2 Particular aspects of the overall package of terms and conditions have changed over time. For example, the provision for a "loss of tenure" loading; the introduction of performance-based pay and its absorption, in 2008, into total remuneration; and the introduction of "total remuneration" style arrangements.

3.3 However, there has been no thorough assessment of the roles and responsibilities of these offices; no evaluation of appropriate relativities with other public sector positions; and no consideration of the demands of these offices in comparison to those of senior private sector positions.

3.4 Over the same period, numerous entities - statutory, incorporated and other - have been created, varied and abolished. However, the Secretaries of departments have continued to have primary carriage of the many policy directions and variations and the associated budgetary and functional changes that have occurred over the same period.

3.5 It is the Secretaries of departments, assisted by their senior departmental managers, who have supported Ministers in their dialogue with the Parliament - through committee processes and the ongoing and demanding legislative programs of governments.

3.6 In view of the period since any substantive consideration had been afforded the work of Secretaries, the Tribunal initiated an extensive and detailed review. The Tribunal:

- commissioned Mr Ric Smith AO PSM to prepare a paper on the roles and responsibilities of Secretaries. Mr Smith had retired as the Secretary of the Department of Defence in December 2006, having been appointed to that office in 2002. Prior to his appointment as Secretary, Mr Smith had been a Deputy Secretary in the Department of Foreign Affairs and Trade (appointed 1992); Australian Ambassador to the People's Republic of China (1996 - 2000); and Ambassador to the Republic of Indonesia (2001-2002);
- circulated the Smith paper to current Secretaries for consideration and comment;
- sought the assistance of the then Public Service Commissioner, Ms Lynelle Briggs, in preparing authoritative accounts of the development of the legislative provisions and associated matters relevant to the following aspects of the framework within which Secretaries work:
 - recruitment;
 - appointment;
 - responsibilities; and
 - termination;
- commissioned Mr John Egan, of Egan Associates - an external adviser with extensive experience in reviewing senior executive roles in both the public and private sectors - to assist the Tribunal in its engagement with individual Secretaries; to prepare a report on the work of Secretaries; and to draw comparisons with senior private sector positions;
- conducted individual interviews, in the period May-August 2008, with each then Secretary; and

- sought the advice of Dr Ian Watt AO, then Secretary of the Department of Finance and Deregulation, the department with responsibility for the superannuation arrangements of Australian Public Service employees, about the superannuation arrangements applying to Secretaries and the costs of those arrangements.

3.7 The Tribunal also had the benefit of discussions with former Secretaries and senior private sector representatives with experience of the work of Secretaries.

3.8 Each aspect of the Tribunal's work also drew upon the expertise and resources of the Tribunal's Secretariat.

4. Mr Ric Smith's Paper

4.1 Early in its review, the Tribunal, through the then Department of Employment and Workplace Relations, commissioned Mr Ric Smith AO PSM to prepare a paper on the current roles and responsibilities of Secretaries to:

- inform its own views about these offices; and
- establish a common basis upon which to engage with Secretaries, and others, as part of the review.

4.2 The resulting paper reflected Mr Smith's extensive experience of the Australian Public Service at senior levels in several roles, including as the Secretary of the Department of Defence. A copy of Mr Smith's paper is at **Appendix 2**.

4.3 The paper addresses Secretaries' roles and responsibilities under five themes - legislative provisions and management structures; attributes of the jobs and of Secretaries themselves; their relations with Ministers and ministerial staff; extra-departmental scrutiny; and the evolution of government expectations.

4.4 Mr Smith observes that:

"..... Secretaries remain at the critical interface of the relationship between the Public Service and the executive arm of Government."

4.5 In drawing this conclusion, he echoes a view that has been expressed in various forms since the establishment of the Commonwealth Public Service consequent upon the enactment of the *Commonwealth Public Service Act 1902*.

4.6 He notes that, under the *Public Service Act 1999* (the current Act):

"Legislation relating to the roles and responsibilities of the Secretaries of Australian Government Departments focuses exclusively on their management obligations, with no reference to the policy development and advising roles they are assumed to have."

4.7 Clearly, the legislation is not indicative of the centrality of the policy development and advisory roles to the functions of each Secretary; nor does it reflect the position that these responsibilities have occupied in the work of current Secretaries, and their predecessors, virtually since the inception of the Commonwealth (now Australian) Public Service.

4.8 The Public Service and Merit Protection Commission publication, *"Serving the Nation - 100 Years of Public Service"*¹ conveys something of the development and intensification of these responsibilities:

- the early period:
"There seems little doubt that a number of Secretaries and other senior officials... had major policy advising roles and influence. But that was not always the case."
- the 1930s:
'The economic difficulties of the Depression and the emerging defence considerations as World War II approached demanded greater attention to policy formulation..'
- the post-war period:

¹ *"Serving the Nation - 100 Years of Public Service"* - published by the Public Service and Merit Protection Commission; Commonwealth of Australia 2001; ISBN 0 642 54339 9

“Although the expansion in the scope of the Service has been striking, the transformation in the quality or type of function has perhaps been even more significant. Virtually every modern government has attempted to adopt a systematic policy to meet the fear of unemployment and the dislocation of the world economy through wars or depressions. Obviously, changes as important as these must have a profound effect on the Public Service under all of its important functions of advising on policy; interpreting policy; in giving effect to policy.”

4.9 Evidently, the “...provision of broad policy advice had clearly become a key responsibility of the departmental Secretary”, and, as indicated by Mr Smith, broad policy advice continues to be a top priority for Secretaries. The observations made by the Prime Minister in giving the John Paterson Oration on 3 September 2009, indicate that the quality, scope and creativity of policy advice provided by the Australian Public Service is a matter of close and continuing interest².

4.10 Of the many pertinent observations in Mr Smith's paper, the Tribunal regards those touching upon the relationship between Secretaries, on the one hand, and Ministers and their staff, on the other, as being of particular relevance.

4.11 This has been a consistent, if evolving, theme of commentators on the public service.

4.12 In his 1990 paper, “The Role of Secretaries of Departments in the Australian Public Service”³, the former Secretary of the Department of the Prime Minister and Cabinet, Mr Mike Codd AC, set out his perspective on the interaction on policy between Minister and Secretary in the following terms:

“Ministers generally regard their responsibility for policy and strategic directions in the portfolio as their highest duty. Such work therefore commands their close personal interest.

“The relationship between minister and secretary will therefore not be a full one if the minister does not respect the secretary's own grasp of policy and strategic directions in the portfolio.

“Secretaries must win that respect and make it their business to be present at any major policy review or strategy discussions with the minister - ensuring that the minister has confidence that any new directions emerging from such discussions will be effectively followed through by the secretary.

“Secretaries need to concentrate their attention on major policy reviews, major strategic assessments and areas known to be of special interest to the minister and where personal involvement of the secretary would be expected.”

4.13 Mr Smith refers to comment in 1997 by Dr Peter Shergold, when he was the Public Service Commissioner (Dr Shergold AC, retired as the Secretary of the Department of the Prime Minister and Cabinet in February 2008):

“The area within which Ministers and Secretaries relate to each otherhas been described variously as a ‘zone’ of ‘strategic conversation’ or of ‘creative tension’. As Dr Peter Shergold, the present Secretary of PM&C, said in a speech he gave as Public Service Commissioner in 1997, it is an area in which ‘ambiguity rules’, ‘the parcel of accountability passes quickly from hand to hand’.”

4.14 He identifies the centrality of the relationship between a Minister and Secretary to effective government and the associated need for officials appointed within a statutory

² The Hon Kevin Rudd MP, Prime Minister, John Paterson Oration, Australia New Zealand School of Government Annual Conference, Canberra, 3 September 2009

³ “The Role of Secretaries of Departments in the Australian Public Service” - Mike Codd; AGPS 1990 ISBN 0 644 12176 9

framework (and often after extensive careers in public administration) to adapt to, and assist, elected representatives to specify, clarify and meet a government's policy objectives:

"The Secretary-Minister relationship is critical. Ministers vary widely in skills and experience, and in the approach they take to their jobs and their expectations of their Departmental Secretaries. The growing number and roles of Ministerial staff, while advantageous to Departments in some ways, pose additional challenges for Secretaries in balancing competing objectives. The level and means of scrutiny of Departments, both formal and informal, are growing and tending to focus on Secretaries."

4.15 As Mr Smith points out, this is not necessarily straight-forward:

"Some Ministers have little contact with their Secretary; some maintain a disciplined regime of contact through regular meetings; others want to be in contact with their Secretary several times a day. Some are very particular about forms of correspondence, insisting that recommendations and decisions, even quite informal or low level ones, be recorded; others care much less about this, and indeed seem at times to prefer not to record their transactions. Some are coy about their political interests and relationships, while others are open and frank, sometimes disarmingly so. All Ministers must assume that they can talk to their Secretary about matters that they would not discuss with other Public Servants."

"Secretaries must talk frankly to their Ministers as early as possible in their respective tenures in order to understand how they want to work, and to establish 'ground rules' about the relationship. They must also be prepared to raise difficult and, at times, personally or politically sensitive issues, and to tell the Minister when he or she is at risk of reaching into areas in which, for reasons of either law or prudence, they should not try to make decisions or exercise influence. The area of Departmental (that is, Public Service) appointments and promotions is one in which Ministers have at times placed themselves at risk. (The challenge in this area is that while the PS ACT requires that personnel decisions be made by the Secretary on the basis of merit, it is counter-productive to leave or place staff in senior positions if the Minister does not have confidence in them.)"

"Secretaries can at times find their integrity being tested. In the end, however reluctantly and after satisfying themselves that full advice has been given, Secretaries will always have to accept a Minister's decision on a matter of policy. But they will on occasions have to be prepared to say "no" on matters of process (for example, because no funds have been appropriated; because of laws or regulations, such as in the letting of contracts; or because of Parliamentary conventions, such as the election-period 'caretaker conventions')."

4.16 There is a very considerable difference between the paths by which an official becomes a Secretary - as often as not, having been appointed by a different government - and an elected representative becomes a Cabinet Minister. Their respective paths are, in turn, quite different from those by which one individual becomes a Chief Executive of a public company, and another becomes the company's chairman or a member of the company's Board.

4.17 It is, in the Tribunal's view, quite understandable, given the distinctive career paths within public administration, and within government, and the fundamental need for there to be an effective relationship between a Secretary and a Minister, that the *Public Service Act 1999* should empower the Prime Minister to terminate an appointment of Secretary at any time, by notice in writing. The allocation of risk implicit in this necessary facility is discussed subsequently in this Report.

4.18 The Secretary's relationship with a Minister's staff is an essential, unavoidable, adjunct to the relationship with the Minister. Mr Smith regards ministerial staff as being *"critical in the equation between a Minister and a Secretary"* and notes that the growth in the number of ministerial staff *"....has probably been the most significant development of the last 30 years in the way the Australian Government works"*.

4.19 He sees the development - both in size and scope of involvement within a Minister's responsibilities - of the ministerial staff 'layer' as a consequence, in part, of the increase in the *"pace, range and inter-related matters of government business"*. He contends that *"the means by which governments do their business have been transformed, and the pace at which business is done has quickened markedly"*, referring to:

- instant and constantly available communications having made government a '24 by 7' business;
- the volume of information available to decision makers, including in policy areas, having burgeoned, and the sources of advice to them having expanded much beyond the traditional 'internal' chains;
- the volume of information available to the public, including to the media, business and interest groups, having also burgeoned, and enabled more informed inputs to, and critiques of, government;
- the boundaries between subject areas and disciplines having blurred, requiring government agencies to work together ever more closely but at the same time blurring responsibilities; and
- increasingly overlapping and enmeshed domestic and international, and federal and state, interests and policies.

4.20 Such developments have an obvious bearing on the roles and responsibilities of Secretaries. As Mr Smith summarises it:

"Secretaries remain at the 'fulcrum point' or the 'frantic interface' between Departments and their Ministers (and the Prime Minister). Their legislative cover is thin and their management and governance structures complex and ambiguous. They retain all the accountabilities, responsibilities and obligations that ever went with their positions, and have as well acquired further responsibilities in regard to the management of their Departments. Yet, in an environment which is faster moving and more fluid, and at the same time more 'scrutiny enabled', they have a reducing level of control over what is achieved and how it is achieved."

5. The Australian Public Service Commission's Contribution

5.1 The arrangements under which Secretaries have been employed have varied over time.

5.2 In the Tribunal's view, it is important that the evolution and future direction of certain aspects of these arrangements be considered from a long-term perspective. There are, after all, few offices - public or private - with comparable continuity.

*"The public interest policy analysis skills of the career public service in the next century must be exceptionally strong. Policy advice itself today is increasingly contestable. There is a growing number of analytical think tanks and lobby groups, which actively voice their private interests in policy advice. The public service is no longer the sole source of advice to governments, but it does remain the government's key advisory voice in the public interest. To understand, analyse and advise from multiple sources of advice requires the skills and creativity of the public service itself to be higher than ever."*¹

5.3 The legislation governing the Australian Public Service - presently the *Public Service Act 1999* (the 1999 Act) - has been the subject of considerable variation since the original Act, the *Public Service Act 1902* (the 1902 Act). However, provisions relating to Secretaries have been a continuing strand of the legislation since the 1902 Act. The frequency of variations to this strand increased after the Royal Commission on Australian Government Administration which presented its final report in August 1976.

5.4 The 1902 Act established the Public Service Board. This agency existed in various forms until replaced, in 1973, by the Public Service and Merit Protection Commission, the antecedent to the current Australian Public Service Commission (the Commission).

5.5 The Commission is concerned primarily with the present performance and the future direction of the Australian Public Service.

5.6 In the expectation that the Commission was likely to be the most significant repository of information about the history of this important national resource, the Tribunal wrote to the then Public Service Commissioner, Ms Lynelle Briggs, noting that it wished to include in its report "... an authoritative account of the ways in which certain features of the office of Secretary have changed over the long term". The Tribunal cited the following features as being of interest - recruitment, responsibilities, appointment, and termination.

5.7 The Tribunal sought the Commissioner's assistance in this and was pleased that Ms Briggs accepted the invitation.

5.8 The Commission completed the work in November 2008. In view of its particular relevance to remuneration and associated conditions, the Commission's paper on 'Tenure' is attached to this chapter (**Attachment 1**). The Commission's papers on Appointments, Role, and Recruitment, are included in **Appendix 3**.

5.9 The Tribunal records its grateful appreciation for the Commission's assistance. In particular, the Tribunal thanks Ms Lynelle Briggs, the then Commissioner, for her personal support of this work.

5.10 The Tribunal regards each of these features as having a bearing on the appropriate structure of the overall package of terms and conditions for Secretaries.

5.11 Subsequent elements of this report draw out the distinctions between the office of Secretary and other public offices, arising from these features.

5.12 The present roles and responsibilities of Secretaries are specified in legislation in very general terms when compared, for example, to the statutory prescriptions governing most regulatory agencies. The statutory provisions relating to appointment, tenure and termination are similarly differentiated. In the Tribunal's view, these distinctions provide clear guidance about the relative degrees of certainty and risk associated with any public office.

¹Ministerial Statement - "Reforming the Public Service to meet the global challenge" - the Hon David Kemp MP, Minister Assisting the Prime Minister for the Public Service, CEDA, 25 February 1998

5.13 The Tribunal considers that higher levels of uncertainty and risk should be reflected in the remuneration arrangements determined for an office.

5.14 In the case of Secretaries, the analysis suggests that increases in uncertainty and risk have not been reflected in remuneration consistently.

Departmental Secretaries - Tenure

Public Service Act 1922

- Prior to 1977 Permanent Heads could only be removed from office by abolition of their departments, unless dismissed from the service for misconduct (s. 56).
- According to Weller¹:
 In the 1950s, the position of a departmental secretary was strong. They had tenure in their position and could only be moved with their consent, unless the department was abolished from underneath them. They could expect to stay until a retiring age of 60 or more. By 2000, the departmental secretary was on an appointment of up to five years, liable to be terminated without notice, and anyway expecting to be rotated every five years into a new job. Their term as a departmental secretary was likely to be shorter.

1976 Royal Commission on Australian Government Administration (the Coombs Inquiry)

- The Royal Commission came out firmly against retention of the title of permanent head:
 Following our review of the office of 'permanent head' we have felt it desirable to consider whether that designation continues to be appropriate. In our view, it does not. Neither theory nor practice suggests that the holders of this office are 'permanent', nor in our view should they be. (Coombs Report 1976:103)

Public Service Amendment (First Division Officers) Act 1976

(Received the Royal Assent on 28 February 1977)

- s. 54 provided, for the first time, for:
 - fixed-term appointments of non-public servants to Permanent Head positions (subs. 54(7)-(13)); and
 - early termination of Permanent Heads - both permanent public servants and short-term appointees (subs. 54(9)).
- s. 54 also provided for "established" and other candidates (refer Appendix 3—Appointments)
- Special provisions applied in the case of persons who were fixed-term and not established candidates.
 - subs. 54(8) limited the appointment period to five years (but not past their 65th birthday); subject to that, however, appointees were eligible for reappointment; and the instrument of appointment was required to include period of the appointment.
 - subs. 54 (9) provided for early termination by the Governor-General on the recommendation of a Prime Minister of a different political party or parties who were in government at the time of appointment.
 - subs. 54(10) provided the Governor-General may, at the time of appointment, make a determination that compensation will be payable to a short-term appointee on early termination or on abolition of the office the appointee held.
 - subs. 54(11) required that details of the determination must be gazetted.
 - subs. 54(12) and (13) provided for the first time early termination under s. 54 (9) of Permanent Heads who were permanent public servants.

¹ Patrick Weller, *Australia's Mandarins: the frank and the fearless*, Australia 2001

- : In the case of a person who was a permanent officer before appointment to Permanent Head - the person was deemed to be an unattached officer in the Second or Third Division with such status and salary as determined by the Public Service Board - having regard to the office prior held to the appointment and the period of service as a Permanent Head. However the person could also elect to retire (subs. 54(12)(a)).
 - : Any other person was deemed to be retired forthwith upon the early termination of his position as Permanent Head (subs. 54(12)(b)).
- As noted in a decision of the Federal Court of Australia in *Barratt v Howard* [FCA 1132 (19 August 1999)], this was the first legislative recognition of the possibility of "politically appointed" Permanent Heads.
- It was accompanied by a recognition that it was appropriate that there should be a different regime in relation to their removal by a government of a different political colour.
- Prime Minister Fraser spelt out the principles on which the change was based:

One of the best safeguards of the political neutrality of the Public Service is a system of appointment - particularly of appointments to senior positions - which minimises the possibility of appointments for purely partisan reasons and increases the chance of making the best possible appointment. A government may, of course, wish for good reason to appoint a person not recommended by due process. The Government believes that if such an appointment is made an incoming administration should not be forced, through permanency, to retain the services of the appointee. (Commonwealth Parliamentary Debates House 18 November 1976:2865)
- The changes represented a significant step in the position of Secretaries as was acknowledged by Prime Minister Fraser in presenting the legislation:

Retention of the title, permanent head, could be regarded as inappropriate, in view of the fixed term arrangements that will be possible under the Bill. This is something we will be looking at in the context of the Royal Commission on Australian Government Administration. (Commonwealth Parliamentary Debates House 18 November 1976:103)
- In the event, no use was ever made of the provisions for fixed-term appointment of a Permanent Head who was not nominated by the committee.

Public Service Reform Act 1984

(Received the Royal Assent on 25 June 1984)

- In relation to tenure, the Government's 1983 policy paper, *Reforming the Australian Public Service*² stated:

The Government appreciates that, whatever the formal legal position, in a practical sense Department Heads do not have the same security of tenure in their positions as other officers in the Public Service; they can be removed from their positions as much as a result of bad luck or over-riding political necessity to reshape the machinery of government as by poor performance. (Over the period from November 1975 to November 1983, more than twenty officers were removed from Department Head positions.) Sometimes this occurs in a context of public speculation or controversy. While the requirement to have a report from the Chairman of the Public Service Board will reduce the risk of a government acting capriciously or in ignorance of the consequences of unattaching a Department Head, from time to time it will be inevitable that,

² *Reforming the Australian Public Service*, Canberra (December 1983)

as has happened in the past, there will be no position immediately available.

The Government believes that Department Heads should not have less protection than other public servants in this situation. It intends, therefore, that the Public Service Board should be required by legislation to attempt to redeploy an unattached Department Head. If redeployment is to a non-Department Head position, including a statutory or ambassadorial position, the Board, at its discretion, may determine that the officer continue to be treated as a Department Head for purposes of pay, allowances and associated conditions of service. If, in the Board's view, after attempting to redeploy the officer, it is not, nor likely to become, possible to place the officer in a position where it would be appropriate to apply Department Head salary and conditions indefinitely, the Board would be required to place the officer at the most senior level of the SES (that is, at a level equivalent to a senior Deputy Secretary). Where this happens the Board should, at its discretion, and after an income maintenance period not less than that applying to other public servants, be able to reduce the officer's salary to that of the position in which he or she is placed. (2003:11-12)

- The Act repealed sections 54, 54A and 54B and inserted two new divisions:
 - Subdivision B - Appointment of Secretaries of Departments (sections 37 to 41) refer Appendix 3 - Departmental Secretary Appointments; and;
 - Division 8A - Retirement and Redeployment of Secretaries (sections 76A to 76G). This Division did not apply to a fixed-term appointment (subs. 37(15)).
- s. 37 continued to provide for fixed-term appointments for persons appointed from outside of the Service and compensation for early termination:
 - subs. 37(4) authorised a determination to be made when a person was given a fixed-term appointment to the office of Secretary, of the compensation payable on early termination.
 - subs. 37(5) provided that a person becomes an unattached Secretary and the appointment terminated where an office was abolished or the Governor-General so directs.
 - Under subs. 37(6) the appointment of the person to the Service terminates, and the person is deemed to be retired from the Service if the Governor-General so directs.
 - The subs. 37(5) and subs. 37(6) powers were only exercisable on the recommendation of the Prime Minister (subs. 37(11)) which, in turn, could only be given after receipt of a report from the Chairman of the Public Service Board (subs. 37(12)).
- In practice, s. 37 was never used and all Secretaries whether from inside or outside the Service were appointed on the basis that, while they did not have tenure in a particular position of Secretary to which they were appointed, they did have continuing tenure in the public service.
- Relevant provisions in the new Division 8A were:
 - s. 76D permitted the Governor-General to retire an inefficient, incapable or incompetent Secretary from the Service if the Board, after investigation, reported to that effect.
 - s. 76E permitted the Governor-General to terminate the appointment of a person to an office of Secretary on the recommendation of the Prime Minister after receipt of a report from the Chairman in relation to the termination. In such case the former Secretary became an unattached officer.

Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994

(Received the Royal Assent on 15 March 1994)

- The 1994 Act amended s.37 so that it could be applied to existing Secretaries.
- subs. 37(5) made it clear that a Secretary would be retired from the Service where: (a) a Secretary's position was abolished; (b) when a Secretary's term had expired; or (c) when a Secretary's appointment was terminated early.
- subs. 37(6) was also amended to include provisions to enable short-term postponement of the retirement of a Secretary whose appointment had expired, or who was terminated and for whom no further appointment was immediately available, to have three months to seek a new long-term appointment. Secretaries retained their previous terms and conditions of employment during such further employment.
- Those in Secretary positions at the time could elect to accept a fixed period appointment. By 1997, all serving departmental Secretaries had agreed to being employed under the modified framework.
- However, s. 36 continued to provide for appointments with tenure and the retirement and redeployment of Secretaries appointed under s. 36 were set out in Division 8.
- s. 76FA provided for the Public Service Commissioner to determine a special lump sum benefit for unattached Secretaries who had continuing tenure in the public service.
- The Act also amended the *Superannuation Act 1976* so that Secretaries would be entitled to superannuation involuntary retirement benefits on termination.
- The Government recommended that the Remuneration Tribunal determine (in accordance with s. 8 of the *Remuneration Tribunal Act 1973*) new remuneration arrangements to allow existing Secretaries to trade their tenure in favour of a loading on their salary. The Government recommended to the Tribunal that the loading be in the order of 20 per cent.
- Remuneration Tribunal Determination 1994/8 gave effect to the new remuneration arrangements for Secretaries.
 - c. 2.4 provided a Loss of Tenure Allowance or 20 per cent for Secretaries appointed under s. 37.
 - c. 2.5 to 2.8 provided compensation for early loss of office of one-third of one month's remuneration for each full month of service foregone, subject to a maximum payment of 12 months (subs. 37(5)).
- In determining the new arrangements, the Tribunal made the following statement:

The basis of the new determination is that a real and substantial sacrifice of one element of a total employment relationship may appropriately be recognised by exchange for a monetary benefit.³
- Since 1987, the fixed-term appointment option has become standard practice and, following the election of the Howard Government in 1996, all departmental Secretaries were appointed on a fixed term basis.
- Without addressing directly issues relating to the tenure of secretaries, Prime Minister Howard effectively reaffirmed the Fraser position in the 1997 Garran Oration:

Any Government must and should reserve the right to adapt the administrative structures of the public service to best achieve the policy priorities on which it was elected. So also, any government must and should reserve the right to have in the top leadership positions within the public service people who it believes can best give administrative effect to the policies which it was elected to implement. Governments of both political persuasions have recognised these realities (Howard 1997, p. 8).

³ *Remuneration Tribunal 1994 Decisions and Reports*, Canberra (1995:100)

- Since 2003, no public servant appointed as Secretary has been required to resign from the APS. Nonetheless, the Department of the Prime Minister and Cabinet has advised that an appointment as Secretary is understood to end APS employment by implication so it has not been the practice to require public servants appointed as Secretaries to resign formally from the APS. There is no such requirement in the *Public Service Act 1999* but it seems reasonably clear that the Act contemplates “Agency Heads” and “APS employees” as mutually exclusive.

Barratt v Howard [1999] FCA 1132 (19 August 1999)

- Federal Court of Australia decision *Barratt v Howard* FCA 1132 (19 August 1999) provides a comprehensive summary of the key legislative changes in 1977, 1984 and again in 1994 in relation to Secretaries’ tenure.
- The Court found in favour of the entitlement to procedural fairness on termination and the opportunity to respond to a statement of reasons provided in relation to the termination, but no entitlement for continuing tenure:
 - the Secretary’s expectations of continuing employment were not supported by legal authority to the point of enforcement of substantive rights:
 - there was no obligation on the part of those recommending termination action (the Prime Minister and the Secretary to his Department) to consider whether the Minister’s reasons for loss of trust and confidence were well founded: and
 - the Secretary of the Prime Minister’s Department was not required to provide ‘further and better particulars of the basis upon which the loss of trust and confidence on the part of the Minister rested’ (*Barratt v Howard* and others, 2000).

Public Service Act 1922 as amended as at 5 December 1999

- Immediately prior to the introduction of the *Public Service 1999*, the termination provisions for Secretaries were as follows:
 - subs. 37(7) provided that the Governor-General was not to give a direction under subs. 37(5) by reason only of the fact that the Secretary’s conduct was such that a charge could be laid against him under s. 57, or on the ground that a Court had convicted the Secretary of a criminal offence under s. 58, or found, without recording a conviction, that the Secretary had committed the offence.
 - Dismissal of Secretaries for disciplinary reasons was dealt with by s 57 (misconduct), and s. 58 (crime). Each may lead to dismissal from the Service by the Governor-General. There was a detailed specification of the procedures to be followed including notice to the Secretary of the case against him or her, and the opportunity of putting submissions in response.
 - s. 76D provided for the Governor-General to retire a Secretary from the Service on the ground of inefficiency, incompetency, or incapacity, upon a report by the Board, after investigation into the circumstances. The requirement for an investigation and for a report as well as the consequences of the exercise of the power, suggested that its exercise is subject to procedural fairness.
 - s. 76E permitted termination of the holding of the office of Secretary on the recommendation of the Prime Minister after receipt of a report from the Commissioner, in the case of the Department of the Prime Minister and Cabinet, or, in any other case, from the Cabinet Secretary. In such case, unless the person continued to hold another office as Secretary, the person became an unattached officer.

- Sections 76D and 76E were not applicable to a person holding a fixed term appointment.

Public Service Act 1999

(Received the Royal Assent on 5 December 1999)

- Part 7 of the 1999 Act deals with Departmental Secretaries and s. 59 deals with the termination of appointments.
- Under the 1999 Act, the Prime Minister may, by notice in writing, terminate a Secretary appointment at any time (subs. 59(1)). Before doing so, however, he must receive a report from the Secretary of the Prime Minister and Cabinet (or from the Commissioner in relation to a proposed termination of a Secretary of the Prime Minister and Cabinet).
- The relevant Prime Minister's determination provides the following termination entitlements:
 - three months' base salary; or
 - one-third of one month's base salary for each full month of the balance of the term not served, subject to a maximum payment of 12 month's base salary calculated at the date of his or her terminationwhichever is the greater.

6. Present Remuneration Arrangements

6.1 S61 of the *Public Service Act 1999* invests the Prime Minister with the responsibility for determining the remuneration and other conditions of appointment of Secretaries, on the advice of the Tribunal. The relevant provisions are as follows:

61. Remuneration and other conditions

- (1) *The remuneration and other conditions of appointment of a Secretary are as determined in writing by the Prime Minister.*
- (2) *For each determination, the Prime Minister must seek the advice of the Remuneration Tribunal and take that advice into account.*
- (3) *Each determination must be published in the Gazette within 14 days after the determination is made.*

6.2 A copy of the Prime Minister's most recent s61 Determination¹, made on 23 October 2009, is included as **Appendix 4**. The Determination, besides dealing with remuneration, specifies conditions associated with official travel; leave entitlements; provisions associated with loss of office (including non-re-appointment); and removal and relocation assistance.

6.3 The Tribunal had itself determined remuneration for Secretaries from its establishment in 1973 (having published its initial determinations in 1974) until the enactment of the *Public Service Act 1999*. The Tribunal's final determination - Determination Number 4 of 1999 made on 24 March 1999 with date of effect of 31 March 1999 - is available on the Tribunal's web-site². This determination marked the shift away from specifying individual components of remuneration to the 'total remuneration' approach which has since continued.

6.4 There are, presently, two levels of remuneration for Secretaries. They are as shown in the following table:

Secretary Office	Total Remuneration	Base Salary
Department of the Prime Minister & Cabinet Department of the Treasury Department of Defence	\$503,220	\$402,670
Other Departments	\$470,790	\$376,640

6.5 'Base Salary' is calculated at 80% of total remuneration. The principal reason for specifying 'Base Salary' is to fix the figure that serves as 'salary for superannuation purposes' under the various Commonwealth superannuation schemes. As such, it establishes the basis upon which the employer contribution to each such scheme is calculated and factored into the specified 'total remuneration' amount.

6.6 The Tribunal expressed the following preliminary views in its 2007-2008 Annual Report:

- the present remuneration range does not reflect adequately the range of responsibilities of these offices;
- conditions of engagement should reflect better the term of appointment and any early termination of it.

¹ Commonwealth of Australia Gazette, No. GN 43, 4 November 2009:

[http://www.aq.gov.au/portal/govgazonline.nsf/CEF7ED49C0DC0DAACA2576630080854B/\\$file/GN%2043.pdf](http://www.aq.gov.au/portal/govgazonline.nsf/CEF7ED49C0DC0DAACA2576630080854B/$file/GN%2043.pdf)

² Remuneration Tribunal Determination Number 4 of 1999:

<http://www.remtribunal.gov.au/determinationsReports/byYear/1999dets/1999-04Determination.pdf>

6.7 The Tribunal's subsequent work has reinforced these earlier views.

6.8 The review has also persuaded the Tribunal that:

- while these jobs, as a group, can be distinguished from all other senior public offices, distinctions can be drawn between them;
- these distinctions should be reflected more clearly in remuneration than the current remuneration structure allows; and
- under the present arrangements for appointment and termination, too much of the risk lies with the Secretary.

6.9 The Tribunal considers that current provisions relating to official travel, leave, removal and relocation assistance, and assistance for training and development, while capable of refinement, are generally appropriate and satisfactory. The Tribunal will, however, revisit these provisions once its role in determining remuneration and other conditions of appointment for Secretaries has been settled.

Superannuation

6.10 The Tribunal notes that the cost of superannuation to the employer varies considerably according to the scheme of which the Secretary is a member. These variations mean that the actual value of the current package is greater for a Secretary who is a member of the defined benefit schemes (particularly the Commonwealth Superannuation Scheme) and lower for a Secretary who is a member of, for example, an industry fund. **Appendix 5** to this report draws out the consequences of differences in the attributes of the various superannuation arrangements. However:

- coverage by different superannuation arrangements is not unique to Secretaries in the Australian Public Service; and
- the defined benefit schemes have been closed to new members for some years; as changes occur in the population of Secretaries, the proportion of those who are members of such schemes will therefore decline.

6.11 While the Tribunal will bear these factors in mind, our primary concern is to establish appropriate remuneration for these offices.

7. Assessment of Work Value

7.1 In framing the review, the Tribunal ascribed particular importance to gaining an external perspective on the work of Secretaries.

7.2 Although the Tribunal could have conducted the review in a manner similar to its reviews of other public offices, Members considered that the following factors, in particular, indicated that a perspective informed by extensive private sector experience would be necessary to arrive at defensible conclusions about the attributes of these offices:

- the significance of the office of Secretary amongst federal public offices;
- the diversity of responsibilities between individual Secretaries (reflecting the diversity of departments)
- the considerable period since any previous, substantive, review of these offices;
- the benefit of having an assessment conducted in a manner consistent with private sector job evaluation; and
- the value to be derived from opinions and advice framed against extensive experience of senior offices in the private sector, tempered by an appreciation of the federal public sector.

7.3 The Tribunal, assisted by its Secretariat and with resources provided by the Department of Education, Employment and Workplace Relations, sought expressions of interest in undertaking the project from three external, professional, service providers. As a result, Mr John Egan, of Egan Associates, was commissioned, personally, to assist the Tribunal.

7.4 The Tribunal considered it essential that it meet with each Secretary to canvass individual roles and responsibilities within a consistent discussion framework. A preliminary task for the external advisor was to prepare such a framework.

7.5 The Tribunal also considered that the benefits to be derived from an external perspective would be reinforced through the participation of the external advisor, rather than officials, in the discussions with individual Secretaries. In the Tribunal's assessment, this expectation proved correct.

Project Objectives

7.6 In undertaking this phase of the review, the Tribunal had two particular objectives:

- to establish a well-founded appreciation of the similarities and differences between Secretaries, the most senior offices in the Australian Public Service, and private sector positions at the most senior levels; and
- to review each individual office of Secretary and to group these offices on the basis of broadly equivalent levels of responsibility.

7.7 In seeking to draw comparisons with the private sector, it was not the Tribunal's purpose to demonstrate that the nature of the responsibilities at the most senior levels of the public and private sectors are the same. Indeed, the analysis confirms that they are not.

7.8 However, the Tribunal has for some time considered there to be a general lack of appreciation of the complexities and demands associated with public offices at the highest levels, particularly those, like Secretaries, in the core public service.

7.9 The thorough work undertaken by Egan Associates for the Tribunal demonstrates, clearly, the differences between the public and private sectors at these levels. Very importantly, it also identifies the broad similarities in the degrees of complexity, intensity, unpredictability and volatility typical of the work of the most senior executives in each sector.

7.10 It is accepted that Secretaries are not subject to the continual demand of ensuring the ongoing commercial viability of a significant business enterprise in changing market and economic circumstances.

7.11 Equally, the most senior private sector executives are not subject to the same levels of scrutiny, uncertainty and volatility that characterise the interface between Ministers, the Parliament, and the most senior officials.

7.12 Nor does the Tribunal contend that demonstrable similarities in the "weight" of the responsibilities of offices in the public and private sectors make a sound argument for inferences about appropriate remuneration for public offices. The Tribunal's consistent view has been that, while movements in senior executive remuneration in the private sector are relevant, they are not key determinants of the remuneration of public offices. In its 2005-2006 Annual Report, the Tribunal set out its position in the following terms:

"Movements in senior management remuneration are also relevant, given the nature of many of the offices in the Tribunal's jurisdiction. The Tribunal is not, however, overly influenced by executive remuneration surveys. Although justifiable comparisons can be drawn between senior private and federal public sector jobs, the Tribunal, while mindful of movements indicated by such surveys, regards private sector remuneration practice as being only one of the factors to be taken into account in setting the remuneration of public offices. The prestige associated with appointment to a high public office entails acceptance, on the part of appointees, of less remuneration than might apply to a comparable job in the private sector.

"That said, the Tribunal is also conscious that the public sector must be able to engage highly capable people if the many and diverse functions of government are to be performed effectively, particularly where appointments are made for relatively short periods - three to five years - and the prospects of renewed appointment are uncertain. It would be to the disadvantage of government were the remuneration of senior offices to lose touch with developments in remuneration more generally."

Advice from Egan Associates

7.13 The full text of the Egan Associates' Report has been published on the Tribunal's website and it is included, on CD, with this first Part of the Report of its review.

7.14 Section 3 of the Egan Associates' Report - the text of which is attached to this Chapter - assesses work value; sets out a 'classification template' for the office of Secretary generally; and provides an allocation of the present offices between two levels.

Relative Responsibilities - Public and Private Sector

7.15 It is self-evident that public office holders and Secretaries are not driven by the fundamental business objective of making a profit. As Egan Associates expresses this point:

"....a primary differentiator between the position of Secretary and a Chief Executive Officer in a major public company would be the latter's accountability for shareholder wealth, increasingly in competitive global markets where choice of resource allocation and risk sits primarily with the CEO and the executive team...."

7.16 Subject to that primary distinction, the Egan Associates analysis indicates that defensible parallels can be drawn across the range of responsibilities of the most senior public and private sector executives:

“While acknowledging in this report some specific differences in the nature of and accountability of a Secretary and that of a CEO of a major public company, both generally and within a ‘*Whole of Government*’ context, it is my judgement that it remains the closest comparator for the position of Secretary. Due to the varied obligations of executives known as Chief Operating Officers, while broadly generic in character, comparison of the office of Secretary with this position is not appropriate. Comparison with the position of business group head is also not appropriate given the primary accountabilities of the position of Secretary.”

7.17 Egan Associates gave particular attention to drawing out the similarities and differences; the report includes the following observations:

- “...matters of national and/or regional consequence take on a character and a scale not normally reflective of a significant enterprise’s involvements in its national or international workforce adjustments, refinancing debt or asset sales programs. The demands on a nation are fluid and variation in the nature of those demands and scale highlights the challenges for Departments of State and indeed their Secretaries. These are generally not demands observed in the private sector....”
- The leadership demands in the context of Government would be seen as broadly comparable to that of a Chief Executive in the private sector. Their fiduciary accountabilities are, however, different.
- a Secretary is not required to possess the same strategic expertise aligned to growth, improving profitability and shareholder return. They are not subject to the same competitive influences, that is they are not competing with other stakeholders for a share of capital, a share of market, a share of suppliers’ wares or a share of customers’ business. Time is not of the essence in the same context though, as noted, speed and efficiency is critical in both sectors.
- Chief Executives, unlike many Secretaries, are not required to address national or international crises which either impact the entire nation or constituents arising from matters reflected upon above. In this context Governments have to respond quickly, efficiently and with the same level of economy as the private sector CEO but often with greater sensitivity having regard to political and constituent interests which are paramount in the business of Government;
- Rarely does an individual business, no matter its size, need to deal with tsunami scale events in any given period and certainly not more than one simultaneous event of similar complexity and scale. Secretaries in this context need to possess the expertise to deal with tsunami scale events in a highly public and ‘*Whole of Government*’ context not found in the private sector.
- Secretaries also have legal, statutory and regulatory boundaries within which they are required to operate. They do, however, not have the same obligations or accountabilities for directly addressing stakeholders or the nation’s constituents or communicating directly with them. They have different legal and public reporting obligations in respect of the nation’s constituents. They are not required to keep the market informed directly. This is managed through the Minister and the Minister’s office or Cabinet. While the roles might be outcome focused they are subject more to political influence than economic influence, though in the current setting economic factors are clearly critical.
- A ‘*Whole of Government*’ accountability in many respects is no different from a CEO or business group head of a major private company who has a ‘*Whole of Company*’

accountability at all times, including in many instances significant international exposure which includes exposure to different jurisdictions, different economies, different markets, different currencies, different financial systems.

- Secretaries are input focused, CEOs are output focused.
- Secretaries are accountable to Parliament through their Minister and to Senate Estimates. A CEO is accountable to the Board and shareholders and faces all the challenges associated with the competitive environment.
- Secretaries don't have to manage capital allocation decisions – it is a major priority of a CEO, not only how much capital but where to invest the capital, whether to outsource or to operate the investment. CEOs also need to make choices in respect of which markets and geographies they should operate in and allocate risk.
-while a CEO in a major privately held company has many financial obligations which are different from a Secretary and are subject to competitive and financial demands which require immediate and appropriate response Secretaries, both within a defined portfolio and as required to engage in *'Whole of Government'* initiatives, do require significant capacity to deal with complexity in a timely manner with a different set of constraints that are subject to public scrutiny where the leadership and judgement is of paramount importance. The consequence of error in financial management terms does, however, while critical not carry the same consequence of error that applies in the private sector.

7.18 Overall, the advice from Egan Associates, reinforced by the Tribunal's own experience and judgement, leads to the conclusion that, although significant distinctions exist between public and private sector offices at senior levels, their core features - the demands, expectations, complexities and uncertainties - are of a similar order.

7.19 That said, the Tribunal considers the review to have demonstrated that, although there is a degree of consistency between individual offices of Secretary, in terms of their general attributes, there are identifiable distinctions between them.

Relativities between Offices of Secretary

7.20 Egan Associates, having considered the various attributes of the office of Secretary, generally, and their weightings between the existing offices, settled on maintaining the existing two-level structure and set out a general statement of the "classification" for the office of Secretary - the statement is set out on the page opposite.

7.21 Consistent with this framework, Egan Associates identified the principal attributes of each level. In summary, the features ascribed to each level are as follows:

Level 1

- This level is the province of the key *'Whole of Government'* roles within the Secretary structure, as well as those positions which have accountability for the oversight of Departments of significant scale and reach in relation to the program priorities of Government.
- The dimensions of these engagements would typically involve the management or joint oversight of a significant proportion of Government appropriations or have primary or shared accountability for major Government programs.
- At this level the work of the Secretary requires a continual screening of the global environment to identify and favourably influence the Minister or the Executive of Government on any or all developments that might have significance to the Australian Government.

CLASSIFICATION FOR THE OFFICE OF SECRETARY

The position of Secretary has carriage of the significant policy and operational areas of Government. A Secretary has stewardship of a Department of Government and in that context, as its Chief Executive, has primary accountability for adapting policies and programs in accordance with the vision of the Government of the day. As the principal agent of Government in this respect the Secretary has a key leadership role, including a requirement to motivate others to change and adapt to the way in which the Government of the day seeks to develop and formulate its programs and ultimately implement those programs.

Positions of Secretary, while reflecting in part a 'Whole of Government' involvement, have been allocated to two distinct classification levels. It is acknowledged that all Secretaries undertake work requiring a high level of policy formulation reflecting a continuous global scanning of relevant issues for the Government of the day, often on a time horizon of three to seven years, though in some instances extending up to twenty years and beyond.

The position of Secretary at each classification level has a significant planning (visualisation) and stakeholder wide communication task that demands high level cognitive skills and strong emotional intelligence.

Executive positions at this level represent the most significant leadership roles in Government and the public sector generally in terms of policy diversity, level of investment, expenditure overview or revenue collection and/or operational demands embracing the most complex strategic, policy, administration and service delivery areas of the Australian Government's activities, both domestic and international.

- It is at this layer there is a shift from an operational perspective to one of assessing risk and adding value from all sources and areas of activity and reflecting that value across the Government's numerous engagements. This includes assessing the Government's needs for increases or decreases in investment or divestment, balancing the allocation of resources between a diversity of demands in a way which ensures that short and long term goals are achievable.
- The province of the Secretary at this level is to assess and address the relevance of the bombardment of information about political, economic, social, technological and intellectual events from a global environment requiring a unique response consistent with the Australian Government's future aspirations (all spheres of Government, both Federal and State).
- The focus of the work is on both domestic and international networking in all areas likely to be significant to the Australian Government in any field of endeavour. The Secretary must accumulate significant data and screen out the less significant.
- Some positions of Secretary must reflect relevant domestic and transnational situations back into the Australian Government and into the planning horizons of the Prime Minister and Cabinet, thereby sustaining as positive an environment as is possible for the Government across all its activities. Positions at this level have as a primary focus '*Whole of Government*' appropriations, expenditures, revenue strategies and asset management.
- The primary thrust of the work is creating an internal environment that makes it possible to judge a myriad of policy and investment priorities to enhance the value of the Government's assets and the nation's resources and contribute to its long term success and sustainability. Work at this level calls for worldwide data accumulation and analysis.

Level 2

- Secretaries at this management level undertake work requiring several interactive projects, each of which is adjusted in relation to the others. At this level executives such as Secretaries do not pursue a single path but are required to establish a number of paths and alternatives, all running at the same time and interconnected one with the other.
- Secretaries at this level of organisational complexity pursue a number of different programs in synchrony with one another, harmonising and resourcing the Government's priorities while meeting schedules and guiding activity into alternate paths where necessary. There is a necessity to make trade-offs between tasks and resources in order to maintain progress along the composite route to achieving a key goal of Government which is likely to involve Government, business and community stakeholders, the latter two with significant self interest.
- Work at this level calls for parallel processing and trading-off. The usual time frame is two to five years, though certain elements of the role and consequences of policy or program initiatives will extend beyond five years.
- The policy, budget, resourcing and geographic dimensions of these positions in relation to the oversight of Government programs are below those in level 1, though encompass major areas of economic significance for Government, as well as service delivery or complex policy formulation where timely and appropriate outcomes are fundamental to the Government's reputation.

The Secretaries of the Department of the Prime Minister and Cabinet and of the Department of the Treasury

7.22 Although Egan Associates nominated the offices of Secretary of the Department of the Prime Minister and Cabinet, and Secretary of the Department of the Treasury, to Level 1 of the proposed two-level classification structure, its analysis identifies particular features of these offices that, in its view, distinguish them from other offices of Secretary. Egan Associates described their distinguishing features in the following terms:

Secretary of Prime Minister & Cabinet and Secretary of the Treasury

The positions of Secretary of the Departments of the Prime Minister and Cabinet and the Treasury are distinct and different. The former position is accountable to the Prime Minister and to the Cabinet of the Australian Government as the primary source of policy advice across all aspects of the national Government's activities, embracing the marshalling of the resources of all other Departments from a policy and administrative perspective, assisting the Cabinet and its committees, overseeing intergovernmental relations and communications, nationally and internationally, specifically including counter-terrorism, policy coordination and national security policy coordination, together with the oversight of highly sensitive portfolio agencies. The Secretary is the principal source of advice and support to the Prime Minister of the day.

The Secretary of the Department of the Treasury is the senior policy counsel on all major economic policy issues to the Prime Minister, the Treasurer and Treasury portfolio Ministers, Parliamentary Secretaries and the Ministerial team, with primary accountability to promote a sound macro economic environment, effective Government spending arrangements, effective taxation and retirement income arrangements, as well as functioning markets. Under the Secretary the Department is also accountable for the effective implementation and administration of the economic policies of the Government of the day.

The office of Secretary in the Department of the Prime Minister and Cabinet and the Treasury is not only reflective of the many attributes of the position of a CEO, albeit that their staff resources and expenditure oversight are not of the scale of some of the other roles classified in level 1, but they are also reflective of the key executives in the office of the Chairman, in this case the Chairman (Prime Minister), of Australia Inc, a \$300 billion annual expenditure and revenue corporation with more than 150 external satellites in the form of Government agencies which are 100% controlled by Government. In this context there is no Australian comparator of a similar scale. I have, however, formed the view that they do represent the most significant and onerous roles in respect of the office of Secretary in the Australian Government.

These positions as a consequence have a duality of focus. One is to manage their Department, which I have seen as secondary to their engagement with the Prime Minister and the Cabinet in the oversight and/or coordination of Australia Inc's activities in their broadest sense.

7.23 Mr Egan concluded that:

“It is my judgement that these two key Secretary roles represent the pinnacle of Government policy advice, straddling ‘Whole of Government’ issues in virtually every facet of their endeavour.

7.24 The Tribunal endorses this assessment.

Classification of Individual Offices

7.25 Based on the assessment of individual offices of Secretary, Egan Associates proposed that the following Secretary offices be reclassified to join the incumbent offices of Secretary of the Departments of the Prime Minister and Cabinet, the Treasury and Defence, in Level 1:

- Secretary of the Department of Education, Employment and Workplace Relations
- Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs
- Secretary of the Department of Finance and Deregulation
- Secretary of the Department of Foreign Affairs and Trade
- Secretary of the Department of Health and Ageing

7.26 On that basis, the allocation of offices between the two classification levels - with which the Tribunal agrees - would be as follows:

Level 1	Level 2
Prime Minister and Cabinet	Agriculture, Fisheries and Forestry
Treasury	Attorney-General
Defence	Broadband Communications and the Digital Economy
Education, Employment and Workplace Relations	Climate Change
Families, Housing, Community Services and Indigenous Affairs	Environment, Water, Heritage and the Arts
Finance and Deregulation	Human Services
Foreign Affairs and Trade	Immigration and Citizenship
Health and Ageing	Infrastructure, Transport, Regional Development and Local Government
	Innovation, Industry, Science and Research
	Resources, Energy and Tourism
	Veterans' Affairs

7.27 This classification may be the subject of discussion on the basis of some Secretaries' views of the significance of their Minister's role, where their Departments are heading or of future responsibilities, but the Tribunal, fortified by the work of Egan Associates, recommends the allocation based on the extensive analysis undertaken in this present review.

The Tribunal's Conclusions on Work Value & Classification

7.28 Overall, the Tribunal considers that the framework enunciated by Egan Associates establishes a viable ongoing basis for assessing the attributes of individual offices of Secretary and for making reasoned judgements about the differences between them and classifying them to one, or another, of the levels outlined above.

7.29 The present remuneration arrangements applying to Secretaries were outlined earlier in this report. For present purposes, the Tribunal notes that the difference in remuneration between the present two levels of Secretary is \$32,430:

Secretary Office	Total Remuneration	Base Salary
Department of the Prime Minister & Cabinet Department of the Treasury Department of Defence	\$503,220	\$402,670
Other Departments	\$470,790	\$376,640

7.30 It has been evident to the Tribunal, since the early stages of the review, that, in terms of 'work value', the offices of Secretary are distributed across a relatively wide range.

7.31 The Tribunal adverted to this in its 2007-2008 Annual Report in noting that *"the present remuneration range does not reflect adequately the range of responsibilities of these offices."* The Tribunal considers that, while these jobs, as a group, can be distinguished from most other senior public offices, distinctions can be drawn between them.

7.32 On the basis of the breadth of the 'work value' range, the Tribunal considered, but discarded, the possibility of establishing a classification structure with more than two levels.

7.33 In the Tribunal's judgement - reinforced by the views of Egan Associates - the use of two levels:

- is consistent with the relatively small number of offices concerned;
- provides a balance between ease of administration and the continuing, and necessary, possibility of administrative change in departments; and
- with an appropriate remuneration structure and range within each classification level, provides scope for justifiable distinctions to be made on the basis of matters other than the attributes of any given department (including, for example, acknowledgement of the relevance of increasing and diverse experience on the part of any Secretary).

7.34 The Tribunal will provide further details about the classification structure in the second Part of its Report. However, it can be indicated, at this stage, that the two-level classification structure to be proposed will have the following features:

- the Remuneration Tribunal determining the initial allocation of Secretary offices between Levels, as well as subsequent shifts between Levels arising, for example, from changes in the Administrative Arrangements Order;

- the remuneration of the offices of Secretary of the Department of the Prime Minister and Cabinet and Secretary of the Department of the Treasury being determined directly by the Remuneration Tribunal;
- the Secretary of the Department of the Prime Minister and Cabinet determining the placement of individual offices within each Level in consultation with the President of the Remuneration Tribunal;
- adequate recognition of the range of roles and responsibilities within each Level (the Tribunal envisages proposing several pay points within each Level); and
- means of recognizing, in remuneration, the attributes of individual office holders as well as the attributes of their respective Departments.

7.35 Part II of the Report will recommend:

- an initial reasonable adjustment of remuneration for existing office-holders
- a longer term remuneration structure entailing levels of remuneration which may be expected to be substantially above the current levels; and
- a transition path to the proposed remuneration structure contingent upon certain criteria being met, designed to ensure that there are no windfall gains (including in respect of superannuation) for current office-holders.

3. Classification

3.1 Structure of accountability in Government

For the purpose of determining the work value of the position of Secretary, I had regard to the role of a nominal Office of the Prime Minister, the role of the Cabinet in executive decision-making of Government, as well as the role of the Parliament and its various committees and the role of Ministers of the Parliament in order to form a view in relation to the nature and breadth of accountability of Secretaries. In that context I made a number of assumptions which informed my view in relation to the relative work value of the positions of the various Secretaries. Additionally, I sought perspectives from senior private sector executives who had long established and continuing involvement with senior Government officials, including Ministers.

I formed the view that within the Office of the Prime Minister would be the Deputy Prime Minister and the Treasurer with the prospect of one or two other senior Ministers representing the core strategic and political advisers to the Prime Minister. I acknowledge in that context that all members of Cabinet are required when Cabinet meets to address issues in a 'Whole of Government' context, as well as in accordance with the issues before the Cabinet which may be portfolio specific.

In forming the view which I have in relation to the position of Deputy Prime Minister and Treasurer in particular (given the scale of Australia Inc) I also reflected on the stewardship of major public companies where the Chief Financial Officer would in many respects be the key officer in the Office of the Chief Executive, except for the position of Deputy where such positions exist. This in no way is intended to diminish the importance of other Ministers or Departments over which they have stewardship, but rather to reflect the primary focus and responsibility of those with a whole of enterprise engagement and accountability. Further detail of this relationship of accountabilities appears in Appendix E – Chief Executive Accountabilities: Government and Private Sector.

In formulating an approach to the determination of work value in the context of Australia Inc, referencing the positions of Secretary, I am mindful of the unique attributes of governance within the context of Australia Inc in that the Prime Minister and the Board of Australia Inc (the Cabinet) are politicians elected by Australian citizens to manage the country in their interest. Politicians are not solely, if at all, chosen by their Party to stand for Parliament on the basis of their management expertise, their experience in a particular area of Government activity or any specific competencies that might be sought after by a Board of a leading company in choosing a fellow member or electing their Chairman.

In developing a work value structure for the office of Secretary I have had sole regard to the position's accountabilities and not in parallel developed a statement of the necessary experience that one might expect to find in a Secretary at each classification level, nor the specific competencies that one might expect to observe in a particular portfolio. These attributes could in part be deduced from the Statement of Accountability of the individual positions of Secretary which are appended to this report. The classification structure developed has of necessity embraced some acknowledgement of the process of appointment of Secretaries and the Parliamentary setting of the stewardship of Australia Inc. In considering the attributes of the role of Secretary I was equally mindful that only three appointments to the position have been made in the past fifteen or more years from outside the government sector.

In that context, in considering work value I have seen the majority of positions of Secretary as business group executives with distinct and different operations, each meeting their allocated requirements in the support of Australia Inc under the leadership of the Prime Minister and direction of the Cabinet, coordinated by the Department of the Prime Minister and Cabinet, with significant though different input to the Office of the Prime Minister by the Secretaries of the Departments of the Treasury and of Finance and Deregulation.

In a 'Whole of Government' context and reflecting variable demand, subject to events of the day, Secretaries either collaboratively or in a more portfolio-focused mode will be required to marshal significant resources to contend with matters of a national scale involving policy and operational complexity, community and political sensitivity and economic impact. Recent examples of these issues would include:

- the Government's domestic and international response to the global financial crisis;*
- the Government's support package to the banks and financial sector generally;*
- the Government's support package for the domestic motor vehicle industry;*
- the Government's engagement and response to the Victorian bushfires and Queensland and New South Wales floods;*
- the Government's engagement in establishing an infrastructure framework for a globally competitive digital economy;*
- the Government's proposed 'Carbon Pollution Reduction Scheme'.*

The last mentioned project represents a significant program which has entailed the compilation of multi-sourced external advice at the highest levels, extensive nationwide consultations, including the provision of opportunities for submissions from interested parties (major corporations and representative bodies), at the end of which a Government policy was formulated and circulated and the legislation introduced into Parliament. These processes, which will impact at varying times on the engagement of Secretaries in the business of Government, are unique to Government.

Other factors in which Secretaries, Ministers and advisors to the Government will need to engage and respond include the collapse of businesses impacting directly on many communities (ABC Learning), the Government's recent \$42 billion package in response to challenging economic times at both corporate and individual level and more recently, its \$40 billion plus proposal involving substantial Government funds in establishing a globally competitive digital economy.

These matters of national and/or regional consequence take on a character and a scale not normally reflective of a significant enterprise's involvements in its national or international workforce adjustments, refinancing debt or asset sales programs. The demands on a nation are fluid and variation in the nature of those demands and scale highlights the challenges for Departments of State and indeed their Secretaries. These are generally not demands observed in the private sector, albeit that the private sector is a key constituent in contributing to the economic wellbeing of the nation and its gross domestic product

I note in the context of 'Whole of Government' that both revenues and expenditures of the Commonwealth Government exceed \$250 billion and that the national gross domestic product which the Government continually endeavours to enhance exceeds \$1.25 trillion.

Another area of complexity in adjudicating on the classification of the position of Secretary is the nature of the engagement of the Secretary in the wider area of the Minister's involvements in the management of his or her portfolio agencies, which include direct engagement in some instances with the agency's Chief Executive Officer, in others with the Chairman of the Board or both.

I also observed that a number of Secretaries serve on the boards of the agencies, statutory corporations or other bodies within the province of their Minister's accountability from enterprises as diverse as the Australian Sports Commission to the Reserve Bank of Australia. I also noted, as I have in the private sector, that a number of Secretaries sit on international bodies relevant to their Minister's portfolio and/or their expertise, bringing the benefit of those engagements to the Government of the day.

At a conceptual level I deduced that States and Territories represented satellites of the national Government, with a focus on delivering services and supporting enterprises in relation to their regional constituents. In that context I believe that the highest classification level identified as appropriate for Secretaries of Commonwealth Departments reflects accountabilities greater than those likely to be observed at State level given their breadth, scale and to a considerable extent their oversight of State Government program requirements, embracing the provision of Commonwealth funds to assist in the delivery of regional services.

Accordingly, I do not therefore believe it would be appropriate for my recommendations to be used for the purpose of automatic adjustments to key Government administration or agency roles at State level (on the basis of structure and the distribution of accountability at the time of preparing this report), excepting in circumstances where the State Government forms a view that it wishes to attract appropriate candidates and reward their most senior officers, positioning those reward arrangements at a higher 'market competitive level' than those that have been embraced in relation to the work value and reward recommendations prepared for the position of Secretary of a Commonwealth Department.

While it is clearly acknowledged that the accountability of the Secretary is substantially greater than that of a Deputy Secretary or Associate Secretary, further work and consideration may be required to be undertaken in terms of classification level parameters, career development and succession planning within Government. This is particularly so if these positions are to be principally resourced by those trained in Government, with movement between Departments, portfolio agencies and statutory bodies as part of that development process in order to appropriately equip the most able officers in the Government's employ to assume these key roles, particularly given the fact that the Ministers of the Parliament are unlikely to have the necessary administrative and professional skills to offer stewardship in a managerial context.

3.2 Work value considerations – a broad market perspective

Issues which will require consideration will be the differentiation between positions that have a 'Whole of Government' policy engagement, though not necessarily oversight of significant direct expenditure, eg the Secretaries of the Departments of the Prime Minister and Cabinet and the Treasury, through to the Secretaries of those Departments which have a combination of policy development and the management of substantial Government appropriations. Consideration must also be given to Departments of significant scale, either spread around the world or around Australia, where the task is to deliver a service to the community regarded by the Government as important, and to do this efficiently within the resources available, not by minimising cost to the detriment of the recipients of benefits but rather by optimising the value of the benefits within the budgeted resources.

Diversity and complexity are further elements contributing to work value assessment. Another element is the extent to which a Secretary's position has either or both primary accountability for a Department's operations under their stewardship as distinct from shared, contributory or advisory accountability in the context of 'Whole of Government' initiatives.

In reflecting upon the relative work value of the position of Secretary I believe that a primary differentiator between the position of Secretary and a Chief Executive Officer (CEO) in a major public company would be the latter's accountability for shareholder

wealth, increasingly in competitive global markets where choice of resource allocation and risk sits primarily with the CEO and the executive team.

While acknowledging in this report some specific differences in the nature of and accountability of a Secretary and that of a CEO of a major public company, both generally and within a 'Whole of Government' context, it is my judgement that it remains the closest comparator for the position of Secretary. Due to the varied obligations of executives known as Chief Operating Officers, while broadly generic in character, comparison of the office of Secretary with this position is not appropriate. Comparison with the position of business group head is also not appropriate given the primary accountabilities of the position of Secretary. While the position of Secretary has a number of comparable attributes within the construct of 'Whole of Government', it could be argued that similarly within the context of Australia Inc there are many substantial private sector companies providing retail services, exploring and mining the mineral and energy resources of the nation, providing health services, business services, technology and science based services, insurance services, financial services, etc. Each of these entities has a relatively modest constituency of shareholders, some international shareholders, though in no sense a 'whole of nation' focused set of obligations.

In most respects the government of the day expects Secretaries to manage allocated resources efficiently, either as advisers, resource allocators or service providers without having a profit motive, though ever mindful of stakeholder outcomes. It is evident that Secretaries have fiduciary obligations for dispensing public monies and for the management of public assets. Secretaries deal with significant risk of fraud in relation to both elements. Risk management, particularly in the current challenging economic environment, is real because of Government guarantees in many organisations under the oversight of Secretaries, though often directly reporting to Ministers. Notwithstanding that, the actual fiduciary accountability rests primarily with the Secretary. From the Minister's and the Government's perspective Secretaries are also required to advise in relation to political risk and reputational risk.

A Secretary's role is to both manage operations and to provide advice to the Government of the day. In the latter context they must remain fearless in relation to the independence of their advice. This is an area where many Secretaries are challenged by such an obligation. It reflects a requirement for a significant capacity to operate in environments of high complexity and changing priorities of Government with the end goal reflecting values at variance with the private sector. Within the Westminster system of Government the value of advice from the position of Secretary is key.

The role of a Secretary in this context is primarily to facilitate effective decisions being made by Government. Secretaries are accountable to a Minister who is in a sense a semi Executive Chairman, though not an independent Chairman nor necessarily skilled in the relevant disciplines or seasoned in dealing with the issues of the Department. A Minister's office will also be a key point of interface and often be called upon to handle significant political or reputational issues and be another source of advice to the Minister.

Political savvy and judgement are, however, vital. A key skill requirement is to survive in the context of Government stewardship through Cabinet and Ministers. A Secretary is required to meet the expectations of the Minister, to meet broad political stakeholder expectations and to manage staff to deliver programs allocated to the Department. A Secretary cannot, however, take decisions which are politically difficult or unpalatable to the Government. While accountable for the activities and the stewardship of a Department some Secretaries have as a primary focus strategy formulation and policy development, whereas others may combine this focus with significant operations and others have a lesser focus on policy and program development and a greater focus on service delivery.

Other observations are that Secretaries are required to respond quickly to Parliament and in that context need to be politically adroit and often imaginative. Notwithstanding that observation, a view might be that the Secretary of the Department of Finance and

Deregulation and the Secretary of the Treasury have to bring commercial perspectives to Government in order that they manage the resources available to them prudently and identify ways and means of maximising the benefit that can be derived from those resources

3.3 Foundation for classification structure

The preparation for establishing a classification of Secretary positions involved the development of a classification tool embracing universal principles within a broadband construct. While there are a number of methodologies available for the purpose of determining work value, the elements considered remain common and focus on job content, complexity, judgement and leadership demands, as well as nature of accountability for financial, material and human resources and incumbent attributes essential in meeting the requirements of the position. Position classification does not concern itself with an individual's performance or effectiveness in the position but rather establishes the relative value of a position compared to others.

3.3.1. Classification descriptors

The factors which have been embraced in the classification descriptions are the core knowledge or experience required, the scope of the position in terms of functions, geographic and jurisdictional breadth, the diversity and complexity of activities and the degree to which the management of those activities are defined, the scale of the enterprise having regard to a combination of financial and other metrics, including numbers of employees, and the degree to which the position incumbent has primary, shared or contributory accountability for outcomes.

The classification descriptors have drawn upon a number of different job evaluation methodologies, including a points factor methodology which was used to establish the framework for the Senior Executive Service (SES) in the APS, that framework having been developed by the writer, and classification methodologies embraced by other major public service organisations outside Australia together with the general principles of work value.

The broad descriptor or level classifications determined do not of themselves limit remuneration outcomes which are influenced by other factors, including the marketplace for similar positions, the marketplace for specific and unique skills or experience that may be required for particular jobs or an individual incumbent's effectiveness or history of employment at a similar level.

3.3.2 Constituency and political sensitivity

Departments had varying levels of engagement in Commonwealth and State matters, some were confined to particular sectors of Government interest, both domestic and international, some Departments had a greater focus on policy development and implementation as distinct from those with a significant engagement in service delivery. I observed varying degrees of intimacy in the oversight of portfolio agencies, with a high incidence in many areas associated with engagement in policy and program reform.

All Secretaries had significant demands placed on them, whether domestic and/or international, in relation to stakeholder relationships, managing relationships with their Minister or Ministers and Parliamentary Secretaries and their support staff, as well as the Parliament, including scrutiny arising from their obligations under the FMA Act and other legislation.

3.3.3 Organisation and position attributes

The framework within which all Secretaries operated was common, with the exception of Defence where a diarchy has been long established reflecting a sharing of accountability across many areas of policy and program implementation between the Secretary and Chief of the Defence Force. Discussions revealed the need for common attributes among Secretaries and an acceptance by incumbents that the constituent elements of

their Departments can vary on short notice in parallel with changed Government priorities and policy initiatives (including the abolition of departments) and/or in response to unplanned factors, including the global financial crisis, natural disasters or terrorist incidents.

Our engagement in determining the relative work value of positions did not have regard to the effectiveness of present or past incumbents or their relationship with their Ministers and their staff or the Parliament.

The framework within which a Secretary operates (with the exception of the Department of Defence) is common across the Departments, the significance of engagement in policy formulation and policy advice was also common and in all instances Secretaries indicated that they accepted accountability to their Minister(s) as the Minister's prime source of policy advice. All were subject to common financial management protocols and all were subject to the preparation of budget statements in accordance with a common set of criteria.

A view was put by many Secretaries that there was a commonality of attributes essential to fulfil the role, though certain portfolios required particular expertise without which an individual would be unlikely to be effective in meeting their position objectives. Secretaries' time commitment on policy as distinct from service delivery and management issues varied considerably, with some having a primary engagement in policy development and implementation, others a primary engagement in service delivery and others a high level of complexity in both, such as Education, Employment and Workplace Relations; Families, Housing, Community Services and Indigenous Affairs, as well as Health and Ageing.

Some Departments had a short to medium term focus as the dominant management and policy scope in their roles whereas the focus of others straddled the short term through to the very long term.

The classification construct adopted for the position of Secretary takes into account the generic knowledge and experience required for the role, as well as the specific expertise or managerial demands, together with the scope of Department portfolios, including portfolio agencies, the degree to which the Secretary's role is principally domestic or incorporates both International and domestic engagement, including participation in COAG.

Some Departments such as the Prime Minister and Cabinet and the Treasury have an intimate and intense engagement in the policy formulation and outcomes of Government initiatives, others have a key 'Whole of Government' monitoring or advisory role such as the Departments of Finance and Deregulation and the Attorney-General's. Others have a significant engagement in a defined portfolio area involving substantial disbursements and areas of policy sensitivity impacting on the lives of most Australian families, including the Departments of Education, Employment and Workplace Relations, Health and Ageing, and Families, Housing, Community Services and Indigenous Affairs.

There are Departments which have a critical and strategic engagement in national security and emergency management, including the Departments of Defence, Foreign Affairs and Trade, the Prime Minister and Cabinet and Attorney-General's. Others have a highly focused, significant engagement in policy formulation and program implementation in key economic areas, including the Departments of Broadband Communications and the Digital Economy; Climate Change; Immigration and Citizenship; Infrastructure, Transport, Regional Development and Local Government; Innovation, Industry, Science and Research; and Resources, Energy and Tourism. Others are highly focused in specific sectorial policy and program areas or service delivery, including the Departments of Human Services, and Veterans' Affairs. Others reflected areas of significant policy sensitivity such as the Departments of Agriculture, Fisheries and Forestry; Climate Change, Environment, Water, Heritage and the Arts; and Immigration and Citizenship.

3.3.4 Diversity of portfolios

Diversity was also influenced by the nature and scale of portfolio agencies within the Minister's purview and the degree of engagement of the Secretary in the management of those agencies or as a Board member as distinct from the provision of policy support to the Minister and support to the agency in budget submissions. The nature and criticality of engagement with external stakeholders, policy sensitivity and the significance of those stakeholders to the effectiveness of the delivery of Government programs also varied.

The consequence of error of judgement was considered to be greatest in those areas oversighting the largest expenditures and/or with intimate engagement in 'Whole of Government' initiatives or strategic programs. Scale in terms of expenditures, revenue accountability, assets managed, major contract oversight and interdepartmental engagement were also relevant considerations and while it was accepted that all Secretaries had primary accountability in relation to the 'four wall' expenditures of their Department, a number had operations primarily confined to Canberra whereas others were widely spread across Australia and others again had diverse international exposure.

While it was acknowledged that all Secretaries would be called upon to assist their Minister(s) in relation to challenges within portfolio agencies, their accountability at best was shared with those agency CEOs and the Minister, except in circumstances requiring radical change where the Secretary on a temporary basis may be held primarily to account during the period of change. While Secretaries were often engaged with their Minister(s) in formulating legislation and/or regulation for the Minister's portfolio agencies, their role was primarily advisory without accountability for agency outcomes.

The effectiveness of service delivery by portfolio agencies or Departments was often shared with other Departments, one having oversight of the administration of the portfolio, the other having contracts associated with service delivery, for example, the role of Human Services with Medicare and Centrelink and the contractual relationship between those agencies and the Departments of Health and Ageing, Veterans' Affairs as well as Families, Housing, Community Services and Indigenous Affairs.

Not all Departments had a significant engagement in COAG or portfolio agencies. Some had a greater engagement in the management of a large workforce than others. All Secretaries had a clear accountability for the resourcing of their Departments, as well as the training and development of their staff.

Discussions with nineteen incumbent Secretaries revealed a significant diversity of portfolios with varying complexity having regard to the scope of policy from 'Whole of Government' to more defined areas of portfolio engagement across Departments varying in scale having regard to expenditure, revenue collection and oversight of Government disbursements, often administered by others. Regard was also had to the engagement of the Secretary in the portfolio agencies under their Minister(s) direction and in that context their scale, geographic diversity and independence.

3.3.5 Adapting to change

Given the diversity of Departments and the prospect for regular change in the priorities of Departments or the areas of Government which are coordinated under a Secretary, it was my assessment that some flexibility needed to be built into a classification framework in its function as an element of a work value structure. Accordingly, I have retained two classification levels as distinct from proposing three or more, an approach which was under consideration. Positions of Secretary have been allocated on the basis of their present role and accountability to one of the two designated levels. The allocation of positions does, however, vary from that which presently exists.

I believe that the position of Secretary is unique and while it represents a significant leadership cohort in Government it should be considered a discrete group classification. Accordingly, a generic statement of the role of Secretary and the factors which set it aside from other key leadership roles in Government has been established.

In order to provide further flexibility and accommodate promotional appointments to the position of Secretary, as well as lateral movements between Departments or the activities of Departments varying over time at the initiative of the Government of the day, I have recommended more than one pay point for each level. My advice in this context is dealt with separately.

3.4 Classification levels and position allocation

3.4.1 Classification levels

Positions of Secretary, as noted, have been allocated to two classification levels addressing the diversity of accountabilities and differences of scale across the current nineteen Departments. In the material below two of the key positions of Secretary, notably that of the Prime Minister and Cabinet and the Treasury, have been commented upon specifically, highlighting the difference in nature of those roles compared to other roles similarly classified. The diarchy embraced by the Department of Defence has also been specifically addressed.

My generic classification definition for the position of Secretary reflects their engagement in 'Whole of Government' initiatives and the requirement of Secretaries to work as a collective in addressing the priorities of the Government of the day.

CLASSIFICATION for the office of SECRETARY

The position of Secretary has carriage of the significant policy and operational areas of Government. A Secretary has stewardship of a Department of Government and in that context, as its Chief Executive, has primary accountability for adapting policies and programs in accordance with the vision of the Government of the day. As the principal agent of Government in this respect the Secretary has a key leadership role, including a requirement to motivate others to change and adapt to the way in which the Government of the day seeks to develop and formulate its programs and ultimately implement those programs.

Positions of Secretary, while reflecting in part a 'Whole of Government' involvement, have been allocated to two distinct classification levels. It is acknowledged that all Secretaries undertake work requiring a high level of policy formulation reflecting a continuous global scanning of relevant issues for the Government of the day, often on a time horizon of three to seven years, though in some instances extending up to twenty years and beyond.

The position of Secretary at each classification level has a significant planning (visualisation) and stakeholder wide communication task that demands high level cognitive skills and strong emotional intelligence.

Executive positions at this level represent the most significant leadership roles in Government and the public sector generally in terms of policy diversity, level of investment, expenditure overview or revenue collection and/or operational demands embracing the most complex strategic, policy, administration and service delivery areas of the Australian Government's activities, both domestic and international.

Level 1

This level is the province of the key 'Whole of Government' roles within the Secretary structure, as well as those positions which have accountability for the oversight of Departments of significant scale and reach in relation to the program priorities of Government.

At this level the work of the Secretary requires a continual screening of the global environment to identify and favourably influence the Minister or the Executive of Government on any or all developments that might have significance to the Australian Government.

Complexity can no longer be readily contained. It is at this layer there is a shift from an operational perspective to one of assessing risk and adding value from all sources and areas of activity and reflecting that value across the Government's numerous engagements. This includes assessing the Government's needs for increases or decreases in investment or divestment, balancing the allocation of resources between a diversity of demands in a way which ensures that short and long term goals are achievable.

The province of the Secretary at this level is to assess and address the relevance of the bombardment of information about political, economic, social, technological and intellectual events from a global environment requiring a unique response consistent with the Australian Government's future aspirations (all spheres of Government, both Federal and State).

The focus of the work is on both domestic and international networking in all areas likely to be significant to the Australian Government in any field of endeavour. The Secretary must accumulate significant data and screen out the less significant. Some positions of Secretary must reflect relevant domestic and transnational situations back into the Australian Government and into the planning horizons of the Prime Minister and Cabinet, thereby sustaining as positive an environment as is possible for the Government across all its activities. Positions at this level have as a primary focus 'Whole of Government' appropriations, expenditures, revenue strategies and asset management.

The primary thrust of the work is creating an internal environment that makes it possible to judge a myriad of policy and investment priorities to enhance the value of the Government's assets and the nation's resources and contribute to its long term success and sustainability. Work at this level calls for worldwide data accumulation and analysis.

Positions at this classification level have either a primary focus on 'Whole of Government', including the Secretaries of the Departments of the Prime Minister and Cabinet, the Treasury and the Department of Finance and Deregulation, or may have as a primary focus significant expenditures and/or asset management, as well as oversight of staff resources, either Australia wide or international. This classification level includes the positions of Secretary of the Department of Defence; Department of Education; Employment and Workplace Relations; Families, Housing, Community Services and Indigenous Affairs; Foreign Affairs and Trade; and Health and Ageing. The dimensions of these engagements would typically involve the management or joint oversight of a significant proportion of Government appropriations or have primary or shared accountability for major Government programs.

Across this cohort of Secretaries the positions of Secretary of the Departments of the Prime Minister and Cabinet and the Treasury are distinct and different. The former position is accountable to the Prime Minister and to the Cabinet of the Australian Government as the primary source of policy advice across all aspects of the national Government's activities, embracing the marshalling of the resources of all other Departments from a policy and administrative perspective, assisting the Cabinet and its committees, overseeing intergovernmental relations and communications, nationally and internationally, specifically including counter-terrorism, policy coordination and national security policy coordination, together with the oversight of highly sensitive portfolio agencies. The Secretary is the principal source of advice and support to the Prime Minister of the day.

The Secretary of the Department of the Treasury is the senior policy counsel on all major economic policy issues to the Prime Minister, the Treasurer and Treasury portfolio Ministers, Parliamentary Secretaries and the Ministerial team, with primary accountability to promote a sound macro economic environment, effective Government spending arrangements, effective taxation and retirement income arrangements, as well as functioning markets. Under the Secretary the Department is also accountable for the

effective implementation and administration of the economic policies of the Government of the day.

The Secretary of the Department is also an ex officio member of the Board of Taxation, a member of the Board of the Reserve Bank of Australia, alternate Governor (for Australia) of the International Monetary Fund, Joint Chair of the Trans Tasman Council on Banking Supervision, Member of the Council of Financial Regulators and Member of the Secretaries' Committee on National Security. Other Government appointments include Chair of Australia's Future Tax System Review, Member of the Infrastructure Australia Advisory Council, Member of the National Broadband Network Panel of Experts, Chair of the Standard Business Reporting Programme Board, a Member of the Defence Procurement Advisory Board and Chair of the Advisory Board of the Australian Office of Financial Management.

The office of Secretary in the Department of the Prime Minister and Cabinet and the Treasury is not only reflective of the many attributes of the position of a CEO, albeit that their staff resources and expenditure oversight are not of the scale of some of the other roles classified in level 1, but they are also reflective of the key executives in the office of the Chairman, in this case the Chairman (Prime Minister), of Australia Inc, a \$300 billion annual expenditure and revenue corporation with more than 150 external satellites in the form of Government agencies which are 100% controlled by Government. In this context there is no Australian comparator of a similar scale. I have, however, formed the view that they do represent the most significant and onerous roles in respect of the office of Secretary in the Australian Government.

These positions as a consequence have a duality of focus. One is to manage their Department, which I have seen as secondary to their engagement with the Prime Minister and the Cabinet in the oversight and/or coordination of Australia Inc's activities in their broadest sense.

It is my judgement that these two key Secretary roles represent the pinnacle of Government policy advice, straddling 'Whole of Government' issues in virtually every facet of their endeavour.

While both Secretaries are accountable in the context of a CEO for managing their Department, they are also the principal source of advice to the Government on everything under the Government's stewardship in relation to Australia Inc, an enterprise with an operating budget and revenues in excess of \$300 billion, oversighting an economy with a gross domestic product in excess of \$1 trillion.

Other positions of Secretary oversighting substantial Government programs similarly classified undertake work requiring continual sensing of how change occurring anywhere across the Department's portfolio can impact upon the effectiveness of the Commonwealth Government. In the 'mega Departments' Secretaries construct unified systems where new directions are initiated. It is at this level that the key organisational direction is provided for a significant area of Government engagement and the time horizon and task complexity is extended, while management retains concurrently the ability to predict with sufficient confidence to budget for and undertake complex programs and projects, their priority often modified by the Cabinet of the day.

Secretaries in these roles must judge the likely impact of changes or events from both outside and inside the Department and its wider Ministerial portfolio engagement on any part of the system, to identify those parts where the impact is likely to be important, to trace the likely second and third order consequences of those impacts and to sustain an active anticipation of what changes are likely to unfold.

Secretaries at this classification level have to cope by means of judgement with a constantly shifting kaleidoscope of events and consequences with far too many variables to readily map. In pursuing their plans Secretaries must sense interconnections across the 'Whole of Government' and the broader environment and

continually adjust them in relation to each other with a sensing for all internal and environmental second and third order effects.

Work at this level calls for practical judgement of immediate and downstream consequences of change. The usual time frame is up to five years, though a number of judgements may extend well beyond that time horizon. Positions at this level will embrace the major Secretary roles across the Commonwealth Government where complexity and scale clearly exceeds those in level 2.

Arising from our proposed two level structure and principally arising from my examination of the construct of shared accountability through the diarchy in the Department of Defence, I have clearly formed the view that the position of Secretary of the Department of Defence appropriately retains its standing in level 1. I do, however, note in accordance with both legislation and Ministerial directive that the Secretary and the Chief of the Defence Force (CDF) have separate and joint accountabilities which they carry out under the policy direction and authority of the relevant Minister(s) and Parliamentary Secretaries. The structure, as I understand it, provides the CDF with clear accountability for command of the Australian Defence Force (ADF) and acknowledges the CDF's role as principal military adviser to Government. Equally, the diarchy recognises the Secretary's role as principal civilian adviser to Government with statutory accountabilities and authority, particularly under the PS Act and the FMA Act.

Arising from this clear statement of both joint and shared accountability and the independent obligations of the CDF for the command of the Australian Defence Force, it was my judgement that the position of Secretary of the Department of Defence within the construct of the diarchy, was appropriately aligned with other substantial Secretary roles noted above.

If there were to be a single officer overseeing Defence, including the Defence Materiel Organisation and the Defence Force, reporting to the Minister of Defence my classification of such a position could be different from that of the position of Secretary of the Department of Defence operating within the diarchy.

The nature of the Secretary's accountability for the Defence Materiel Organisation within the diarchy remained obscure, even though I have read a number of reports and recommendations to Government in relation to the stewardship of this enterprise which employs more than 7,000 staff in its own right, with expenditures approaching \$10 billion per annum. In the event of the position of Secretary having primary and not shared accountability for the Defence Materiel Organisation and being the principal officer in Government reporting on the Defence Materiel Organisation's strategic intent and operational effectiveness, it would be my clear recommendation that the position of Secretary of Defence in this context would represent the most onerous operational role of a Secretary in the classification.

Should a public sector role be created that oversights the entire Defence portfolio it is improbable that appropriate succession roles could be established outside the Defence portfolio under the existing structure of Government. In classification terms it would be most unusual to source a candidate for a position at the most senior level of Government with stewardship of several billion dollars in operating expenditure and the largest workforce in civilian resourced Government from a position of significantly less scale.

Level 2

Secretaries at this management level undertake work requiring several interactive projects, each of which is adjusted in relation to the others. At this level executives such as Secretaries do not pursue a single path but are required to establish a number of paths and alternatives, all running at the same time and interconnected one with the other.

Secretaries at this level of organisational complexity pursue a number of different programs in synchrony with one another, harmonising and resourcing the Government's

priorities while meeting schedules and guiding activity into alternate paths where necessary. There is a necessity to make trade-offs between tasks and resources in order to maintain progress along the composite route to achieving a key goal of Government which is likely to involve Government, business and community stakeholders, the latter two with significant self interest.

Work at this level calls for parallel processing and trading-off. The usual time frame is two to five years, though certain elements of the role and consequences of policy or program initiatives will extend beyond five years.

The policy, budget, resourcing and geographic dimensions of these positions in relation to the oversight of Government programs are below those in level 1, though encompass major areas of economic significance for Government, as well as service delivery or complex policy formulation where timely and appropriate outcomes are fundamental to the Government's reputation.

3.4.2 Position allocation to classification levels

Following a detailed review of each Secretary's position, they have been allocated to a classification level. These levels are set out in the table below.

3.4.3 Alignment with the current classification

It is my judgement that the proposed classification has principally recognised the continuing criticality of those positions presently classified in level 1 although, as noted above, there is a distinct and different role being fulfilled by the Secretaries of the Departments of the Prime Minister and Cabinet and the Treasury. It will be noted that having regard to the broad cohort of Secretaries and the current distribution of accountabilities among them I have proposed that five of the positions previously allocated to level 2 should be differentiated from the balance of their cohort. The positions elevated in this context include the office of Secretary in the Departments of Education, Employment and Workplace Relations; Families, Housing, Community Services and Indigenous Affairs; Finance and Deregulation; Foreign Affairs and Trade; and Health and Ageing. The balance of positions, numbering eleven, retain their alignment of equivalence within the long established two level classification structure. In essence, therefore, the principal point of departure following a review of all positions of Secretary, after discussion with each incumbent in mid 2008, led me to the conclusion that a number of positions of Secretary should be uplifted in terms of their relative classification and that the most appropriate way of achieving that outcome was to incorporate those positions in level 1.

While my initial judgement was that the prior two-level classification model did not adequately recognise the differences in terms of the scale of Departments under the stewardship of Secretaries, I have formed the view, though acknowledged the differences between the various roles occupied by Secretaries, that a two level classification structure, should the Government adopt a more flexible approach to reward in recognition of a variety of factors put forward in the second of my reports, should adequately accommodate the Government in both attracting and retaining high calibre and experienced executives in the service of Government to fulfil the role of Secretary. While I have not used scale in terms of employee numbers as a key foundation for pay comparison, it does have a direct impact on Departmental expenditure. The two tables below set out the differences across the spectrum of positions classified in levels 1 and 2 in respect of collections (revenue) and expenditure.

Classification Level 1 *				
	75 th Percentile \$ millions	Median \$ millions	25 th Percentile \$ millions	Average \$ millions
Revenue	1,585	1,237	679	3,157
Expenditure	1,966	1,238	679	3,617
Appropriations	45,635	25,600	1,930	28,256
* Includes Prime Minister & Cabinet				
Classification Level 2				
	75 th Percentile \$ millions	Median \$ millions	25 th Percentile \$ millions	Average \$ millions
Revenue	506	283	145	320
Expenditure	524	285	141	325
Appropriations	2,569	2,063	1,285	2,980
Position allocation to classification levels				
Level 1		Level 2		
Prime Minister and Cabinet		Agriculture, Fisheries and Forestry		
Treasury		Attorney-General		
Defence		Broadband Communications and the Digital Economy		
Education, Employment and Workplace Relations		Climate Change		
Families, Housing, Community Services and Indigenous Affairs		Environment, Water, Heritage and the Arts		
Finance and Deregulation		Human Services		
Foreign Affairs and Trade		Immigration and Citizenship		
Health and Ageing		Infrastructure, Transport, Regional Development and Local Government		
		Innovation, Industry, Science and Research		
		Resources, Energy and Tourism		
		Veterans' Affairs		

3.5 Concluding observations

The above classification structure endeavours to reflect distinct variability in position demands reflecting a multitude of differences in contextual attributes of the position of Secretary arising from engagement in 'Whole of Government' initiatives, Departmental breadth or narrowness of focus, scale as reflected in operating expenditure, revenue collection, staffing levels or the oversight of appropriations, geographic spread, policy and/or operational focus. However, I have acknowledged in my analysis that while the position of Secretary has many attributes common to the role of Chief Executive in a major private sector organisation it has other attributes which more properly reflect a major business group leader in the private sector without the value creation or profit generation obligation. Many Secretaries do, however, manage a diverse set of service delivery obligations involving rigorous attention to financial management, program prioritisation, staff management and leadership of both national and international staff resources.

Within the context of the Government and its obligations under the leadership of the Prime Minister and the Cabinet of the day, no single role of Secretary has oversight of Australia Inc in a policy, financial and operational context and in that setting no one Secretary fulfils the role of Chief Executive of Australia Inc. Nor is the Prime Minister fulfilling that role given that the interests of the Australian Government, while in part coordinated by the nineteen Secretaries, extend to more than 180 'wholly owned' agencies which have a reporting obligation through the Ministries of Government and through to the Cabinet in fulfilling a considerable diversity of roles, some corporatised, others not, and including but not limited to the Australian Postal Corporation, the Australian Broadcasting Corporation, the Australian Sports Commission, the Australian Submarine Corporation, the Australian Taxation Office, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), the Defence Materiel Organisation, the Future Fund Management Agency, Medibank Private Limited and the Reserve Bank of Australia, to name but a few.

While indicating that the most appropriate comparator for the position of Secretary would be that of a CEO of a significant private sector enterprise, those positions regarded as clearly unique in Government, notably the Secretary of the Department of the Prime Minister and Cabinet and the Secretary of the Treasury, are in many respects reflective of principal staff executives in global enterprises, in that context partially paralleling the role of a principal executive overseeing strategy, development and planning, or the role of an executive director in a major company with considerable authority, serving in the office of Chairman and CEO.

These two roles noted, while requiring different attributes and having different specific accountabilities, are those most closely advising the Prime Minister of the day and the Cabinet on matters affecting the 'Whole of Government', its policy priorities and foreshadowed initiatives across all matters affecting the constituents of the nation, its stakeholders and its economic welfare. Both Secretaries have a clear and separate accountability for managing complex Departments which impact all facets of Government endeavour, though neither role has a predominance of accountabilities reflective of a CEO of a major company.

The position of Secretary of the Department of Finance and Deregulation shares some similar attributes with these positions, while other roles in level 1 share more of the attributes of a CEO, as do those in level 2, although again there are key positions of Secretary in level 2 which while sector specific have a strong strategic and policy orientation, with all roles placing significant leadership demands on their incumbents, having to marshal collaborative engagement across a myriad of stakeholders, many of which are not under their control or indeed the control of Government.

While I formed the view that Secretaries are not primarily engaged in creating enterprise value, increasing profitability or seeking entry into new markets, they are in varying capacities focused on the productive use of assets, financial resources and people.

Another comparator for the position of Secretary would be the CEOs or senior partners of leading advisory firms in strategic consulting, as well as the legal and accounting professions whose Australia-wide and/or broader regional workforces of highly skilled employees now number in the thousands.

8. Public Sector Relativities

8.1 The Prime Minister's letter to the Tribunal of 20 May 2008 was mentioned earlier in this report.

8.2 The letter referred, in part, to the Tribunal's review of Secretaries. It included the following observations:

"I am aware that the Tribunal has indicated on several occasions since 2005 that Secretaries' remuneration has not kept pace with the private sector or with the rate of increase for upper levels of the SES, and that the former Prime Minister asked the Tribunal in 2007 to review Secretaries' terms and conditions....."

8.3 The Prime Minister also set out his views on an appropriate reference framework for the Tribunal's consideration of remuneration for Secretaries:

"In relation to the review requested by the former Prime Minister, my preference would be for that to be completed after a careful examination of remuneration levels and trends in the public sector across Australian jurisdictions. It is there, rather than in comparisons with the private sector, that I believe the most useful information will emerge."

8.4 The Tribunal, in its response of 29 May 2008, acknowledged the Prime Minister's observations and noted its intention to have regard for developments in the remuneration of public offices in bodies outside the core public service:

"In conclusion, on behalf of the Tribunal, thank you for your views on the relevance to our work of remuneration levels and trends in the public sector across Australian jurisdictions. We will give such data careful consideration. We will also take into account information derived from public bodies outside the core public service."

Secretary of the Department of the Prime Minister and Cabinet and Secretary of the Department of the Treasury

8.5 The Tribunal noted, earlier, its endorsement of the Egan Associates' conclusion that, of the nineteen offices of Secretary in the Australian Public Service, the offices of Secretary of the Department of the Prime Minister and Cabinet and Secretary of the Department of the Treasury (Secretary of the Treasury), while broadly equivalent in terms of the dimensions of their respective responsibilities and in the demands arising from them, are distinguished from all other offices of Secretary in these regards.

8.6 Two features, in particular, indicate the weight of the responsibilities of the Secretary of the Department of the Prime Minister and Cabinet

- first, the proximity of the office to the most central aspects of any government, namely the Prime Minister and the Cabinet; and
- second, the associated responsibility for ensuring that matters brought to government for consideration reflect a 'whole of government' perspective; that government decisions are implemented effectively; and that responses to the most significant emerging challenges to government are timely and incorporate the best possible analysis and advice.

8.7 The Tribunal has no doubt about the primacy, among federal public offices, of the Secretary of the Department of the Prime Minister and Cabinet and Secretary of the Treasury.

8.8 The Tribunal's priority has been to establish a basis for deciding appropriate remuneration for them.

Relativities between Public Offices

8.9 In its work, the Tribunal makes judgements about the relative 'weight' of roles and responsibilities between public offices and determines remuneration on the basis of their respective attributes. The Tribunal described this in its 2005-2006 Annual Report:

"Relativities within the public sector are also an important consideration. The Tribunal aims to ensure that relativities between public offices in its own jurisdiction are appropriate. Over time, developments in public administration can bring about significant changes in the roles and responsibilities of public offices. The Tribunal needs to assess the implications of such changes for the remuneration of the offices concerned. In general, the Tribunal takes the view that offices of comparable responsibility should be remunerated at like levels."

8.10 The Tribunal considers that, subject to the observations below, the relativities established between public offices in its determinative jurisdiction provide a sound foundation for conclusions about appropriate remuneration for these offices. These conclusions, together with the 'work value' relativities between the two levels of Secretary outlined previously, will, in turn, lead to the overall remuneration structure for Secretaries that the Tribunal will propose.

8.11 The Tribunal has considered some data about the remuneration of senior public offices in a limited number of state jurisdictions. However, the Tribunal perceives risks in relying on such data. First, the Tribunal lacks the specific insights into the positions concerned necessary to draw reliable conclusions about equivalence between state and federal public offices; and second, the Tribunal is unable to establish an appropriate discount to take account of inter-jurisdictional 'leapfrogging' (noting that, in respect of judicial and parliamentary offices, it is not uncommon for other jurisdictions to follow the Tribunal's decisions, notwithstanding the differences in responsibility between federal and state offices).

8.12 The Tribunal also notes the following observation by Egan Associates about differentials between federal and state offices:

I believe that the highest classification level identified as appropriate for Secretaries of Commonwealth Departments reflects accountabilities greater than those likely to be observed at State level given their breadth, scale and to a considerable extent their oversight of State Government program requirements, embracing the provision of Commonwealth funds to assist in the delivery of regional services.

8.13 The Tribunal considers that its knowledge of the federal public sector provides the best foundation upon which to draw conclusions.

Comparisons

8.14 There are few reference points for the office of Secretary of the Department of the Prime Minister and Cabinet. By contrast, the range of offices in the Treasury portfolio provides well-defined points of reference for the office of Secretary of the Treasury. The Tribunal considers the following offices to be particularly relevant:

- the principal offices of the Australian Prudential Regulation Authority (APRA); the Australian Competition and Consumer Commission (ACCC); and the Australian Securities and Investments Commission (ASIC); and
- the Governor and Deputy Governor of the Reserve Bank of Australia.

8.15 The remuneration history of these offices is therefore highly relevant to the present enquiry into remuneration of Secretaries.

8.16 The Tribunal is conscious of the significant responsibilities vested in each of these offices. However, the responsibilities of the Secretary extend across the full range of economic, budgetary and financial matters of interest and concern to government. The overview in the 2009-2010 Portfolio Budget Statements for the Department of the Treasury gives an indication of the breadth of these responsibilities:

Department of the Treasury - Agency Overview - Strategic Directions

- efficient administration of federal financial relations;
- lead role in providing policy analysis and advice on managing the impacts of the global economic slowdown;
- advice to Government on how best to meet its medium term fiscal strategy;
- examining taxation and retirement income arrangements;
- develop policies to ensure the financial system remains robust and dynamic, and that regulatory frameworks promote macroeconomic stability and market confidence;
- monitor prudential frameworks applying to the banking sector, insurers and superannuation funds;
- coordinate effective policy responses to current economic challenges with other economies through engagement in multilateral and regional forums;
- support the Government's engagement in forums such as the Group of Twenty (G-20);
- preparation of the third Intergenerational Report;
- lead Australia's Future Tax System Review

The Principal Offices of APRA, ACCC and ASIC

8.17 The current remuneration determined by the Tribunal for the most senior APRA, ASIC and ACCC offices is shown in the following table.

Office	Total Remuneration
Chair, Australian Prudential Regulation Authority (APRA)	\$621,230
Chairperson, Australian Securities and Investments Commission (ASIC)	\$545,730
Chairman, Australian Competition and Consumer Commission (ACCC)	\$545,730

8.18 The total remuneration determined for these offices is greater than that of any other full-time public office for which the Tribunal determines remuneration. **Attachment 1** to this Chapter sets out the present remuneration of a wider range of public offices.

8.19 The Tribunal initiated a review of these offices in 2005 and published its conclusions in June 2006. In conducting the review, the Tribunal aimed to ensure that its approach would afford it a detailed understanding of each of the public offices concerned. To this end, the Tribunal:

- considered the current circumstances of each agency and reviewed the background to the remuneration arrangements then current;
- afforded each agency the opportunity to make a submission;

- met with the principal office holder of each agency; and
- sought the views of the responsible Minister.

8.20 The Tribunal's Statement¹ of June 2006 included the following observations:

- *The work of these agencies is central to the effective functioning of the Australian economy.*
- *The ACCC enforces and administers the Trade Practices Act 1974 (TPA) and, as a result, holds a very public profile as an economic regulator. The ACCC has wide-ranging responsibilities to seek to promote effective competition and informed markets, encourage fair trading and protect consumers, and to regulate infrastructure service markets in other markets where competition is restricted. The Government has commenced an extensive legislative program to reform various aspects of the TPA.*
- *ASIC administers corporate law in relation to some 1.4 million companies. A key challenge for ASIC is the effective regulation of licensed exchanges and listed companies. The importance of this role is underscored by the fact that more than 55% of Australian adults directly or indirectly own shares. Confident participation by retail investors is assisted by financial services laws that maintain quality and value of financial advice for some 2.1 million people with a financial adviser. ASIC's consumer protection functions now encompass 15.7 million people with a deposit account and 10.5 million people investing through superannuation or annuities.*
- *APRA plays an important, high-profile and specialised role in the financial sector. It is the prudential regulator of banks, insurance companies and superannuation funds, credit unions, building societies and friendly societies. APRA currently supervises institutions holding approximately \$2.2 trillion in assets for 20 million Australian depositors, policyholders and superannuation fund members.*

8.21 The Tribunal also noted that it had reviewed the remuneration of the APRA offices following the extensive reform of that agency's structure and powers in 2003. On that basis, the Tribunal expressed the view, in 2006, that it was satisfied that the remuneration levels of the APRA offices were appropriate and that it did not intend to vary them. As at 1 July 2006, total remuneration for the office of the Chair of APRA was \$554,950

- by way of comparison, total remuneration for the offices of Governor and Deputy Governor of the Reserve Bank of Australia had been, according to the Bank, \$575,819 and \$430,762, respectively, at 30 June 2005.

8.22 It is particularly relevant to note that the then Treasurer, in the context of the 2003 reform of APRA, had advised the Tribunal that:

"The position of Chair should be considered as a peer to the Governor of the Reserve Bank of Australia."

8.23 In respect of the ASIC and ACCC offices, the Tribunal concluded as follows:

The Tribunal considers that developments in the roles and responsibilities of ASIC and ACCC justify the remuneration of the public offices in those agencies being brought into broader alignment with the remuneration of the public offices in APRA.

In particular, the Tribunal considers that the remuneration of the offices of Chairman of ASIC and Chairman of the ACCC should continue to be closely aligned, having regard to the remuneration of the office of Chairman of APRA.

¹ <http://www.remtribunal.gov.au/determinationsReports/byYear/default.asp?menu=Sec7&switch=on>

8.24 On this basis, the Tribunal determined significant increases in remuneration for the ACCC and ASIC offices and established new relativities that have since been maintained for the principal offices of APRA, ACCC and ASIC.

The Public Offices of Governor and Deputy Governor of the Reserve Bank of Australia

8.25 From its inception in 1973 until 1988, the Tribunal determined remuneration for the public offices of Governor and Deputy Governor of the Reserve Bank of Australia.

8.26 In the mid-1980s, disparities had emerged between the remuneration of the most senior public offices in 'government business enterprises' and like offices in the private sector. The Tribunal described the situation as follows:

*"Prior to 1985 the Tribunal had discussed with Government the level of remuneration payable to the senior executive officers of a number of the largest Government Business Enterprises. It had informed Government, inter alia, that such remuneration was less than that of senior executive officers in comparable or other relevant business enterprises in the private sector; that because of this it was becoming difficult to recruit and/or retain officers appropriate for such positions; that the level of remuneration for senior executive officers in such bodies had led to the remuneration at lower levels being less than it should have been and consequently the loss of officers at middle and more senior levels; that steps should be taken to provide for more appropriate levels of remuneration for the senior executive officers; and that if this were not done the efficient conduct of such enterprises would be, or would likely to be, affected adversely."*²

8.27 The Tribunal, at the request of the then Prime Minister, undertook an enquiry into the level of remuneration payable to the senior executive officers of a number of government business enterprises. The Tribunal's report was provided to the Government in March 1986.

8.28 In May 1988, the Government announced new arrangements to apply to the setting of remuneration levels for chief executive officers of certain government business enterprises. Under those arrangements:

- (a) the remuneration of a chief executive officer was to be fixed by the relevant board;
- (b) boards were to consult with the Remuneration Tribunal prior to negotiation on remuneration packages; and
- (c) boards were to advise the Tribunal of the terms of the remuneration packages once they had been concluded.

8.29 The new remuneration arrangements were given effect by the *Government Business Enterprises (Miscellaneous Reforms) Act 1988* (the GBE Act), which also established a new class of public offices, "principal executive offices".

8.30 The GBE Act also amended the *Remuneration Tribunal Act 1973* to establish a new function for the Tribunal, namely to provide advice to approved authorities in relation to terms and conditions, including remuneration, of principal executive offices.

8.31 These arrangements applied, at the outset, to several enterprises that were unarguably of a business-like character, including Qantas Airways Limited; Australian Airlines Limited; the Australian Telecommunications Commission; the Australian Postal Commission; and the Commonwealth Banking Corporation.

8.32 The Reserve Bank of Australia was also included in the list of government business enterprises. As a consequence the *Reserve Bank Act 1959* was amended by the GBE Act to invest the Reserve Bank Board with responsibility for determining the remuneration of the

² Remuneration Tribunal Annual Report 1988-1989 - Appendix 2

Governor and Deputy Governor. The consultation and reporting arrangements outlined above applied to the Board.

8.33 It is notable that, apart from Australia Post (which has since taken on a more commercial character), and the Reserve Bank of Australia, none of the entities identified originally as 'government business enterprises' remains in government ownership. In the Tribunal's view, it is unsurprising that an agency, like the Bank - being a primarily a central regulatory agency - continues to have statutory responsibilities that are much the same as those it had prior to its identification as a 'business enterprise'. Indeed, in retrospect, its nature and function are so different that its categorisation in 1988 as a 'government business enterprise' seems inappropriate. In this regard, the Tribunal also notes the recent observations by the Governor of the Reserve Bank about changes in the size of the Bank and the scope of its functions since the 1980s:

*"The organisation grew to nearly 3000 staff at its peak by the early 1980s, before technological change and financial deregulation saw a much diminished staffing need. Today the bank employs about 900 people."*³

8.34 In 2001, the *Remuneration Tribunal Amendment Act 2001* supplanted these largely informal arrangements. The amendments made in 2001 to the *Remuneration Tribunal Act 1973*:

- extended the jurisdiction of the Tribunal to principal executive offices; and
- identified the offices of Governor and Deputy Governor as principal executive offices.

8.35 However, for the Tribunal's principal executive office framework to apply to a specified, or subsequently nominated, office, certain declarations needed to be made. In the case of the public offices of the Reserve Bank of Australia, those declarations remain to be made.

8.36 Consequently, the offices of Governor and Deputy Governor, while specified as principal executive offices under the *Remuneration Tribunal Act 1973*, are not, in fact, obliged to conform with the framework determined by the Tribunal for establishing the remuneration of each such office.

8.37 As a result, the remuneration of the Governor and Deputy Governor is now set by the Reserve Bank Board without any reference to the Tribunal.

8.38 This situation distinguishes these particular statutory public offices not only from every senior public office in each of the other economic regulatory agencies - APRA, ASIC and ACCC - but also from the most senior Commonwealth statutory offices.

8.39 The Tribunal regards the office of Governor of the Reserve Bank as a most relevant continuing point of comparison for its present review of Secretaries and for the remuneration of the principal offices of APRA, ACCC and ASIC.

The Principal Economic Policy and Regulatory Agencies

8.40 In its review of the offices of APRA, ASIC and ACCC, the Tribunal acknowledged the significance of the roles of these agencies in managing the regulatory framework that is fundamental to the general economic well-being. The Tribunal has absolutely no doubt about the significance of the contribution of the Reserve Bank of Australia in this regard.

8.41 However, the Tribunal considers that there are significant points of distinction between each of the public offices of these agencies, on the one hand, and the office of Secretary of the Treasury, on the other. There are notable distinctions in what might be regarded as formal attributes of the respective offices (including appointment, tenure and termination) and 'statutory reach'.

8.42 The very significant distinctions in respect of appointment, tenure and termination are considered in detail in the next chapter of this report.

³ The Weekend Australian Financial Review 29 December 2009 - 3 January 2010 - "Values of a central bank" - Glenn Stevens, Governor of the Reserve Bank of Australia - Review p3

8.43 The regulatory powers administered by APRA, ASIC and the Reserve Bank stem from legislation.

8.44 The following table shows the legislation administered by each agency.

RBA	<i>Reserve Bank Act 1959; Payment Systems (Regulation) Act 1998; Payment Systems and Netting Act 1998; Cheques Act 1986; Corporations Act 2001; Electronic Transactions Act 1999; Financial Services Reform Act 2001; Payment Systems (Regulation) Regulations 2006</i>
APRA	<i>Australian Prudential Regulation Authority Act 1998; Financial Management and Accountability Act 1997; Corporate Law Economic Reform Program Act 1999; Banking Act 1959; Financial Sector (Shareholdings) Act 1998; Financial (Business Transfer and Group Restructure) Act 1999; Financial Sector (Collection of Data) Act 2001; Financial Sector (Collection of Data – Consequential and Transitional Act 2001); Insurance Act 1973; Life Insurance Act 1995; Life Insurance Regulations; Insurance Contracts Act 1984; Insurance Regulations 2002; Insurance Acquisitions and Takeovers Act 1991; General Insurance Reform Act 2001; Financial Sector Legislation Amendment Act (No.1) 2000; Superannuation Industry (Supervision) Act 1993; Superannuation Industry (Supervision) Regulations 1994; Retirement Savings Accounts Act 1997; Retirement Savings Accounts Regulations</i>
ASIC	<i>Corporations Act 2001; Australian Securities and Investments Commission Act 2001; Insurance Contracts Act 1984; Superannuation (Resolution of Complaints) Act 1993; Superannuation Industry (Supervision) Act 1993; Retirement Savings Accounts Act 1997; Life Insurance Act 1995; Medical Indemnity (Prudential Supervision and Product Standards) Act 2003</i>

8.45 The Department of the Treasury is not, itself, primarily, a regulatory agency. However, within the Treasury portfolio, the Department is responsible for ensuring that the portfolio's legislative 'fabric', as a whole, is maintained and developed in a manner consistent with government policy objectives.

8.46 In addition, the range of legislation for which the portfolio is responsible is significantly greater than that encompassed by the responsibilities of APRA, ASIC and the Reserve Bank. This is evident from the Administrative Arrangements Order⁴ which sets out, for each department, the matters dealt with by that department and the legislation administered by the Minister administering the department. **Appendix 6** is the component of the Administrative Arrangements Order of 25 January 2008 relevant to the Department of the Treasury.

8.47 In the Tribunal's view, this kind of 'indicator' - like the distinctions in appointment, tenure and termination - reflects key differences between regulatory agencies and departments. The former are characterised by specific statutory responsibilities within relatively well-defined boundaries, and, for the office holder, autonomy, independence and relative certainty of appointment and tenure. The Tribunal regards such attributes as being the necessary hallmarks of any entity invested with regulatory functions and exercising them at 'arm's length' from government.

8.48 The office of Secretary is quite the opposite - limited role definition (including in statute); higher risk; fluid responsibilities; and little certainty. That said, it is the flexibility of the departmental form, and the consequential scope available to any government to reshape the administration according to its current priorities, that are essential hallmarks of these offices.

8.49 The evident distinctions arising from these significant, if limited, indicators point clearly to material distinctions in work value between the office of Secretary and other senior public offices.

8.50 In the Tribunal's judgement, the most significant differences lie in the scope of the functions for which each office is responsible, and, particularly, their responsibility for providing policy advice to the Government and their accountability to the Parliament.

⁴ http://www.pmc.gov.au/parliamentary/docs/aao_july_2008.pdf

Scope of Functions

8.51 The Reserve Bank of Australia, APRA, ASIC and the Treasury are members of the Council of Financial Regulators. In September 2008, the Council published a "Memorandum of Understanding on Financial Distress Management"⁵.

8.52 The Memorandum included the following short descriptions of the "responsibilities of each member for dealing with stress in the financial system":

- *The RBA has primary responsibility for the maintenance of overall financial system stability, including stability of the payments system, and for providing liquidity support to the financial system or to individual financial institutions where appropriate.*
- *APRA is responsible for the prudential supervision of banks, building societies, credit unions, life and general insurance companies, friendly societies and certain superannuation funds. In performing its functions to protect the interest of depositors, policyholders and fund members, APRA is required to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia. APRA has failure management and enforcement powers to deal with a distressed institution and will be responsible for administering the Financial Claims Scheme (FCS).*
- *ASIC is responsible for monitoring, regulating and enforcing corporations and financial services laws, and for promoting market integrity and consumer protection across the financial services sector and the payments system.*
- *The Treasury provides advice to the Government on policy and possible reforms that promote a sound financial system, including on financial distress management arrangements. The Treasury has responsibility for advising the Government on matters relating to the exercise of the Treasurer's powers, and on the broader economic and fiscal implications of developments that pose a threat to the stability of the financial system.*

8.53 The Tribunal, noting observations about the respective roles of each of these entities in other published materials, accepts the foregoing descriptions to be accurate, if summary, statements of the responsibilities of each.

8.54 They suggest to the Tribunal that the common interest of each entity in ensuring a robust, flexible, stable and accountable financial system is achieved, primarily, through:

- the exercise of extensive and complementary statutory responsibilities, informed by deep expertise and thorough insights, on the part of the principal financial system regulators - the Reserve Bank, ASIC and APRA; and
- ongoing, system-wide, assessment, review, analysis and statutory and administrative reform by the Treasury, as the principal provider of policy advice to the Government.

8.55 It is understandable and appropriate that any regulatory agency should be concerned, primarily, with the proper exercise of its statutory responsibilities as they stand at any given time. It is also to be expected that each such agency, informed by experience and the responses of the regulated systems to external shocks and other developments, will be concerned to identify areas that would benefit from statutory and administrative reinforcement.

8.56 However, the primary concern of any government will be that it can draw upon ready advice that provides a system-wide balanced perspective, consolidating and assessing the views of individual regulators (and other interests, including those of the regulated); ascribes appropriate weight to current policy, contemporary circumstances, viable possibilities and

⁵ http://www.rba.gov.au/FinancialSystemStability/AustralianRegulatoryFramework/Pdf/mou_cfr_fdm.pdf

desired directions; advances and tests the evidence; and presents careful analysis and considered options. This is, primarily, the province of Secretaries.

8.57 With respect to the financial system, generally, for example, the primary responsibility for advising the Government rests with the Treasury. The Treasury - like each other department - is the principal adviser of its ministers and is directly accountable to the portfolio minister, in its case, the Treasurer.

8.58 In the Tribunal's judgement, these factors, of themselves, indicate that the roles and responsibilities of the office of Secretary of the Treasury are, at the very least, comparable to those of the principal public offices of the financial regulators.

8.59 The Tribunal observes, however, that the responsibilities of the office of Secretary of the Department of the Treasury extend beyond the financial system; the supervision of its component elements; and the effective functioning and regulation of the financial services sector and the payments system.

8.60 It is the scope and materiality of the Department's responsibilities that persuades the Tribunal that, amongst the most senior public offices of the financial regulatory agencies and those of the other agencies in the Treasury portfolio, the office of Secretary of the Department of the Treasury is the principal public office. In particular, the Tribunal considers that the responsibilities of the Governor are not greater than those of either the Secretary of the Department of the Prime Minister and Cabinet or the Secretary of the Treasury.

8.61 The Tribunal also notes the following observation by Egan Associates:

"I further assumed that the Secretary of the Department of the Prime Minister and Cabinet would be unlikely to be appointed to any other role in Government once assuming that role and that the Head of Treasury, unless appointed to lead the Department of the Prime Minister and Cabinet, would be unlikely to assume any other Secretary role in Government, though in the past I observe that the Head of Treasury has been appointed to the position of Governor of the Reserve Bank (at a time when the regulatory accountability was retained by the Reserve Bank), a role today which I would see as a lateral move at best."

The Tribunal's Conclusions - Secretary of the Department of the Prime Minister and Cabinet and Secretary of the Treasury

8.62 The Tribunal considers that the responsibilities of these, the most significant of the offices of Secretary, extend beyond those of the principal offices of the economic regulatory agencies for which the Tribunal determines remuneration.

8.63 The Tribunal is reinforced in its conclusion by the material differences between these offices in their terms of appointment and tenure. The Tribunal accepts that the continuity of appointment associated with the offices in the economic regulatory agencies is intended to reinforce their independence and to enable the holders of these offices to lean against prevailing opinion, as necessary, for the longer term good. However, the considerable uncertainty that attends the office of Secretary needs to be accorded weight.

8.64 The Remuneration Tribunal, in its first report, in 1974, said this:

*"In our assessment, the Secretary to the Department of the Prime Minister and Cabinet and the Secretary to the Department of the Treasury deserve special consideration. We see the functions and responsibilities of these offices as persistently broad, changing and onerous..."*⁶

8.65 The present Tribunal regards this assessment as being as accurate today as it was in 1974.

⁶ Remuneration Tribunal - Reports and Determinations - July 1974 - p26

8.66 In the Tribunal's judgement, each of these offices is more singular and demanding than any of the full-time public offices in the Tribunal's jurisdiction and other senior federal public offices.

Movements in SES Remuneration

8.67 On 24 September 2009, the Tribunal issued a Statement setting out the basis for its decision to increase the remuneration of public offices by 3%. The Statement included a table showing movements in SES remuneration since 1998. Over the ten years to the end of 2008, median SES Band 3 remuneration (excluding performance pay) increased at a compound annual rate of more than 6%.

8.68 These increases - arrived at largely through the operation of the isolated and insulated APS "internal market" and without reference to a third party – consistently exceeded the annual adjustments determined by the Tribunal over the same period. One significant consequence has been that the remuneration of higher level SES officers (primarily Deputy Secretaries) has moved closer to that of Secretaries. As a result, the balance between reward and responsibility has become distorted. This is unsatisfactory.

8.69 It is not evident to the Tribunal that there has yet been any concerted action to reduce the scope for such erosion in future. In the absence of any Service-wide approach to managing SES expectations, the increases evident in the last 10 years may well continue. The Tribunal is concerned that, in these circumstances, new relativities arising from any adjustments in the remuneration of Secretaries that it may be disposed to recommend will, if implemented, simply be eroded. As the Tribunal noted in its 2008-2009 Annual Report:

"The Tribunal's concern is that, in the absence of consistent means of establishing and varying SES remuneration across the Australian Public Service, any movement in the remuneration of Secretaries will create a "remuneration vacuum" likely to engender, over time, competitive tensions between Departments to fill the perceived void."

8.70 As a first step, the Tribunal has written to all Secretaries seeking their advice about the remuneration of Associate Secretaries and Deputy Secretaries in their respective departments. The Tribunal will then consult with senior officials and relevant Ministers about the arrangements necessary to ensure that any new relativities between Secretaries and their direct reports arising as a consequence of the Tribunal's recommendations on the remuneration of Secretaries are maintained over time.

8.71 The Tribunal has also noted the comments in the September 2009 discussion paper *"Reform of Australian Government Administration: Building the world's best public service"*, issued by the Advisory Group on Reform of Australian Government Administration, identifying the consequences of the lack of maintenance of an APS-wide classification system; classification creep; and lack of Service-wide consistency in remuneration and responsibility. In the Tribunal's view, these problems need to be addressed; SES remuneration and classification arrangements would be a practical place to start.

Remuneration of the Principal Offices of APRA, ASIC and ACCC

8.72 The Tribunal has acknowledged, previously, the importance of the functions of each of these agencies. Their functions and those of the Reserve Bank are complementary and their respective functions are highly significant.

8.73 The Tribunal has no doubt that the responsibilities of the principal public offices of APRA, ASIC and ACCC are demonstrably greater than those of the Deputy Governor of the Reserve Bank of Australia. It need only be observed that, unlike the Deputy Governor, each of these office holders is an agency head. The proper point of comparison, therefore, is the Governor.

8.74 The Tribunal will revisit the remuneration of the Chair of APRA, the Chairperson of ASIC and the Chairman of ACCC, at least, once it has presented its final report on this review.

SECRETARIES' REMUNERATION RELATIVE TO THE REMUNERATION OF FULL-TIME PUBLIC OFFICES

Secretaries Total Remuneration (TR) Upper Level - \$503,220 Lower level - \$470,800 <small>[from 1 Oct 2009]</small>	Key	
		Above TR range of Departmental Secretaries
		At/around TR range of Departmental Secretaries
		Below TR range of Departmental Secretaries

Public Office [remuneration determined by the Tribunal]	Total Remuneration
Chair, Australian Prudential Regulation Authority (APRA)	\$621,230
Solicitor-General	\$545,280
Chairperson, Australian Securities and Investments Commission (ASIC)	\$545,730
Chairperson, Australian Competition and Consumer Commission (ACCC)	\$545,730
Deputy Chair, Australian Prudential Regulation Authority	\$519,800
Member, Australian Prudential Regulation Authority	\$494,470
Deputy Chairperson, Australian Securities and Investments Commission	\$458,410
Director of Public Prosecutions	\$431,070
Chair, Australian Communications and Media Authority (ACMA) [includes personal loading for present appointee of \$22,710]	\$420,140
Member, Australian Securities and Investments Commission	\$397,430
Commissioner, Australian Federal Police	\$395,660
Director-General of Security, Australian Security Intelligence Organisation	\$385,270
Director-General, Office of National Assessments	\$373,590
Deputy Chairperson, Australian Competition and Consumer Commission	\$372,220
Vice-Chief of the Defence Force	\$372,220
Chief Executive Officer, Australian Crime Commission	\$354,730
Inspector-General of Intelligence and Security	\$355,210
Commonwealth Ombudsman	\$372,170
Member, Australian Competition and Consumer Commission	\$355,230
Examiner, Australian Crime Commission	\$355,230
Law Enforcement Integrity Commissioner	\$327,440
Chief of Navy	\$355,210
Chief of Army	\$355,210
Chief of Air Force	\$355,210
Chair, Australian Energy Regulator	\$355,210
Chairperson, Productivity Commission	\$355,210

9. Termination and Redeployment

9.1 It is a commonly held view, in the Tribunal's experience, that a Secretary, once appointed, is entitled to remain in office permanently; in short, that a Secretary has tenure.

9.2 This is a misconception.

9.3 Setting aside dismissal for misconduct, the termination of an appointment as Secretary can be effected extremely quickly. As cause need neither be given, nor demonstrated, termination can be more expeditious, in fact, than in the private sector.

9.4 The Tribunal referred earlier in this report to the observation in its 2007-2008 Annual Report that *"the attributes of the office of Secretary - particularly its fluidity, complexity and portfolio-wide responsibilities - distinguish it from many public offices in the Tribunal's jurisdiction"*. The Tribunal also noted its assessment that, under the present appointment and termination arrangements, too much of the risk lies with the Secretary.

Appointment

9.5 Appointment to the office of Secretary does not entail a fixed term. The creation of an office of Secretary, and its abolition, are consequences of the establishment, and abolition, of a Department. Section 56 of the *Public Service Act 1999* provides as follows:

56 Creation of offices of Secretary

- (1) On the establishment of a Department, an office of Secretary of that Department is established by force of this subsection.
- (2) On the abolition of a Department, the office of Secretary of that Department is abolished by force of this subsection.
- (3)

9.6 This lack of a fixed term is one of the features that distinguishes the office of Secretary from other public offices.

9.7 Typically, appointments to public offices are made for fixed terms, with the maximum term of an appointment to an office being specified in the legislation establishing the office.

9.8 In respect of the public offices of APRA, ACCC, ASIC and the Reserve Bank of Australia, the terms of appointment set out in the enabling legislation are as follows:

Agency	Legislation	Appointment by	Term
APRA	<i>Australian Prudential Regulation Authority Act 1998</i>	Governor-General	for a period not exceeding 5 years;
ASIC	<i>Australian Securities and Investments Commission Act 2001</i>	Governor-General on the nomination of the Minister	at most 5 years; eligible for re-appointment
ACCC	<i>Trade Practices Act 1974</i>	Governor-General	period not exceeding 5 years; eligible for re-appointment
Reserve Bank of Australia	<i>Reserve Bank Act 1959</i>	Treasurer	period not exceeding 7 years; eligible for re-appointment

Termination

9.9 The statute by which a public office is established generally includes provisions setting out the basis upon which an appointment may be terminated. Such provisions set out clear tests and include limited, if any, scope for discretion on the part of the office responsible for termination.

9.10 The following table summarises the provisions relevant to the public offices of APRA, ASIC, ACCC and the Reserve Bank.

Agency	Termination of Appointment terms
APRA ASIC ACCC	<p>The Governor-General may terminate an appointment on grounds of:</p> <ul style="list-style-type: none"> • misbehaviour or physical or mental incapacity; • bankruptcy and related matters; • absence from duty for 14 consecutive days or 28 days over 12 months; • engagement in unapproved outside employment or conflicting employment; • failure to not have a role in deciding matters that they may have an interest in; and • failure to disclose conflict of interest. <p><i>[The appointment of an APRA member is also immediately terminated if the member becomes a director, officer or employee of a body regulated by APRA.]</i></p>
Reserve Bank of Australia	<p>Appointment may be terminated by the Treasurer on grounds of:</p> <ul style="list-style-type: none"> • permanent incapacity; • engagement in any other paid employment outside of RBA Governor duties; and • bankruptcy or related matters.

9.11 **Attachment 1** to this Chapter summarises the appointment and termination provisions applying to several other senior federal public offices. The provisions generally provide for:

- appointment by the Governor-General; and
- a term of appointment - either fixed or specifying the maximum period - specified in an instrument.

9.12 Most significantly, for these purposes, the conditions for termination of the appointment, like those of the offices noted above, are detailed and properly at arm's length from government.

9.13 The termination of an appointment as a Secretary, however, is unencumbered by any prescriptive framework of threshold 'tests'.

9.14 Section 59 of the *Public Service Act 1999* is straightforward. It provides as follows:

59 Termination of appointment

- (a) The Prime Minister may, by notice in writing, terminate an appointment of Secretary at any time.
- (b) Before terminating the appointment of the Secretary of the Prime Minister's Department, the Prime Minister must have received a report about the proposed termination from the Commissioner.
- (c) Before terminating any other appointment, the Prime Minister must have received a report about the proposed termination from the Secretary of the Prime Minister's Department.

9.15 It is evident from the Australian Public Service Commission's paper on "Tenure" that tenure/termination provisions have been subject to consistent amendment over an extended period - the general trend having been a gradual reduction in the security of appointment.

9.16 In summary:

- prior to 1977, a Secretary (then - in style and in fact - a 'Permanent Head') could only be removed from office by abolition of his or her department, unless dismissed from the service for misconduct;
- now, it is a matter virtually at the discretion of the Prime Minister.

9.17 This feature of a Secretary's terms and conditions - as it stood prior to the amendments to the *Public Service Act 1922* in December 1999 - was examined in considerable detail in proceedings before the Federal Court of Australia¹.

The Remuneration Tribunal's 1994 Report

9.18 The 'loss of tenure' has not been entirely unrecognized in remuneration.

9.19 The Remuneration Tribunal, in its 1994 Decisions and Reports, outlined the consideration it had given to varying its then determination for Secretaries in the light of anticipated legislative change. The amendments to the *Public Service Act 1922* included, as the Tribunal then described it, provision for:

*"...persons already within the public service to be appointed as Departmental Secretaries for fixed terms up to five years and thus to forego tenure."*²

9.20 The Tribunal then decided that, in exchange for giving up tenure, a loading of 20% of salary would be granted.

9.21 The Tribunal notes, however, that no consideration has since been given to adjusting remuneration to reflect subsequent changes in the provisions concerning termination. In short, while the risk to a Secretary has increased (in terms of the increasing simplicity and speed with which termination can be effected), there has been no consonant increase in remuneration.

9.22 The then Tribunal also included the following observations in its report:

"For the monetary benefit to be justifiably received, the Tribunal takes the strong view that the foregoing of tenure must be complete and genuine. The new legislation provides considerable latitude to Government in actual application of the new arrangements to individual appointments. The new arrangements and the integrity of them will hence depend, for practical success, on their careful administration in accordance with the intent of the new provisions as set out in the Explanatory Memorandum to the Bill.

'In particular, the Government's submission refers to "a continuing employment relationship if the Commonwealth terminates the appointment to a particular office" and indicates that this is what will be foregone by those taking appointment under section 37 of the Public Service Act 1922. It would not be consistent with this understanding for appointees losing occupancy of an office of Secretary to have substitute offices of similar remuneration assured by the Commonwealth, or Australian Public Service remuneration preserved by administrative means. This extends to alternative full-time employment under other Commonwealth statutes, unless it were clear that the former Secretary had gained such a position not from the

¹ Federal Court of Australia decision Barratt v Howard FCA 1132 (19 August 1999)

² Remuneration Tribunal - 1994 Decisions and Reports - p101

*gift of Government, but through his or her own efforts such as, for example, in open competition with others.*³

9.23 The Tribunal regards the 1994 observations as being of continuing relevance.

Current Termination Provisions

9.24 A Secretary's entitlements on termination are set out in the Determination of Secretaries' remuneration and conditions made by the Prime Minister under s61 of the *Public Service Act 1999*.

9.25 The current Determination provides as follows:

PART 5 - LOSS OF OFFICE

5.1 *Where a Secretary is terminated in accordance with the provisions of sub-section 59(1) of the Public Service Act 1999 and the Commonwealth has not made the Secretary an offer of suitable alternative employment, the Secretary shall be entitled upon his or her termination to be paid:*

- (a) three months' Base Salary; or*
- (b) one-third of one month's Base Salary for each full month of the balance of the term not served, subject to a maximum payment of 12 months' Base Salary calculated at the date of his or her termination*

whichever is the greater.

5.2 *In determining whether, for the purpose of clause 6.1, there has been an offer of suitable alternative employment, account is to be taken of any offer of employment with the Commonwealth, the administration of a Territory, or a public statutory corporation referred to in paragraph 3(4)(d) of the Remuneration Tribunal Act 1973, or an incorporated company all the stock or shares in the capital of which is or are beneficially owned by the Commonwealth or by a public statutory corporation, or an incorporated company limited by guarantee where the interests and rights of the members in or in relation to the company are beneficially owned by the Commonwealth or by a public statutory corporation.*

PART 6 – NOTICE OF A DECISION NOT TO RE-APPOINT

6.1 *A Secretary who is not given three months' notice that he or she will not be re-appointed to the position at the expiration of his or her term shall be paid three months' Base Salary unless the Commonwealth has made the Secretary an offer of suitable alternative employment.*

6.2 *In determining whether, for the purpose of clause 6.1, an offer of suitable alternative employment has been made, regard is to be had to any offer of employment of the kind described in clause 5.2.*

Extract from the Prime Minister's Determination, under section 61 of the *Public Service Act 1999*, of the remuneration and other conditions of appointment of Secretaries at 23 October 2009

9.26 This provision is not dissimilar to the termination provision determined by the Tribunal for full-time public offices in its determinative jurisdiction. The relevant provisions of Determination 2007/07, are as follows:

³ Remuneration Tribunal - 1994 Decisions and Reports - p101

- 2.2** *Subject to Clause 2.1, where a person's appointment to a public office is terminated prematurely, the Commonwealth may elect to offer suitable alternative employment (including in a Commonwealth company or authority).*
- 2.3** *Where the Commonwealth does not offer alternative employment under Clause 2.2, the Commonwealth will pay the office holder 1/3 of one month's remuneration per month of service remaining, in lieu of obligations such as provision of notice or payment instead of notice of redundancy pay and subject to:*
- (a) *a minimum payment of four months' remuneration; and*
 (b) *a maximum payment of a year's remuneration.*
- 2.4** *Under clause 2.3, the Commonwealth may calculate service remaining taking into account any period of continuing Commonwealth service in alternative employment, and may require an office holder to sign a release in return for the payment.*
- 2.5** *Where an office holder is eligible for a payment under clause 2.3, the rate of remuneration used for calculating an entitlement is to be the same as the office holder's salary for superannuation purposes.*

Extract from Remuneration Tribunal Determination 2007/07: Compensation for Loss of Office for Holders of Public Office

The Tribunal's Preliminary Views

Termination Benefit

9.27 The Tribunal notes that the termination benefit of a full-time office holder may be greater (and is certainly no less) than that of a Secretary in similar circumstances. Having regard for the significant differences outlined, above, in respect of appointment and, in particular, termination, the Tribunal considers that such an outcome is anomalous.

9.28 Under the present arrangements, the termination benefit entitlement over the term of a five year appointment would be as follows:

Term Remaining (months)	Termination Payment (months)
60	12
48	12
36	12
24	8
12	4
0	3

9.29 In the Tribunal's assessment, the decline in termination payment in the final year of an appointment is excessively steep. The advice of Egan Associates on this aspect of the present terms and conditions was as follows:

"The key clause in the contract is the one which provides what happens if a Secretary's term in office is cut short. It is in this area that concern was expressed by some of the Secretaries interviewed.

"An important question is whether there should be any age discrimination in the treatment of remuneration on termination. And should the government look to the retirement entitlements of individual Secretaries when contracting to appoint them to positions? In my judgement, given the current policy climate which leans towards terms of three years, the vulnerability of very senior public servants to changes of government attitudes and

requirements should be compensated for by making provision for adequate notice and for remuneration support after termination takes place. I would advise that contracts provide for a requirement for six months notice of termination to be either served in office or to be paid for without such service (at the unfettered discretion of the Minister of that Department) with a further payment equivalent to six months fixed annual remuneration to be made on actual termination. These six months periods would be sequential not tangential."

9.30 The Tribunal agrees with the general proposition that the minimum termination payment should be no less than six months. The concept of 'notice' and the scope to serve that period in office is, in the Tribunal's judgement, problematic given the terms of s59 of the *Public Service Act 1999*. Accordingly, the Tribunal considers that, upon termination in accordance with the provisions of sub-section 59(1) of the *Public Service Act 1999* - and in circumstances in which the Commonwealth has not made the Secretary an offer of suitable alternative employment - a Secretary should be entitled upon his or her termination to be paid, calculated using the value of base salary at the date of his or her termination:

- (a) twelve months' base salary; except that
- (b) in the final year of the term, 75% of one month's base salary for each full month of the balance of the term not served, subject to a minimum payment of 6 months base salary.

Base Salary

9.31 The Tribunal also notes that the present entitlement is expressed as a multiple of "base salary", this amount being defined as the "salary for superannuation purposes" for Secretaries and set at 80% of total remuneration. This 'definition' reflects the Tribunal's approach.

9.32 The Tribunal notes that the *Corporation's Amendment (Improving Accountability on Termination Payments) Bill 2009* defines "base salary" as follows:

"'base salary' has the meaning generally accepted within the accounting profession"

9.33 The Productivity Commission in its September 2009 discussion draft paper "Executive Remuneration in Australia", describes 'base salary' as "cash in hand". In practice, the concept of base salary in the private sector is not constrained to the limited meaning ascribed to it by the Tribunal.

9.34 In the Tribunal's full-time office jurisdiction, generally, (and in the Prime Minister's determination of Secretaries' remuneration and conditions), the only component of remuneration that may not be the subject of an election to take as 'cash' salary is the component ascribed to the value of the employer's superannuation contributions made in respect of the office holder. The Tribunal considers that, for the purposes of calculating the amount to be paid on termination, 'base salary' should be taken to be the maximum cash component available to a Secretary - that is, total remuneration less the dollar value of the employer superannuation contribution. This approach would also be consistent with that advanced in the Government's *Corporation's Amendment (Improving Accountability on Termination Payments) Bill 2009*.

Income Maintenance in 'Suitable Alternative Employment'

9.35 The present "Loss of Office" provision includes, as an alternative to the making of a termination payment, the scope to offer a Secretary 'suitable alternative employment'.

9.36 The Tribunal has no in-principle difficulty with such a provision. It provides an avenue, potentially, for the federal public sector to retain highly capable officials with valuable experience at the most senior levels of government, where considered appropriate.

9.37 However, the basis upon which such offers are to be made, in future, should, in the Tribunal's view, be clarified.

9.38 One of the Tribunal's principal objectives in setting remuneration for public offices is to ensure that the remuneration fixed for an office properly reflects its roles and responsibilities, as well as appropriate relativities with other offices.

9.39 Not infrequently, former Secretaries have accepted - as 'suitable alternative employment' - appointment to a public office in the Tribunal's jurisdiction. Almost invariably, the remuneration determined by the Tribunal for the office to which the Secretary is appointed is less than the remuneration determined for the office of Secretary. Equally invariably, the Tribunal is asked to consider determining, as a 'personal rate' for the appointee, remuneration that is the same as that to which they were entitled as a Secretary.

9.40 The end result is that remuneration relativities amongst public offices are distorted - the more so, in the Tribunal's view, where the public office to which such an appointment is made it is not the head of the agency concerned. It has been the Tribunal's experience that, as a consequence of such a transfer, an appointee to a public office subordinate to another public office invested with "head of agency" responsibilities is, as a consequence of income maintenance arrangements, enjoying remuneration that is considerably greater than that of the agency's principal public office.

9.41 The Tribunal accepts that longer term income arrangements will be important to all parties involved in establishing the future of a soon-to-be former Secretary. However, the Tribunal considers that such arrangements should be subject to constraints. After all, if a Secretary is unwilling to accept an offer of alternative employment, he or she can elect to accept the termination payment.

9.42 The Tribunal will give further consideration to this issue, including options along the following lines:

- (1) sustain income maintenance arrangements for a transferee for twelve months from the date of appointment to his or her current office, with remuneration then reverting to the remuneration determined by the Tribunal;
- (2) maintain the remuneration of the former Secretary at its level on transfer, without applying the standard annual adjustments, and continue to apply this policy until the 'ongoing' remuneration determined by the Tribunal for the office reaches the level at which the former Secretary's income has been maintained; or
- (3) express the remuneration of the former Secretary as two components - one being the ongoing remuneration determined by the Tribunal for the office, and the other being the 'excess amount'. Tribunal adjustments would apply to the ongoing remuneration component but not to the 'excess amount'.

9.43 The Tribunal's principal concern is that remuneration maintenance arrangements should not extend indefinitely. In the Tribunal's judgement, without the incentive for a former Secretary to seek high, if alternative, public office, on their own merits, the indefinite extension of income maintenance arrangements will defeat the purpose of seeking to maintain high-level skills and abilities in the federal public sector and have a corrosive effect on the balance between remuneration and responsibility.

The Tribunal's Indicative Conclusions

9.44 The Tribunal's disposition is to recommend improving the present termination benefit provisions, as outlined above. However, the Tribunal considers that changes in these provisions go "hand in hand" with clarification of the basis upon which alternative employment arrangements are to be offered to a Secretary subject to the 'loss of office' provisions.

Office	Appointment	Termination
Commissioner for Taxation	Appointed by the Governor-General for seven years.	<p>(1) The Governor-General may remove the Commissioner or a Second Commissioner from office on an address praying for the removal of the Commissioner or the Second Commissioner, as the case may be, on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.</p> <p>(2) The Governor-General may suspend the Commissioner or a Second Commissioner from office on the ground of misbehaviour or physical or mental incapacity.</p> <p>(3) Where the Governor-General suspends the Commissioner or a Second Commissioner, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.</p> <p>(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement was laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.</p> <p>(5) The suspension of the Commissioner or a Second Commissioner from office under this section does not affect any entitlement of the Commissioner or Second Commissioner, as the case may be, to be paid remuneration and allowances.</p> <p>(6) If:</p> <p>(a) the Commissioner or a Second Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;</p> <p>(b) the Commissioner or a Second Commissioner engages, except with the approval of the Minister, in paid employment outside the duties of the office of Commissioner or Second Commissioner, as the case may be; or</p> <p>(c) the Commissioner or a Second Commissioner is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;</p> <p>the Governor-General shall remove the Commissioner or Second Commissioner, as the case may be, from office.</p> <p>(7) The Governor-General may, with the consent of the Commissioner or a Second Commissioner, retire the Commissioner or Second Commissioner, as the case may be, from office on the ground of physical or mental incapacity.</p> <p>(8) The Commissioner or a Second Commissioner shall not be suspended, removed or retired from office except as provided by this section.</p>

Office	Appointment	Termination
CEO of Customs	CEO is appointed by the GG for a specified period of not more than five years but is eligible for reappointment.	<p>(1) The Governor-General may remove the CEO from office on an address praying for the removal of the CEO on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.</p> <p>(2) The Governor-General may suspend the CEO from office on the ground of misbehaviour or physical or mental incapacity.</p> <p>(3) Where the Governor-General suspends the CEO, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.</p> <p>(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement was laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.</p> <p>(5) The suspension of the CEO from office under this section does not affect any entitlement of the CEO to be paid remuneration and allowances.</p> <p>(6) If:</p> <p>(a) the CEO becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;</p> <p>(aa) the CEO fails, without reasonable excuse, to comply with a direction given under section 4A;</p> <p>(b) the CEO fails, without reasonable excuse, to comply with section 11;</p> <p>(c) the CEO engages, except with the approval of the Minister, in paid employment outside the duties of the office of CEO; or</p> <p>(d) the CEO is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;</p> <p>the Governor-General shall remove the CEO from office.</p> <p>(7) The Governor-General may, with the consent of the CEO, retire the CEO from office on the ground of physical or mental incapacity.</p> <p>(8) The CEO shall not be suspended, removed or retired from office except as provided by this section.</p>

Office	Appointment	Termination
Auditor-General for Australia	<p>Appointed for term of 10 years.</p> <p>A person cannot be reappointed</p> <p>Appointments must be referred to and approved by the Joint Committee of Public Accounts and Audit</p>	<p>(1) The Governor-General may remove the Auditor-General from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Auditor-General on the ground of misbehaviour or physical or mental incapacity.</p> <p>(2) The Governor-General must remove the Auditor-General from office if the Auditor-General does any of the following:</p> <ul style="list-style-type: none"> (a) becomes bankrupt; (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; (c) compounds with his or her creditors; (d) assigns his or her remuneration for the benefit of his or her creditors. <p>(3) If the Auditor-General is:</p> <ul style="list-style-type: none"> (a) an eligible employee for the purposes of the <i>Superannuation Act 1976</i> ; or (b) a member of the superannuation scheme established by the Trust Deed under the <i>Superannuation Act 1990</i> ; or (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the <i>Superannuation Act 2005</i> ; <p>the Governor-General may, with the consent of the Auditor-General, retire the Auditor-General from office on the ground of physical or mental incapacity.</p> <p>(4) For the purposes of the <i>Superannuation Act 1976</i> , the Auditor-General is taken to have been retired from office on the ground of invalidity if:</p> <ul style="list-style-type: none"> (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and (b) the Board (within the meaning of the <i>Superannuation Act 1976</i>) gives a certificate under section 54C of that Act. <p>(5) For the purposes of the <i>Superannuation Act 1990</i> , the Auditor-General is taken to have been retired from office on the ground of invalidity if:</p> <ul style="list-style-type: none"> (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and (b) the Board (within the meaning of the <i>Superannuation Act 1990</i>) gives a certificate under section 13 of that Act. <p>(6) For the purposes of the <i>Superannuation Act 2005</i> , the Auditor-General is taken to have been retired from office on the ground of invalidity if:</p> <ul style="list-style-type: none"> (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and (b) the Board (within the meaning of the <i>Superannuation Act 2005</i>) gives an approval and certificate under section 43 of that Act.

Office	Appointment	Termination
Australian Statistician	The Statistician is appointed by the Governor - General and, subject to the ABS Act 1975, holds office for a period not exceeding 7 years, as is specified in the instrument of his or her appointment. The Statistician is eligible for re-appointment.	<p>Removal from office</p> <p>(1) The Governor-General may remove the Statistician from office on an address praying for his or her removal on the ground of misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.</p> <p>(2) The Governor-General may suspend the Statistician from office on the ground of misbehaviour or incapacity.</p> <p>(3) Where the Governor-General suspends the Statistician from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.</p> <p>(4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Statistician should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Statistician from office.</p> <p>(5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.</p> <p>(6) The suspension of the Statistician from office under this section does not affect any entitlement of the Statistician to be paid remuneration and allowances.</p> <p>(7) If the Statistician becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall remove the Statistician from office.</p> <p>(8) The Governor-General may, with the consent of the Statistician, retire the Statistician from office on the ground of incapacity.</p> <p>(9) The Statistician shall not be removed or suspended from office except as provided by this section.</p>

Office	Appointment	Termination
Public Service Commissioner	The Commissioner is to be appointed by the Governor-General on a full-time basis for a period of up to 5 years specified in the instrument of appointment	<p>(1) The Governor-General may remove the Commissioner from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Commissioner on the ground of misbehaviour or physical or mental incapacity.</p> <p>(2) The Governor-General must remove the Commissioner from office if the Commissioner does any of the following:</p> <ul style="list-style-type: none"> (a) Becomes bankrupt; (b) Applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; (c) Compounds with his or her creditors; (d) Assigns his or her remuneration for the benefit of his or her creditors.
Director-General of Security (DG), Australian Security Intelligence Organisation	Appointed by the Governor-General for the period specified in the instrument of appointment (not exceeding seven years).	<p>(1) The Governor-General may terminate the appointment of the Director-General by reason of physical or mental incapacity, misbehaviour or failure to comply with a provision of the ASIO Act.</p> <p>(2) If the Director-General:</p> <ul style="list-style-type: none"> (a) Is absent from duty, except with leave of absence, for 14 consecutive days or for 28 days in any 12 months; or (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; <p>the Governor-General shall terminate his or her appointment.</p>
Director-General (DG), Office of National Assessments	Appointed by the Governor-General for a period, not exceeding seven years, as is specified in his or her instrument of appointment. Eligible for reappointment.	<p>(1) The Governor-General may terminate the appointment of the Director-General for physical or mental incapacity.</p> <p>(2) If the Director-General:</p> <ul style="list-style-type: none"> (a) Is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; (b) Is guilty of misbehaviour; or (c) Becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; <p>The Governor-General shall terminate his or her appointment.</p>
Commissioner, Australian Federal Police	Appointed by the Governor-General by Commission for a period, not exceeding seven years, as is specified in his or her instrument of appointment, but is eligible for reappointment.	<p>(1) The Governor-General may terminate the appointment of the Commissioner or a Deputy Commissioner by reason of misbehaviour or physical or mental incapacity.</p> <p>(2) If the Commissioner or a Deputy Commissioner:</p> <ul style="list-style-type: none"> (a) Engages in paid employment outside the duties of his or her office without the approval of the Minister; (b) Is absent from duty, except on leave of absence under section 21, for 14 consecutive days, or for 28 days in any 12 months; or (c) Becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with is or her creditors or makes an assignment of his or her remuneration for their benefit; <p>The Governor-General shall terminate his or her appointment.</p>

APPENDICES

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“Departments and Public Service Agencies”

Attachment D

to

Governance Arrangements for Australian Government Bodies

Department of Finance and Administration
August 2005

Departments and Public Service Act Agencies

This appendix describes some of the attributes of the following bodies:

- Departments of State – under the Constitution and the *Public Service Act 1999*
- Executive Agencies – under the Public Service Act
- Statutory Agencies – under the Public Service Act

Departments of State

When considering potential new government bodies, it is important to recognise the respective roles of Ministers of State and Departments of State.

Chapter II of the Australian Constitution deals with the “Executive Government”. Section 64 deals with Ministers and Departments as follows:

The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen’s Ministers of State for the Commonwealth.

Under the Constitution, the Governor-General, on the advice of the Prime Minister, appoints Ministers, under section 64. The Governor-General, on the advice of the Executive Council, also formally establishes the matters dealt with by each portfolio, by each department (since more than one department may be in a single portfolio), and the legislation administered by each Minister. This information appears in the Administrative Arrangements Order (AAO), available on the website www.pmc.gov.au.

The constitutional concept of a Department of State also underpins key aspects of the Public Service Act. The term ‘Department’, in the Public Service Act, means a Department of State, established by the Governor-General under section 64 of the Constitution, excluding any part of the ‘constitutional’ department that is itself

- an Executive Agency under the Public Service Act; or
- a Statutory Agency (declared by an Act to be a Statutory Agency for the purpose of the Public Service Act).

The term ‘Department’ for the purposes of the Public Service Act also excludes a Parliamentary Department established under the *Parliamentary Service Act 1999*.

Whenever a Department of State is established by the Governor-General, an office of Secretary of that Department is also created. The Secretary of a Department will, under the Minister who administers that Department (‘described as the Agency Minister’), be responsible for managing that Department⁸².

The Public Service Act uses the concept ‘under the Minister’ in relation to the responsibilities of the Secretary, in accordance with statutory terminology used since 1984 and reflecting the constitutional position. However, there is an explicit limitation on Ministerial directions in relation to a Secretary’s ordinary individual Australian Public Service (APS) staffing decisions.

The APS as constituted by the Public Service Act consists of:

- Agency Heads (including Secretaries); and

⁸² Section 57 of the Public Service Act.

- APS employees (including Senior Executive Service (SES) employees).

Accordingly, the APS includes statutory office holders who are Agency Heads (or APS employees), but not other statutory office holders who are not APS employees (eg, Second Commissioners of Taxation or Second Parliamentary Counsel).

This definition of the APS can be important for references in other legislation to matters relating to the APS (e.g. terms such as 'SES employee in the APS').

Under the previous *Public Service Act 1922*, personnel systems of the APS were based on the concept of "officers" of the APS who occupied and had tenure in formally-created offices. However, as explained in the explanatory memorandum to the *Public Service Bill 1999*, the 'all-pervasive nature' of the concept of an "office" was seen to result in significant rigidities in APS management arrangements. The concept also produced a degree of legislative complexity (e.g. 'unattachment'). Accordingly, the *Public Service Act 1999* is drafted without any use of the concept of office, other than in relation to Agency Heads. The use of the term 'employee' rather than 'officer' was considered to be in keeping with more modern approaches to APS employment. (Formal "positions" can be created if needed for delegation purposes, however).

Some of the most significant consequences of being an APS employee is the duty to comply with the APS Values and the Code of Conduct, which are set out in sections 10 and 13 of the Public Service Act respectively.

Executive Agencies – under the Public Service Act

Executive Agencies are a mechanism to identify a group of APS employees who, under an Agency Head, can conduct business within the portfolio of a Minister, without necessarily involving an AAO change. The Executive Agency structure provides a degree of independence from departmental management where that is appropriate to an agency's functions. An Executive Agency structure may lend itself to a range of situations, including where:

- the functions of the agency may cross portfolio lines, making it inappropriate to place it in a Department;
- it is desirable to separate substantial service delivery functions to allow a policy department to focus on primary business;
- an identity separate from the parent department would assist sponsorship or external funding; or
- a separate agency is desirable to administer a whole-of-government or joint Commonwealth-State initiative.

Executive Agencies are established by an order of the Governor-General. The Governor-General's order may:

- establish or abolish an Executive Agency;
- allocate a name to an Agency or its Head;
- identify the responsible Minister; and
- specify its functions.⁸³

An Executive Agency consists of the Agency Head (who is appointed, and whose appointment may be terminated, by the Minister responsible for the agency) and the APS employees assisting the Agency Head.

⁸³ Section 65, Public Service Act

The Public Service Act provides that the Agency Head is directly accountable to the Minister responsible for the Agency. Section 66 describes the responsibilities of heads of Executive Agencies as follows:

- (1) The Head of an Executive Agency, under the Agency Minister, is responsible for managing the Agency.
- (2) The Head of an Executive Agency must assist the Agency Minister to fulfil the Agency Minister's accountability obligations to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of the Agency.
- (3) The Head of an Executive Agency is accountable to the government, the Parliament and the public in the same way as the Secretary of a Department.

It is important to note, however, that a Departmental Secretary still retains a role in overseeing the governance of an Executive Agency. This is because the Agency Minister, before appointing an Agency Head, must have received a report about the vacancy from the relevant Secretary. Also, before terminating an appointment, the Agency Minister must have received a report about the proposed termination from the relevant Secretary. For these purposes, the 'relevant Secretary' is the Secretary of any Department that is administered by the same Minister who is the Agency Minister.⁸⁴ Accordingly, the relevant Secretary will need to be aware at a broad level about the operations of Executive Agencies in order to be able to prepare both reports.

After the end of each financial year, the Head of an Executive Agency will be required to give a report to the Agency Minister, for presentation to the Parliament, on the Agency's activities during the year. This annual report must be prepared in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.⁸⁵

It is now the practice for an Executive Agency to also be prescribed as an FMA Act agency because, if it is not so prescribed, the Head of the Executive Agency would be subject to the resourcing, financial and appropriations authority of the Secretary of the Department, while having autonomy in terms of staffing decisions and being responsible for "managing the Agency".

Agencies should contact PM&C if they require more detailed information or guidance on Executive Agencies.

Statutory Agencies – under the Public Service Act

A statutory authority that is identified, in its enabling legislation, as constituting a "Statutory Agency" (for the purposes of the Public Service Act) will also usually be prescribed under the FMA Act.

For example, the Public Service Commissioner and APS employees assisting the Commissioner "together constitute a Statutory Agency",⁸⁶ and these people are also described, under the name of the "Australian Public Service Commission" as comprising a prescribed Agency under the FMA Regulations.

Statutory Agencies are entities separate from the Department of State (under the Constitution) for the purposes of the Public Service Act. This derives from the definition of a Department, which states "**Department** means a Department of State, excluding any part that is itself an Executive Agency or Statutory Agency."

⁸⁴ Section 67, Public Service Act.

⁸⁵ Section 70, Public Service Act.

⁸⁶ Section 40, Public Service Act.

The Public Service Act confers general employer powers on the Agency Heads of a Statutory Agency. However, specific accountability obligations of heads of statutory agencies flow from their enabling legislation and not the Public Service Act (that is, there is no equivalent to sections 57 and 66 of the Public Service Act – which set out the responsibilities of Secretaries and Heads of Executive Agencies respectively – applying to Agency Heads of Statutory Agencies).

‘The Roles and Responsibilities of Departmental Secretaries’

**R.C. Smith
December 2007**

**THE ROLES AND RESPONSIBILITIES
OF
DEPARTMENTAL SECRETARIES**

A PAPER PREPARED FOR THE REMUNERATION TRIBUNAL

**R.C.SMITH
DECEMBER 2007**

THE ROLES AND RESPONSIBILITIES OF SECRETARIES

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SUMMARY

Legislation relating to the roles and responsibilities of the Secretaries of Australian Government Departments focuses exclusively on their management obligations, with no reference to the policy development or advising roles they are assumed to have. There is little written doctrine demarcating the respective responsibilities of Secretaries and Ministers. In the first Rudd Ministry, 19 Secretaries and Departments are responsible to, and service the needs of, 42 Ministers and Parliamentary Secretaries. Secretaries also have varying and sometimes ill-defined degrees of responsibility for a large number of agencies of less-than-departmental status.

Public Service reforms over the past 20 years have required Secretaries to play much stronger roles as managers and leaders. While giving them more flexibility of a private sector kind, this has added to the challenge of reconciling Secretaries' management roles with their roles as policy advisers and implementers. The Secretary-Minister relationship is critical. Ministers vary widely in skills and experience, and in the approach they take to their jobs and their expectations of their Departmental Secretaries. The growing number and roles of Ministerial staff, while advantageous to Departments in some ways, pose additional challenges for Secretaries in balancing competing objectives. The level and means of scrutiny of Departments, both formal and informal, are growing and tending to focus on Secretaries.

'Globalization' in all its dimensions is impacting on Government in many ways. It is expanding the role of Government, and increasing the range of its business and the pace at which it is done. The '24 hour media cycle', growing inputs to government decisions from better informed interest groups, and the increasing need for 'whole-of-government' decision making, are among the effects on Departments. With closer and faster scrutiny, and clearer definitions of Departmental management responsibility, notions of ministerial accountability are evolving away from the traditional Westminster model.

In all this, Secretaries remain at the critical interface of the relationship between the Public Service and the executive arm of Government. Their traditional responsibilities are being added to, but the environment in which they work is more complex and fluid, faster moving, and ambiguous. Much of the onus of managing the increasing ambiguity in Government accountabilities lies with Secretaries.

THE ROLES AND RESPONSIBILITIES OF SECRETARIES

This paper addresses the roles and responsibilities of Secretaries of Australian Government Departments under five headings:

- I. Legislative Provisions and Management Structures.
- II. Secretaries: Their Jobs and Who They Are.
- III. Secretaries' Relationships With Ministers and Their Staff.
- IV. Scrutiny and Audit
- V. Changes Affecting Secretaries.

I. LEGISLATIVE PROVISIONS AND MANAGEMENT STRUCTURES

(a) Legislative Provisions Relating Specifically to Secretaries

1 The *Public Service Act 1999 (PS Act)* and the *Financial Management and Accountability Act 1997 (FMA Act)* each include provisions relating to the roles and responsibilities of Departmental Secretaries. The *PS Act*'s wording is parsimonious and, especially as it embraces the Secretaries' roles as *Agency Heads*, refers only to their management responsibilities. In short, the *Act* requires that Secretaries "manage the Department and ... advise the ...Minister in matters relating to the Department". There is no reference in the *Act* to policy development or advice.

2 The *FMA Act* describes the responsibilities of Secretaries ('Chief Executives') specifically in the area of financial management. The *Act* is said, by contrast with previous legislation in this area, to provide "a principles-based approach which gives Chief Executives significant responsibilities in defining detailed formal management procedures for their agencies." It requires Chief Executives to "promote efficient, effective and ethical use of Commonwealth resources". It makes it clear *inter alia* that financial management responsibility ends with the Secretary as Chief Executive. There is no provision for any role for Ministers in this area.

3 While there are few legislative references to Secretaries in a generic sense, in some cases portfolio-specific legislation refers to the responsibilities of the Secretary. The *Defence Act* for instance includes a statement about the responsibilities of the Secretary of that Department vis-à-vis those of the Chief of the Defence Force, and the *Migration Act* sets out explicitly the decision making authority of the Secretary of that Department.

4 The *Administrative Arrangements Order* which is promulgated by the Governor General whenever a new Ministry is sworn in provides a summary list of "Matters Dealt with by Departments" and a list of the "Legislation Administered by a Minister Administering a Department of State".(Para 24 below refers.)

5 As to Ministers, the Constitution provides simply that they are appointed to "administer such departments of State" as the Government may establish. There is no legislation which describes their responsibilities further or defines the boundaries between the responsibilities of Ministers on the one hand and Secretaries or other Public Servants on the other. The Australian Public Service Commission's 2005 publication, *Foundations of Governance in the Australian Public Service*, states that "Ministers and Governments as the elected representatives of the Australian people determine and define public interest. Agency heads advise and implement – assisting Governments to deliver their policy agenda and priorities. Under the Australian system, Ministers are responsible to Parliament for the overall administration of their portfolios; for the carriage of new legislation through Parliament; and for answering questions on that portfolio when required."

6 The Department of Prime Minister and Cabinet (PM&C) has published a document entitled *Guide to the Key Elements of Ministerial Responsibility*, intended for use by Ministers and their staff; and another, *Working With Ministers*, which is directed to Public Servants in

general. The Public Service Commission's 2006 publication *Supporting Ministers, Upholding The Values*, is also a useful guide for Public Servants.

7 Separately, the *Parliamentary Services Act 1999* makes provision for Departments of the Parliament; and the *Commonwealth Authorities and Corporations Act 1997 (CAC Act)* provides for statutory agencies and Government Business Enterprises. These Departments and agencies are not the subject of this paper.

(b) Other Legislation Affecting Secretaries

8 Beyond the *PS Act* and the *FMA Act*, a number of other acts help define the framework of law within which Secretaries must manage their Departments. They include the *Freedom of Information Act*, the *Sex Discrimination Act*, the *Privacy Act*, the *Disability Discrimination Act*, the *Racial Discrimination Act*, the *Equal Employment Opportunity Act*, the *Workplace Relations Act*, and the *Occupational Health and Safety Act*. While some of this legislation applies also to CEOs in the private sector, its burden is probably greater in the public sector because the likelihood of any breach being exposed by audit activity is greater. The risk of adverse publicity is also greater because failure to comply with legislation can be portrayed as incompetence on the part of government, or a waste of taxpayers' money.

(c) Management Structures

9 Government structures are complex. The Fourth Howard Ministry (January 2006 to November 2007) was structured to comprise:

- a Cabinet which included the Prime Minister and 17 Ministers, responsible for 17 portfolios (the Foreign Affairs and Trade portfolio included two Ministers);
- 12 other Ministers who were not Cabinet Ministers;
- two Assistant Ministers; and
- ten Parliamentary Secretaries.

10 In addition,

- three Cabinet Ministers, as well as being Ministers with their own portfolios, were also designated as 'Ministers Assisting the Prime Minister ...' for specific matters;
- one Minister, the Minister for Veterans' Affairs (not in Cabinet), was also designated as 'Minister Assisting the Minister for Defence'; and
- the Defence portfolio embraced two Departments (Defence and Veterans' Affairs), each with its own Secretary.

11 The Rudd Ministry which was sworn in on 3 December 2007 comprises:

- a Cabinet which includes the Prime Minister and 19 Ministers, responsible for 17 portfolios;
- ten other Ministers;
- 12 Parliamentary Secretaries.

12 Among other features of the Rudd Ministry:

- Three portfolios include more than one Cabinet Minister – Prime Minister and Cabinet (the Prime Minister, Cabinet Secretary and Minister for Climate Change and Water), Foreign Affairs and Trade (Foreign Minister and Trade Minister), and Finance and Deregulation (Special Minister of State and Minister for Finance and Deregulation).
- Two Cabinet Ministers have multiple appointments – the Deputy Prime Minister is also Minister for Education, Minister for Employment and Workplace Relations, and Minister for Social Inclusion; and the Cabinet Secretary is also Special Minister of State. One non-Cabinet Minister also has two appointments – as Minister for Youth in the Education, Employment and Workplace Relations portfolio, and Minister for Sport in the Health and Ageing portfolio.

- Four portfolios have three Ministers, four have two and one has a Minister who holds three titles in addition to being Deputy prime Minister.
- The Cabinet Secretary is a Cabinet Minister.
- The use of the titles 'Minister Assisting' and 'Assistant Minister' is more limited than in the Howard Government, with only one of each.
- Of the Parliamentary Secretaries, Foreign Affairs and Trade has three, and Prime Minister and Cabinet and Defence have two each. The responsibilities of eight of the 12 are specifically designated.
- There are 19 Departments, one more than in the last Howard Government. In one case, a 'matrix' management arrangement seems to be assumed - the Minister for Climate Change and Water is in the portfolio of the Prime Minister and Cabinet, but "water policy and resources" is a function of the Department of Environment, Water, Heritage and the Arts. As noted, 14 Departments are responsible to more than one Minister or Parliamentary Secretary, and several Ministers and Parliamentary Secretaries have responsibilities in more than one Department.

(d) Agencies Other Than Departments

13 While as a general rule there is one Department in each **portfolio**, the responsibilities of the Prime Minister and Cabinet Ministers as portfolio Ministers are responsible also include many **statutory and other agencies**. There are several kinds of agencies, ranging from fully independent Government business enterprises (like the Australian Submarine Corporation and the Defence Housing Authority) and statutory authorities (like the Reserve Bank of Australia) to agencies which are in effect divisions of their home department. Some of these are responsible to Secretaries, some not. Some have fully empowered boards, some have advisory boards, and some have no boards at all. The Chief Executives of 'statutory agencies' or authorities, that is, those which are established by legislation and are subject to the *CAC Act*, are appointed by the Government, on the advice of the Portfolio Minister (and in some cases of a Board) and are responsible for all aspects of agency business.

14 There is also a category of '**prescribed agencies**', that is, agencies listed specifically under the *FMA Act*. The head of such an agency is appointed by the Departmental Secretary under the *PS Act* and is responsible to the Secretary under the *Act*, but reports directly to the Auditor General (and is thus responsible to the Minister) on the agency's financial management. Examples of prescribed agencies include AusAID and Austrade, in the Foreign Affairs and Trade portfolio; the Defence Materiel Organisation, in the Defence portfolio; and the Australian Office of Debt Management, in the Treasury portfolio. There has been a tendency to create more of these 'prescribed agencies' in recent years, probably to ensure that the Secretary has more of the responsibility for the agency (and the Minister less). Austrade for instance, went from statutory agency status to 'prescribed agency' status.

15 Beyond these three categories lie a plethora of other bodies of different kinds. The Public Service Commission's 2005-2006 "*State of the Service*" report listed 73 **bodies of less-than-departmental status**, excluding statutory and executive agencies, which are responsible to Departmental Secretaries in one way or another. As well, nearly all Departments have lists of standing committees, consultative councils or other bodies which report to them; DFAT for instance lists 17.

16 In November 2002, the Government appointed Mr **John Uhrig AC** to **review the corporate governance** of Commonwealth statutory authorities and office holders. His report, which the government accepted, recognized the role of Secretaries in supporting Ministers as the principal source of advice on the portfolio bodies for which a Minister is responsible. It defined this role as:

- Advising Ministers on options for establishing statutory authorities.
- Advising on the performance of the authority.

- Developing policy and legislation.
- Supporting Ministers during the passage of legislation through the Parliament.

The Report reinforced the significance of the Secretary as the principal source of advice to Ministers, and enhanced the role of Secretaries by recommending that portfolio bodies provide relevant information to Secretaries in parallel with providing information to Ministers.

17 The nature of the Secretaries' responsibilities for these many kinds of agencies thus varies considerably. Two points are salient, however. The first is that there is an evident trend to give Secretaries greater responsibility, either formally or in a 'monitoring' or 'vigilance' sense. Second, whatever the extent of their formally defined responsibilities, in the event of problems Ministers will expect their Secretaries to know what is going on. To put it another way, if everything is going well in an agency, the Minister is unlikely to involve the Secretary in his or her relationship with the agency; but if anything goes wrong in the agency, he or she will turn to the Secretary.

(e) Conclusion

18 The way in which Ministries are structured is thus both complex and changeable, and the responsibilities of Departmental Secretaries are at best loosely defined. With 19 Secretaries responsible to, and servicing the needs of, 42 Ministers and Parliamentary Secretaries (18 for 42 in the last Howard Government), and with a wide range of agency types with varying levels of responsibility to Ministers and Secretaries, the arrangements are also clearly prone to management ambiguities. If anything, some of the features of the Rudd Ministry seem to have increased this complexity in that several Ministers and Parliamentary Secretaries have responsibilities in more than one Department.

19 The complexity of these arrangements has three broad consequences for the roles and responsibilities of Secretaries. The first is that, self evidently, no two Departments, and hence no two Secretary positions, are the same. This point is developed further below. The second is that the responsibilities of Secretaries extend beyond their Departments to agencies, councils, committees and other bodies which are supported by their Departments. In practice, Ministers' expectations of Secretaries in relation to these bodies vary considerably. Some Ministers are content to deal with the agency, council or committee head, while others require close involvement or even supervision by the Secretary.

20 Thirdly, the complex and potentially ambiguous portfolio arrangements involving multiple Ministers and Parliamentary Secretaries do much to define a Secretary's responsibilities qualitatively as well as quantitatively. In effect, Ministers can come to compete with each other for the Secretary's time and attention, wanting priority attention for the particular subject of their interest at any one time. A Secretary can also become involved in trying to resolve differences between Ministers within a portfolio, and between the staffs of Ministers. There is sometimes a need to facilitate communication between them or to carry a message from one to the other. If these situations become unusually difficult, Secretaries will typically seek the advice of the Secretary of the Department of Prime Minister and Cabinet.

II. SECRETARIES : THEIR JOBS AND WHO THEY ARE

(a) Departments

21 Government **Departments** differ considerably from one to another. Some (like Treasury) are highly policy-oriented; others (like Families, Community Services and Indigenous Affairs) are more operational or focused on 'programme delivery'; and others again embrace a mix of policy advising and programme delivery. Three – PM&C, Treasury and Finance and Deregulation - have 'all-of -government' roles and are often referred to as 'central agencies'. Others, like Agriculture, Forests and Fisheries and Health and Ageing, are sectoral in focus.

22 There are also considerable differences in the **sizes** of Departments: for instance, Defence has on its payroll some 20,000 Public Servants (and 70,000 full and part-time ADF members). PM&C has about 550 staff, Finance about 1300 (excluding Commonwealth car

drivers), and Treasury about 850. (It might be remarked that by private sector standards, even the smaller of these Departments are quite big.) The new Department of Education, Employment and Workplace Relations is now among the largest Departments, with some 9,000 staff as well as a wide range of functions.

23 **Budgets** also vary considerably, depending on whether the Department is funded simply for its own administration (eg PM&C, about \$100 million; Treasury, about \$150 million) or for the programmes it delivers as well as its own administration (eg Health and Ageing \$38 billion, Defence \$22 billion, Veterans' Affairs \$11 billion). Some are located almost entirely in Canberra, while others have a majority of their staff dispersed around Australia (some 65 per cent of all Commonwealth Public Servants are located outside Canberra). Some, like Foreign Affairs and Trade, Defence and Immigration, are widely represented overseas.

24 The allocation of **functions** between portfolios, and thus Departments, is set out the '*Administrative Arrangements Order*', or AAO, which are redrafted for promulgation by the Governor General whenever a new ministry is appointed. The AAO is flexible and are adjusted with every incoming Ministry to reflect, for instance, changing priorities and alignments between the functions, and sometimes the varying skills and interests of the Ministers being appointed. In addition to describing the functions of each Department, the AAO lists the extant legislation which the portfolio Minister is responsible for administering. Thus, the AAO promulgated on 3 December 2007 listed, by portfolio, some 1096 Acts or parts of Acts. The Treasurer is responsible for administering wholly or in part of 220 Acts and the Attorney General 164, while the Minister for Climate Change and Water administers six Acts and the Minister for Human Services seven.

25 Some Departments embrace a logical and coherent set of functions, others less so. The fact is that many of the functions of government do not fall neatly into one box or another. Australian Governments since the late eighties have had a preference for fewer large departments rather than a larger number of small departments, with the result that at times some departments become amalgams of functions that seem only marginally related.

26 Some functions seem perennially difficult to place. Indigenous Affairs has been one such. At times it has been a separate Department (once sharing a Secretary with another Department) and for a time was included in the Department of Immigration, Multicultural and Indigenous Affairs. In the Fourth Howard Ministry it was in the Department of Families, Community Services and Indigenous Affairs; in the Rudd Government, it has remained in that Department, to which responsibility for housing has been added. Responsibility for the Commonwealth's role in relation to the arts is another function that has moved over time, as has responsibility for the Government's own IT functions.

27 One effect of this is that Departments tend to be of two kinds. The first are those which are quite **specialized** and, at their core at least, stable; Treasury, Defence, Attorney General's and Foreign Affairs and Trade, for instance. Other Departments however are more **general** and varied, and susceptible to change, and require of their Secretaries much greater versatility both in dealing with quite diverse ranges of subjects and in responding to changes in their Department's functions.

(b) Secretaries – Skills and Background

28 Reflecting all of these factors, **Secretaries** differ widely in their **skill-sets**, experience and management styles. Some are specialists who would expect to serve only in one Department: the Secretaries of the Treasury and the Attorney General's Department would generally, though not invariably, meet this description. Others could expect, subject to performance, age and so on, to serve as Secretary in a range of Departments, probably no less than three over their careers.

29 This diversity was reflected among the 19 Secretaries who held appointments in December 2007. Six had served as Secretary in more than one Department. The Secretary of PM&C, Dr Shergold, for instance had served as Secretary of three Departments (and has as well been Public Service Commissioner and head of the Aboriginal and Torres Strait Islander

Commission). Dr Helen Williams had served as Secretary (or Associate Secretary) in six Departments and as Public Service Commissioner.

30 Public prominence or **profile** is a further area of difference among Secretaries.

- The Secretary of PM&C will usually be the best known because of the nature and broad reach of the job; his role in dealing at the Prime Minister's direction or on his behalf with all Ministers; the extent to which, as head of the Public Service, he is called on to speak on service-wide matters; and, often, the personality of the person concerned.
- The Secretary of the Treasury is usually also well known, in part because his signature is on our bank-notes and, more importantly, because of his critical role in policy advising across Government and his role as a member of the Board of the Reserve Bank.
- Other Secretaries will be more or less in the public eye depending on the subject matter of their Department and their personal style and approach with the media. 'Stuff-ups' or scandals in their Departments can of course attract an unwanted public profile. Generally, Secretaries these days seem less inclined than their predecessors to seek public prominence, in part because in today's intense media environment their Ministers are often not comfortable with their doing so.

31 It follows again that Secretaries will reach their positions by a variety of different **career paths**. A typical path might include movement across a number of Departments and agencies with a mostly domestic focus, including service in PM&C, leading to appointment first as a Deputy Secretary and then as a Secretary. Some might head separate agencies, like the Public Service Commission, *en route*. Historically, a number of Secretaries have come from the Department of Foreign Affairs and Trade, serving in Defence, Immigration and elsewhere. The Treasury Secretary has always been appointed from within the Treasury, and in the last 60 years at least all but two Foreign Affairs Secretaries have come from within the Department. Defence, by contrast, has not produced its own Secretary since 1956.

32 Secretaries vary widely in **age** as well as experience. For instance, one current Secretary had just turned 42 when first appointed; at 58, the previous Secretary of the Department of Defence was probably the oldest to be appointed for the first time. Most would have spent at least 20 years in the Public Service.

(c) Secretaries - Appointment and Employment Conditions

33 Secretaries are **appointed by the Prime Minister** on the recommendation of the Secretary of PM&C, who must have consulted with the relevant Minister. In the case of the Secretary of PM&C, the Prime Minister is advised by the Public Service Commissioner. A small number of Secretaries are **appointed from outside** the Australian Public Service, either from the private sector, from an industry or sectoral body (eg among current Secretaries, Mark Paterson and Robert Cornall) or from a State Government (eg Michael Taylor). Only rarely – possibly only once, in 1984 – has a Secretary been appointed as a result of a publicly advertised recruitment and selection process, though 'head-hunting' has been used more often.

34 Secretaries, having ceased to be called 'permanent heads' in 1984, have been employed on **contracts** since 1994. When they were first introduced, contracts were of five years duration, the maximum permitted under the *PS Act*. In the latter years of the Howard Government most contracts were for three years, with options for renewal. Secretaries may be relieved of their positions involuntarily (six were in 1996, one in 1998). There have been a few instances of contracts not being renewed. In reality, these contracts are little more than agreements which set out remuneration arrangements (which are anyway pretty uniform among Secretaries) and provide a formula (modest by private sector standards) for paying-out Secretaries who are removed from office without re-employment within government – that is, one month's salary for every three remaining, to a maximum of one year's salary.

35 All of the 18 Secretaries who held office in the last Howard Government were either confirmed in their positions (14) or reappointed to other Secretary positions (4) by the incoming Rudd Government in December 2007. Of the four re-appointees, one went to a different Department, and in three cases it was judged that the changes in the functions of the

Departments concerned were such that a new appointment was warranted. These four, together with the newly appointed (nineteenth) Secretary, were reportedly given five year contracts.

36 Differences in the nature and scale of Secretaries' jobs are reflected to some extent in their **two-tiered salary structure**. The higher level includes

- the Secretary of PM&C, who has significant whole-of-government responsibilities (dealing not only with the Prime Minister but with Cabinet as a whole and all Ministers individually) and responsibilities in relation to the Council of Australian Governments (COAG). The appointee is also the head of the Public Service;
- the Secretary of the Treasury, who *inter alia* is a member of the Board of the Reserve Bank and also has COAG responsibilities; and
- the Secretary of Defence, who heads an unusually complex organization as large as any in Australia and is nominally at least at the same level as the Chief of the Defence Force (albeit in real terms his total remuneration is much less).

37 The heads of some statutory and other agencies, including some 'prescribed agencies', are paid more than Secretaries. This is the case notwithstanding that their organizations are mostly smaller, their professional responsibilities and their relationships with their Minister more clearly defined, and thus their jobs arguably less demanding, than those of Secretaries. Generally, however they are specialists recruited from the private sector or from 'specialist markets' and must be remunerated at the market rate. Examples of this kind include the Governor of the Reserve Bank of Australia, the heads of the Australian Prudential Regulatory Authority and the Australian Securities and Investment Commission, and the CEO of the Defence Materiel Organisation.

38 Secretaries are required to have '**performance agreements**' with their portfolio Ministers, reviewed and renewed annually, and are eligible for 'performance pay'. The intention is that the agreement should be based on a discussion and/or an exchange of paper between the Minister and the Secretary about priorities and objectives for the year. In practice, Ministers have varied widely in the attention they have given to these exchanges. Decisions about whether to award 'performance pay', and if so at what level, are made by the Prime Minister, with critical advice from the Secretary of PM&C following consultation with the portfolio Minister. A small number (none in 2005, three in 2006) get the maximum 20 per cent of total remuneration; most get 10 or 15 per cent; some get 5 per cent, and some none.

(d) Secretaries as Managers and Leaders

39 The last 20 years have seen a significant evolution of the **management** roles of Secretaries. Agencies were formerly almost 'self-managing', with strong and uniform Public Service rules and procedures, a powerful Public Service Board (later Commission) and rules relating to the use of money which defined rigorously the ways in which it could be used. The late eighties and nineties saw a succession of reforms in which authority was devolved to Secretaries for appointments and salary setting and gave them much greater authority to decide how Departmental budgets could be used. The *FMA Act 1997* and the revised *PS Act 1999* reflected these reforms. These and other enduring changes have also seen Secretaries become much more involved in contract management.

40 The effect of giving Public Service CEOs greater management authority and responsibility was to bring their jobs closer in nature to those of CEOs in the private sector. They remain nevertheless more constrained by the range of equity and diversity provisions embraced in the legislation described in paragraphs 1-8 above and the scrutiny framework described below. As well, they face a continuing need to manage other uniquely public sector constraints, such as the Government's requirement for annual 'efficiency dividends', that is, fixed percentage cuts to their staff numbers each year.

41 At the same time, as a result of these changes and of the changing expectations of the workforce, Secretaries have had to take on stronger **leadership** roles. There was a new

requirement of them, commensurate with the new opportunities provided by the devolution of authority, to shape their organizations and to set their tone and broad directions. These were not matters in which their predecessors had been much involved. Nor were they, in my experience, matters which attracted much interest among any but a few Ministers. Many seemingly did not appreciate that Secretaries had acquired new levels of responsibility, and their own interest remained in ensuring that their Departments served their own needs.

42 In addition to their statutory obligations under the *PS Act* in relation to *PS Values* and the *Code of Conduct*, Secretaries have **broad professional obligations** to improve Public Service performance, and to foster and maintain professionalism and an appropriate public service ethos. All Secretaries are members of the Public Service's Management Advisory Committee (MAC), which is established under the *PS Act* and which meets three or four times a year, and several are engaged at any one time in MAC reviews or studies of Public Service management issues. During the Howard Government, all attended monthly meetings chaired by the Secretary of PM&C and quarterly meetings on employment issues chaired by the Secretary of the then Department of Employment and Workplace Relations. Secretaries also have considerable 'staff development' obligations within their own organizations, and most perform some wider duties within the Public Service, such as speaking at training and development courses and sitting on staff selection committees.

III. SECRETARIES' RELATIONS WITH MINISTERS AND THEIR STAFF

43 It follows from this account of the governance frameworks and the structure of Government within which Secretaries work that their relationships with Ministers are crucial to the working of the Public Service and, at the same time, complex, flexible and readily subject to change.

(a) Ministers

44 Much depends on the Minister. Ministers differ widely in style and experience, in their approaches to their jobs and in what they expect or want of their Secretaries. Some Ministers want their Secretaries to be both CEOs and active policy advisers, while some want them to be little more than Chief Operating Officers, implementing Government decisions, maintaining records, running their Departments efficiently and avoiding scandals. For example, according to historians, Paul Hasluck considered that all the then Department of External Affairs had to do when he was Minister in the 1960s was to provide accurate information on the basis of which he and his Ministerial colleagues could make policy. His immediate predecessor, Garfield Barwick, had looked to the Department for much more, and developed policy in a very collegiate way with the Secretary and senior officials.

45 Differences of this kind in both philosophy and style exist today. Thus for instance some Ministers, when seeking a new Secretary or being consulted about possible candidates, will highlight the need for appropriate policy skills and experience, almost overlooking the scale of the management job the appointee will have. Others will simply seek a competent manager who can keep the organization running well.

46 Some Ministers have little contact with their Secretary; some maintain a disciplined regime of contact through regular meetings; others want to be in contact with their Secretary several times a day. Some are very particular about forms of correspondence, insisting that recommendations and decisions, even quite informal or low level ones, be recorded; others care much less about this, and indeed seem at times to prefer not to record their transactions. Some are coy about their political interests and relationships, while others are open and frank, sometimes disarmingly so. All Ministers must assume that they can talk to their Secretary about matters that they would not discuss with other Public Servants.

47 Secretaries must talk frankly to their Ministers as early as possible in their respective tenures in order to understand how they want to work, and to establish 'ground rules' about the relationship. They must also be prepared to raise difficult and, at times, personally or politically sensitive issues, and to tell the Minister when he or she is at risk of reaching into areas in which,

for reasons of either law or prudence, they should not try to make decisions or exercise influence. The area of Departmental (that is, Public Service) appointments and promotions is one in which Ministers have at times placed themselves at risk. (The challenge in this area is that while the *PS ACT* requires that personnel decisions be made by the Secretary on the basis of merit, it is counter-productive to leave or place staff in senior positions if the Minister does not have confidence in them.)

48 Secretaries can at times find their integrity being tested. In the end, however reluctantly and after satisfying themselves that full advice has been given, Secretaries will always have to accept a Minister's decision on a matter of policy. But they will on occasions have to be prepared to say "no" on matters of process (for example, because no funds have been appropriated; because of laws or regulations, such as in the letting of contracts; or because of Parliamentary conventions, such as the election-period 'caretaker conventions').

49 While Secretaries must win and maintain the confidence of their Ministers, they need at the same time to be alert to the risks of being drawn into matters not appropriately theirs to be involved in. They must be wary about being 'co-opted' to personal or partisan political agendas, and about being 'seduced' into relationships that are, or pretend to be, personal rather than professional. Above all, they need to keep in mind that Ministers have legitimate interests which, beyond a certain point, will be different from those of Public Servants. (One of the reasons why collegiality among Secretaries is so important is to enable them to canvass with their peers, and especially with the Secretary of PM&C, any difficulties or dilemmas they may be facing with their Ministers.)

50 Secretaries are often challenged in finding the right balance between the competing demands of their organization on the one hand and of their Ministers on the other. There are no rules for this: the balance will vary from job to job, from Minister to Minister, from Secretary to Secretary and of course from one time or issue to another. Most Departments are 'hungry' for their Secretary's time and 'face', and good leadership requires a Secretary to try to meet the requirements and expectations of his or her organization and its people. Some Ministers understand this, encourage it and are 'forgiving' if the Secretary is distracted at times by the 'other half' of the job, but others are less understanding of the management needs of big organizations and more 'selfish' in their demands. Secretaries will err if they try to make an enduring choice one way or another, either for the Minister or for the Department, or for policy advising or for managing the organization: they must do all these things.

(b) Ministerial Staff

51 Ministerial staff are critical in the equation between a Minister and a Secretary. The growth in their number has probably been the most significant development of the last 30 years in the way the Australian Government works. From some 150 in 1970, their number reached 207 in 1983 and by November 2007 was around 480. While this growth has been bi-partisan, it does seem to have been greater in Australia than in other similarly governed countries.

52 Nor is it just Ministerial staff numbers that have grown: 'staffers' have moved much beyond their original secretarial and administrative roles to become advisers on policy development and implementation, and sometimes on management issues. They now embrace a hierarchy as sensitive as any in the Public Service – Chief of Staff, principal adviser, senior advisor, media adviser, and so on, and in most Ministers' offices each has specific functional responsibilities. As their numbers and roles have grown so, obviously, has their influence: where once a Secretary might refuse to take a call from a Minister's Chief of Staff, he or she would be most unlikely to do so now.

53 This growth in number, roles and influence has come about in part because, as the pace, range and inter-relatedness of government business has increased, Public Service Departments in general have become less adept at meeting Ministers' needs. Reflecting changes in the pace and intensity of politics and in community involvement in government decision-making, Ministers have also faced increasing demands to liaise with party members, caucuses and committees and with external interest groups.

54 In this sense, the Public Service is well served in having this 'extra layer of government' between itself and its Ministers. Without Ministerial staff and advisers, Public Servants (and especially Secretaries) would be called on to do many more things for which they are not professionally or personally equipped and which would take them beyond the presently defined bounds of legitimate Public Service activity.

55 From a Secretary's point of view there are however down-sides to the emergence of this 'extra layer of government'.

- One is that Ministers receive advice from sources that are not always evident to Secretaries and Departments, and which may not be transparent to them. In other words, the 'inputs' to decisions are less clear to Secretaries, who may nevertheless have to implement and explain them.
- A second is that there are many more 'points of contact' between Ministers' offices and Secretaries and Departments. There are thus many more sources of 'pressure' on Departments, and more channels through which directions, requests and decisions are conveyed. Public Service staff will invariably be instructed by their Secretary to insist on knowing whether advice, requests or decisions are from the Minister or from staff members, but obfuscation remains possible. As well, Secretaries may not always be aware of the transactions between their staff and the staff of the Minister.
- A third downside is that, while Ministerial staff are accountable to their Minister, they are not accountable to the Parliament or to the public through any of the generally available mechanisms of accountability, such as a code of conduct. In this sense, the uncertainties and ambiguities which generally attend the relationship between Minister and Secretaries have acquired another layer.
- A fourth downside is that Ministerial staff vary greatly in their skills, experience of government and attitudes to the Public Service. The processes by which they are selected are usually opaque to outsiders, but in some cases presumably reflect factors other than merit in the *PS Act* sense, such as party loyalty and political connections and experience, and anyway the market from which staff can be drawn is not big. Some are former Public Servants or Public Servants on 'secondment' from Departments, but most these days are not.

(c) Conclusion

56 This is the context in which words like 'dexterity', 'astuteness', 'agility' and 'adaptability', 'integrity' and 'courage', are used in describing the qualities required of a Secretary. In short, there is a constant need to balance competing objectives and priorities, and the accountabilities or lines of responsibility between Ministers and Secretaries (and between Ministers' offices and Departments) are blurred.

57 Undesirable as some of this may be in terms of 'good governance', it is unlikely to change. Ministers will always differ in style, aptitude and approach, and Governments will always have to have room to manoeuvre politically. These needs create an indispensable requirement for flexibility. Two facts are salient: first, suitability for high level executive appointment of the Ministerial kind is not a criterion for election to Parliament, and relatively few of the elected members from among whom Ministers are chosen have previous higher level management experience; and second, in university terms, 'government 101', which is in the end about politics and public policy, is very different from 'management 101'.

58 The area within which Ministers and Secretaries relate to each other has been much discussed in commentaries about the Public Service. It has been described variously as a 'zone' of 'strategic conversation' or of 'creative tension'. As Dr Peter Shergold, the present Secretary of PM&C, said in a speech he gave as Public Service Commissioner in 1997, it is an area in which "ambiguity rules", "the parcel of accountability passes quickly from hand to hand",

and in which “the issue of vicarious liability is not easily resolved, particularly when it comes to stuff ups.”

III. SCRUTINY AND AUDIT

59 Public administration in Australia generally, and the Australian Public Service in particular, are heavily packed around with formal and informal mechanisms of audit, scrutiny and accountability.

(a) Audit

60 The *FMA Act* requires Departments to have audit committees and fraud control plans, and Secretaries to provide annual financial statements to the Auditor General, who in turn reports to Parliament on them. These statements, together with the Auditor General's comments on them, are provided in an Annual Report from the Secretary to the Minister, who in turn is required to table it in Parliament. The Auditor General also undertakes performance audits of aspects of Departments' work, and submits them to Parliament (and publishes them). As the Auditor General is accountable to Parliament, not to the Government, the relationship with Departments is very unlike that which private sector companies have with their auditors.

61 As noted above, legislative and other changes over the last 20 years have increased the formal responsibility of Secretaries for the oversight and financial performance of their agencies. In particular, the demands on Departments (and other agencies) in this area grew appreciably after the adoption of accruals-based annual budgeting and financial reporting in 1994-95, and with the progressive introduction through the 1990s of audits against accruals requirements. The 'post Enron' focus on audit standards flowed through to the approach taken by the Auditor General, who applied the Australian Accounting Standards (AASs) and Australian Equivalents to International Financial Reporting Standards (AEIFRS) with increasing rigour.

62 These standards have been applied in Australia at some cost to Government, and there has been debate about the relevance of some of them to the operations of government organizations which are not-for-profit and have assured sources of income which do not depend on markets or profitability. The Howard Government generally took the view however that it could not ask less of its own agencies than it was requiring, through law, of the private sector. Subsequent amendments to the AASs as they apply to not-for-profit organizations have relieved some of what Departments have regarded as the 'audit-for-audit's sake' burden. But in the meantime, the Finance Minister has introduced a requirement for a black-letter 'certificate of compliance' which, as something like a 'public confession' (in the words of one Secretary), has added further to the weight of audit.

63 In short, the formal audit requirements on Secretaries, as individuals as well as in their institutional roles, have escalated markedly over the last decade (as they have for the private sector, albeit that the latter has been better equipped – and motivated - to cope with them).

(b) Review Provisions

64 Significant provisions exist in legislation for scrutiny and review of Government decision making. The *Administrative Decisions (Judicial Review) Act 1977*, the *Administrative Appeals Tribunal Act 1975* are both more than 20 years old, but are increasingly used. The *Freedom of Information Act 1982* is also widely used; while the number of applications has reportedly fallen, anecdotal evidence suggests that the frequency with which the legislation is used by interest groups and the media in pursuit of political points appears has increased. The Merit Protection Commissioner exists to help agencies meet the requirements of the *PS Act* and regulations in relation to Public Service employment. The Commonwealth Ombudsman, the Federal Privacy Commissioner and the Human Rights and Equal Opportunity Commissioner are also frequently used, including by Public Servants, to challenge Government decisions. The Ombudsman currently receives between 16,000 and 18,000 complaints a year. The 'whistleblower' provisions established under the *PS Act* offer a further channel for scrutiny of Government decision-making. Together, these laws and the agencies and courts which apply them

constitute a sizeable and growing body of scrutiny for Departments, especially for Secretaries who are the legally responsible parties in most cases.

(c) Parliamentary Scrutiny

65 Parliament, in addition to its regular “question time” and “questions-on-notice” mechanisms, has a significant role in the scrutiny of Departments through its standing or ‘select’ committee arrangements. For instance, the Committee on Public Accounts and Audits, to which the Auditor General reports, holds hearings on Departments’ Annual Reports, and conducts several inquiries a year into aspects of departmental business. Senate Legislative Committees (formerly known as ‘Estimates Committees’) hold hearings for all Departments and agencies which, although intended to address budgetary and financial matters, in fact reach much further into matters of policy and management. Parliament also has frequent recourse to inquiries through either standing committees or select committees, some of which – like the so-called “Children Overboard” inquiry - gain real prominence.

66 There has been an increasing expectation on Secretaries to attend hearings of these committees. Ten years ago very few Secretaries attended ‘**estimates**’ hearings. Retired Secretaries boast that they never attended ‘estimates’ hearings once they reached the level of Secretary; now, all but the Secretaries of PM&C and Foreign Affairs and Trade participate. In Defence, for instance, the Minister, at the time a Senator, insisted in 2001 that the Secretary (and CDF) should attend, as he had to, and their attendance is unlikely now be reversed. These hearings have become increasingly time-consuming; Departments appear three times a year, twice for one day and once for two days (that is, 9.00 am to 11.00 pm). On one occasion in Defence, further hearings were held and we spent 29 hours on one issue. Preparation for these hearings is very time-consuming and resource intensive, and must involve the Secretary personally.

67 The dynamics of ‘estimates’ and other hearings of an ‘inquiry’ kind put particular weight on Secretaries, who are held accountable, often in very political and tendentious terms, for all the actions of their Departments. Secretaries can be confronted with demands to explain actions or decisions made by quite junior staff which they might not have known about prior to the matter being raised. Opposition spokesmen have frequent recourse to media releases restating points made in ‘estimates’ hearings, and often naming Secretaries. One effect of this is for Secretaries to want to know more and more about the workings of their large organizations in areas which might attract committee interest. Another is that, in defending Government decisions, Secretaries risk being seen as politically tainted. The hearings are public and attract close media attention, and are watched live on close circuit television by Ministers, their staff and the Press Gallery.

(d) Media Scrutiny

68 To these mechanisms for scrutiny must be added an increasingly relentless and typically adversarial media. There is a clear 24 hour news cycle: issues raised must if at all possible be responded to within the same 24 hour cycle in which they arise. Most Secretaries could offer anecdotes about Ministers (or their staff) telephoning as early as 6.00 am to seek a piece of information or advice as they are about to go into a live radio or television interview. ‘Talk-back’ radio has added to the power –and the immediacy – of media pressure. A number of media outlets also now have ‘investigative units’ which add to the relentless and persistent quality of media pressure. It can be assumed that even minor errors or misdemeanours of the kind that are unavoidable in large organizations and in public administration will be ‘exposed’ and Departments asked to account for them.

69 For political reasons, Ministers need to maintain their relationships with key media players. Some also adopt the practice of ‘backgrounding’ selected media representatives on sensitive issues, sometimes to the Department’s disadvantage. For these reasons, among others, the Secretary’s relationship with the Minister’s media adviser is critical. It is also a relationship with potential for tension - between the media adviser’s objective of getting big impact announcements or responses out quickly and the Secretary’s objective of ensuring prudence and accuracy.

V. THE CHANGING EXPECTATIONS AND NATURE OF GOVERNMENT

70 Changes in society and the economy have impacted on all areas of government. Globalization and the IT revolution in particular have increased the expectations of government – what it will do, how quickly, and with what degree of openness and accountability. Contrary to expectations a decade ago, the breadth of government business has expanded. In the view of some, the new focus on security post ‘nine-eleven’ has added further to the role of modern governments.

71 As well, the means by which governments do their business have been transformed, and the pace at which business is done has quickened markedly.

- Instant and constantly available **communications** have made government a ‘24 by 7’ business, in part because in western democracies at least, politicians (and government agencies) need to be able to respond to the incessant demands of the **media**, and no Minister wants to be ‘scooped’ or taken by surprise. The Canberra Press Gallery is ever growing, ambitious and competitive and, as noted, the ‘24 hour cycle’ is well established.
- The **volume of information available to decision makers**, including in policy areas, has burgeoned, and the sources of advice to them have expanded much beyond the traditional ‘internal’ chains.
- The **volume of information available to the public**, including to the media, business and interest groups, has also burgeoned, and enabled more informed inputs to, and critiques of, government.
- The **boundaries** between subject areas and disciplines have blurred, requiring government agencies to work together ever more closely but at the same time blurring responsibilities.
- Domestic and international, and Federal and State, interests and policies are increasingly **overlapping** and **enmeshed**.
- In government no less than in the corporate sector, greater exposure of processes as a result *inter alia* of the IT revolution has enabled deeper and quicker **scrutiny**, as well as rapid ‘contagion’ when problems arise. This in turn has led to demands for better and more detailed standards of **governance**.

72 These changes are affecting most governments, but especially those in liberal democratic states and in more globalised nations like Australia. In the Australian Government, they are reflected in a number of ways, several of which have been referred to in earlier discussion.

- (a) The “**velocity**” of government business has increased, that is, a greater volume of work is required (including in servicing the needs of Ministers) and at a faster pace. This is demonstrated in the statistics reported by Departments about their communication with Ministers.
- (b) There has been both an ‘**upward drift**’ in decision making and in announcing decisions, that is, a tendency for decisions to have to be made and announced at higher levels. This might be seen as the “presidentialization” of the parliamentary system, in which public interest is focused on the ‘centre’, with the Prime Minister being expected to know (and be able to comment on) everything.
- (c) At the same time, there has been a greater ‘**downward reach**’ as mediaconscious Ministers look for decisions they can make and announce, and – in some cases - take the view that given the risks from greater scrutiny, they should become more involved in decision making. This ‘downward reach’ has been a significant factor contributing to perceptions of the ‘politicization’ of the Public Service.

- (d) The emphasis on **'whole of government'** approaches has increased significantly. One effect of this has been to strengthen the 'centre', that is, the Prime Minister and his Department and possibly other 'central agencies'. Another has been to increase the number and frequency (and level) of inter-departmental committee meetings; for instance, the Secretaries Committee on National Security, and the Secretaries Group on Indigenous Affairs, both of which support Ministerial committees, now meet frequently.
- (e) Further, the demand for Departments to work together, **'across the boundaries'**, though impossible to contest as a matter of better government, does at times require Secretaries to compromise in regard to their Department's (or Minister's) prerogatives and to bring to Ministers positions that are less than optimal from the policy or operational perspective of their own portfolio.
- (f) As noted, **Ministerial staff numbers** have grown, in part because Public Service agencies haven't been able to keep up with the speed, creativity or quality required.
- (g) In formulating policies, Ministers increasingly need (and want to be seen) to draw on a **wide range of contacts, sources and interest and community groups** and often to engage them on either a continuing or *ad hoc* bases. For Secretaries, in addition to introducing inputs to decisions about which they may be unsighted, this also implies a greater need for 'network management' of their own.
- (h) The tolerance for **risk** is declining, and consequently there is closer attention to 'governance' issues.
- (i) Pressures on **Federal/State relations** have grown as the world has contracted and the boundaries between layers of government become less relevant. This development is clearly reflected, for instance, in the growing work of COAG. In a less public way it is also reflected in the increasing frequency with which the Commonwealth Government is required to consult the States about international treaties and agreements which affect their interests.

73 These developments in turn are affecting the relationship between the executive arm of Government (the Prime Minister and Ministers) and the Public Service, with consequences for the expectations of Secretaries and the demands upon them. These include:

- The blurring of accountabilities and the difficulty of determining who is responsible, having regard to the wider range of players providing advice and the tendency of Ministers and their staff to reach further down the decision-making chain.
- The increasing range and reach of the mechanisms of scrutiny and audit, including, for example, new and more demanding accounting standards and increased time spent before Parliamentary committees.
- A subtle shift in the interpretation of the 'Westminster model' as it relates to Ministerial responsibility. Thus, Ministers seem increasingly less inclined to accept responsibility - let alone resign - for failures or breakdowns by their Departments. In explaining situations or announcing decisions, they will often preface their statements with clauses like "I am advised that...", or "I have decided, on the advice of..."; and in making public announcements, they will sometimes have the Secretary, or other senior officials responsible, before the camera with them.

CONCLUSION

74 Secretaries remain at the 'fulcrum point' or the 'frantic interface' between Departments and their Ministers (and the Prime Minister). Their legislative cover is thin and their management and governance structures complex and ambiguous. They retain all the accountabilities, responsibilities and obligations that ever went with their positions, and have as well acquired further responsibilities in regard to the management of their Departments. Yet, in an environment which is faster moving and more fluid, and at the same time more 'scrutiny enabled', they have a reducing level of control over what is achieved and how it is achieved. A point made by Dr Shergold seven years ago is ever more pertinent today: "The increasingly complex relationships that exist between Government, Parliament, Public Service and the public increasingly challenge the traditional notions of accountability". Much of the responsibility for managing this challenge falls to Departmental Secretaries.

Australian Public Service Commission Papers

Departmental Secretaries

- **Appointment**
- **Role**
- **Recruitment**

Departmental Secretary Appointments

Public Service Act 1902

(Received the Royal Assent on 5 May 1902 and came into force on 1 January 1903)

- Entry to the Australian Public Service (APS) was by way of prescribed competitive examination (s. 26 and 27 of the Act).
- Sections 15 and 16 of the Act established a public service constituted by four divisions. Secretaries (then titled Permanent Heads) were part of the Administrative Division:
 - subs.16(1) The Administrative Division shall include all Permanent Heads of Departments and all Chief Officers of Departments, and also all persons whose offices the Governor-General on the recommendation of the Commissioner directs to be included in such Division.¹
- The 1902 Act established the officers specified in its Second Schedule as the permanent heads of their specified departments.
- It contained no express provisions relating to the appointment of Secretaries whether from inside or outside the Australian Public Service (APS).
- Five of the first seven Secretaries were appointed from the colonial public service.

Public Service Act 1922

(Received the Royal Assent on 18 October 1922)

- The 1922 Act renamed the Administrative Division the First Division of a four-division structure.
 - s.24(1) The First Division shall include all Permanent Heads of Departments and such other officers as the Governor-General determines.
- subs. 54(1) provided that 'all appointments and promotions in or to the First Division shall be made by the Governor-General on the recommendation of the Public Service Board' but with the proviso that 'appointments to the position of Permanent Head could also be made by the Governor-General without reference to the Board' (subs. 54(2)).
- The appointment provisions remained basically unchanged for more than 50 years until modified by the:
 - *Public Service Amendment Act 1976*;
 - *Public Service Reform Act 1984*; and
 - *Prime Minister and Cabinet (Miscellaneous) Act 1994*.

1947—1960—Appointment Process

- In 1947 Sir William Dunk, Public Service Board Chairman (1947 to 1960) outlined how he and the Prime Minister (Ben Chifley) agreed on the processes for nominating and appointing Permanent Heads:
 - ...we worked out an understanding—unwritten...that, as vacancies occurred, I would discuss them with the Prime Minister and tentatively decide on an acceptable candidate (or bracket of them). I would then discuss the vacancy and the short list of possibilities with the Minister. If we agreed on a candidate I would inform the Prime Minister who would take the matter—without an agenda—to Cabinet for approval and subsequent submission (through the Executive Council) to the

• ¹ 'Chief Officers' were mainly State departmental heads whose functions transferred to the Commonwealth on Federation, and who continued to head the State division of the successor Commonwealth department, or senior Commonwealth officials such as the Commonwealth Statistician and the Chief Electoral Officer.

Governor-General. If the Minister would not agree to the Board nominee as accepted by the Prime Minister the case would be taken to agreement in this three cornered atmosphere—even if a compromise was necessary.

When Mr Menzies became Prime Minister I explained the position to him and he said that he would have no hesitation in continuing the procedure.²

1958 Committee of Inquiry into Public Service Recruitment (the Boyer Committee)

- The Boyer Committee recommended inter alia that the Act be amended as follows:
 - all appointments and promotions in or to the First Division to be made by the Governor-General after obtaining a recommendation from the Public Service Board; and
 - if the appointee was a person not on the recommended list, a copy of the Board's recommendation together with a statement of reasons for rejecting that recommendation be laid before both Houses of the Parliament. (Boyer Report 1958: 28)
- Prime Minister Menzies stated that, while consultation with the Board Chairman would continue to occur, it was not thought desirable 'to impose on the responsibilities of a government the duty of stating quite publicly and notoriously, why some nomination was not accepted' (Commonwealth Parliamentary Debates House 17 November 1960: 2985)

1976 Royal Commission on Australian Government Administration (the Coombs Inquiry)

- The Coombs Inquiry made a number of recommendations to the Permanent Head appointment process:
 - that vacancies be advertised whenever possible but with the Prime Minister's approval;
 - the Prime Minister and Minister, after consultation with the Chairman of the Public Service Board, appoint a panel to nominate a short list for Cabinet consideration;
 - ministers have the right to nominate potential appointees for consideration by the panel;
 - the shortlist, in order of preference, be given to the Prime Minister and minister by the Chairman of the Public Service Board; and
 - the relevant minister and Cabinet approve the ultimate selection.

Public Service Amendment (First Division Officers) Act 1976

(Received the Royal Assent on 28 February 1977)

- The Act repealed s. 54 of the 1922 Act and inserted three new sections—54, 54A and 54B. The new provisions referred to appointments only—there was no longer a reference to promotion—and responsibility for making recommendations to the Governor-General rested with the Prime Minister—with the Public Service Board's role reduce to an advisory one.
- s. 54 also provided, for the first time, for:
 - short-term appointments of non-public servants to Permanent Head positions (subs. 54(7) —(14); and
 - early termination of Permanent Heads—both permanent public servants and short-term appointees (subs. 54(9)—refer Attachment C—Tenure).
- s. 54 provided for 'established' and other candidates.

² Dunk W, *They Also Serve*, privately published by W Dunk Canberra (1974: 91—92)

- subs. 54(1) defined an ‘established candidate’ as (a) one nominated by the Public Service Board Chairman, or a committee, in accordance with the s. 54A procedures; or (b) not nominated under (a) but held an existing Permanent Head (other than a fixed tenure—see below); or (c) not within a class of persons under (a) or (b) but a previous long-serving Permanent Head who continues to be an officer of the Public Service.
- subs. 54(8) provided for an appointee who was not an established candidate—such appointees were eligible for a five year fixed term appointment (but not past their 65th birthday), with eligibility for reappointment.
- subs. 54(3) provided that every appointment to a First Division office be made by the Governor-General
 - for appointments to an office of Permanent Head in accordance with the recommendation of the Prime Minister
 - in any other case—subject to subs. 54(9)—reappointment of fixed-term appointees— in accordance with the recommendation of the Prime Minister and in accordance with the advice of the Board.
- The Prime Minister was not obliged to recommend to the Governor-General the appointment of an “established candidate” (subs. 54(4)) but, if not doing so, the appointment instrument was required to state that the Prime Minister had informed the Governor-General of this and be published in the Gazette (subs. 54(5)).
- s. 54A set out the procedures to be followed in selecting persons for appointment as Permanent Head, for example, the establishment, membership and role of a committee to make recommendations to the Prime Minister.
- s. 54B dealt with acting appointments to the First Division and is substantially the same in terms as the previous s. 54.
- In summary, appointments of Permanent Heads were made by the Government of the day after considering the advice of a committee of officials chaired by the Chairman of the Board.

Public Service Acts Amendment Act 1982

(Received the Royal Assent on 5 November 1982)

- The Act repealed s. 54 of the 1922 Act and inserted a new Subdivision B—Appointment of Permanent Heads—sections 35 to 41—that with one exception are substantially the same in terms of the previous s. 54.
- New subs. 38(a) enabled the appointment of a Permanent Head to more than one Permanent Head Office for the purpose of allowing a Permanent Head to be in charge of a major department and a minor one. It precluded a dual appointee from receiving remuneration in relation to the second office.
- The Act also repealed the four-tier divisional structure of the APS (ie. the First, Second, Third and Fourth Divisions)—consistent with a recommendation of the Coombs Royal Commission.

Public Service Reform Act 1984

(Received the Royal Assent on 25 June 1984)

- The 1984 Act repealed sections (35 to 41 inclusive) and inserted a new Subdivision B—Appointment of Secretaries of Departments (sections 35 to 41 inclusive).
- The changes reflected the Government’s 1983 policy paper, *Reforming the Australian Public Service*³:

Traditionally, decisions on the appointment of Department Heads have been made by the Prime Minister and his Ministers, although the

³ *Reforming the Australian Public Service*, Canberra (December 1983)

procedures supporting these decisions have varied. In the Government's view, the current procedures, set out in detail in the Public Service Act, are not satisfactory. By creating distinctions in the tenure the Government can offer to candidates on the basis of the support they receive from officials, the current procedures appear to place inappropriate power in the hands of public servants and to inhibit the appointment of outstanding candidates from outside the Service. In practice, the procedures of the day have not prevented the government of the day from advancing its preferred candidates with full tenure, and have merely proved cumbersome and irrelevant. They do not, however, facilitate the search for and appointment of able outsiders. It is intended therefore that these provisions should be repealed.

The Government wants to obtain the best services of the best people it possibly can as Department Heads. While it must take the decisions about appointments, it wants to see that these decisions are based in each case upon the most comprehensive advice. It intends therefore that the new legislation should require the Chairman of the Public Service Board to provide a report to the Prime Minister before any decisions are taken to appoint a Department Head, unattach an officer from such a position or to transfer a Department Head to another Department Head position....This legislation is similar in intent to that which prevailed from 1922 to 1976, but stronger, to the extent that it requires, rather than merely allows for, a report from the Chairman of the Board. (1983:10)

- Under the Act, the system of appointment reverted, in most respects, to that which existed before the 1976 changes. New provisions included:
 - renaming Permanent Head as Secretary to the Department (s. 60);
 - appointments, transfers or the unattaching of Secretaries would be by the Governor-General on the recommendation of the Prime Minister—who was required to have received a report from the Chairman of the Public Service Board (subs. 36(3));
 - all fixed term appointees as Secretaries of departments were able to take out a superannuation endowment policy providing for benefits on completion or termination as an alternative to the standard superannuation cover available under a Commonwealth superannuation scheme (s. 38); and
 - providing for consultation of possible rotation to another department after five years.
- s. 36 provided for the appointment of Secretaries who were not fixed term appointments.
- s. 37 provided for fixed term appointments—these are set out in Federal Court of Australia decision *Barratt v Howard* FCA 1132 (19 August 1999).

1987 Machinery of Government changes

- With the abolition of the Public Service Board in July 1987, the Public Service Act was amended to provide that the Secretary of the Department of the Prime Minister and Cabinet should take on the role of providing reports to the Prime Minister on Secretary appointments (s. 36).

Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994

(Received the Royal Assent on 15 March 1994)

- The Act introduced a major change to employment arrangements for departmental Secretaries—it amended the Public Service Act to provide for fixed period appointments for all Secretaries. (See also Attachment B—Tenure)
- However, s. 36 continued to provide for tenured appointments from within the Service.

Public Service Act 1999

- s. 754 of the *Public Employment (Consequential and Transitional) Amendment Act 1999* repealed the whole *Public Service Act 1922*.

- Part 7—Secretaries of Departments, sections 56 to 63 of the 1999 Act provide a limited process for secretary appointments:
 - subs. 58(1) provides that the Prime Minister may appoint a person to be the Secretary of a department for a period of up to five years—the instrument of appointment specifies the term. Previously authority for Secretary appointments rested with the Governor-General.
 - subs. 58(2) and subs. 58(3) respectively require that before making a Secretary appointment, the Prime Minister must receive a report from the Secretary of the Department of the Prime Minister and Cabinet; or the Commissioner for a Secretary of the Department of the Prime Minister and Cabinet appointment.
 - subs. 58(4) requires the person preparing the report to consult the relevant Minister.
 - subs. 58(5) provides that a person will be able to hold more than one office of Secretary, ie. multiple appointments (previously s. 40 of the 1922 Act).
- Under the Howard Government, including the period 1996 to 1999, Secretary appointments were at the discretion of the Prime Minister.
- There was no consistency in the term of appointments. Some Secretaries were appointed for five years while others were appointed for three years or less.
- Under the Rudd Government, the Prime Minister remains responsible for Secretary appointments but, in line with pre-election commitments, has introduced a standard appointment of five years, unless otherwise requested by the appointee.
 - The Government has extended this policy to agency head appointments unless otherwise agreed by both parties or required by the supporting legislation.
- The introduction of standard terms (together with the abolition of performance pay for Secretaries) seek to address perceptions that the scope of such offices to act apolitically has been eroded.

Departmental Secretaries - Role⁴

- *Serving the Nation* describes the role of a Secretary as follows:

The Secretary's duties focused on three inter-related functions—management of the department, the provision of policy advice to the Minister, and the implementation and administration of policy. (2001:137)

Public Service Act 1902

- Section 12(2) of the Act provided:

The Permanent Head of the Department shall be responsible for its general working, and for all the business thereof, and shall advise the Minister of such Department in all matters relating thereto.

- Sir William Lyne (Minister for Home Affairs and the Minister responsible for the public service) commented on this provision as follows:

The clause does not mean that the permanent head is to be allowed to do exactly as he likes. The Minister must look to see that the work of the permanent head is properly done. I have inserted the clause after the experience I have had of the Public Service of New South Wales. We have sometimes had the head of the department fighting with the Commissioners, and feeling that he has been oppressed by them. We could not have the work done as it should be done under such conditions (Commonwealth Parliamentary Debates 13 June 1901:1083).

- While the number of departments remained largely unchanged during the McLachlan and Edwards periods, the public service which they administered more than doubled in size between January 1903 and June 1922, with numbers of permanent staff increasing from 11,374 to 24,759.

- In relation to the role of a Secretary, the Public Service Board Annual Report 1968-9 stated:

As the manager of his department, the Permanent Head has the primary responsibility for ensuring that its business is carried out efficiently and economically. (45 AR, 1968-69, 5)

- In its 1982-83 Annual Report, the Board made the following statement:

Demands upon the management skills of public servants, particularly senior managers, have grown significantly throughout the past decade. Factors underlying this have included the requirement for departments to 'manage with less' despite the growing scale and complexity of the management tasks and policy issues confronting them; a series of major machinery of government changes; technological change; industrial relations problems; increased public criticism; and a significant increase in formal scrutiny of the Service under the administrative law processes introduced since 1975, by parliamentary committees, by the courts, and by various other mechanisms including royal commissions, committees of inquiry, efficiency audits, management reviews and so on. The combination of these factors has imposed strains on morale, performance and leadership of the Service. (2003:1)

- A recurring theme in another analysis of Secretaries⁵ is '*...the extent to which the role of secretaries is affected by changing external forces. ...a particular government; the personality of ministers; and the specific issues they must deal with. To this we might also add changing expectations about the way the public service functions, and its role in a modern society*'. (2004:3)

⁴ Note. This summary principally examines changes to the Public Service Act. While it provides an overview of major reforms to the financial and workplace relations frameworks, these are the responsibility of the Departments of Finance and Deregulation and Education, Employment and Workplace Relations respectively.

⁵ Patrick Weller, *Australia's Mandarins: the frank and the fearless*, Australia 2004

Administrative Law Reforms

- Between 1968 and 1973, the Federal Government established three committees to examine administrative decision making and review in Australia: the Commonwealth Administrative Review Committee, known as 'The Kerr Committee', and the Bland and Ellicott Committees.
- *Serving the Nation* observes:

A new era in external legal accountability of Australian government was ushered in by the report in 1971 of the Commonwealth Administrative Review Committee. Chaired by Mr Justice Kerr, the Committee proposed a comprehensive system of administrative law premised on the view that the growth in government power must be accompanied by 'a concomitant acceptance of responsibility to correct administrative error and the improper exercise of administrative power.

The Administrative Review Committee recommended major changes in the traditional administrative law system. (2001:127)
- The Parliament passed three major pieces of legislation as the result of the reports by the Kerr, Bland and Ellicott Committees. These Acts recognise four bodies as elements in a comprehensive structure:
 - the office of Ombudsman established by the *Ombudsman Act 1976*;
 - a general administrative appeal tribunal—the Administrative Appeals Tribunal (AAT) established by the *Administrative Appeals Tribunal Act 1975*;
 - a new system of judicial review—introduced by the *Administrative Decisions (Judicial Review) Act 1977*;
 - a body to monitor and review the new structure—the Administrative Review Council established by the *Administrative Appeals Tribunal Act 1976*.
- A further Act was introduced in 1982—the *Freedom of Information Act*.
- Individually and collectively, these reforms introduced a new accountability dimension for both Ministers and officials.

Public Service Reform Act 1984

(Received the Royal Assent on 25 June 1984)

- The Hawke Government's white paper, *Reforming the Australian Public Service*, stated:

For Departmental Heads, greater management flexibility will bring with it a need for greater responsibility and accountability. (1983:29)
- subs. 25(2) of the Act was amended to make clear that a Secretary's responsibilities for the general working of a department were exercised 'under the...Minister', in accordance with the Minister's powers under the Constitution.
- subs. 25(3) of the Act was also amended to make a number of personnel and managerial changes within the Service and to provide Secretaries with greater autonomy in relation to the following:
 - subs. 22B and 22C required Secretaries to develop and implement an equal employment opportunity programme and an industrial democratic action plan. Such plans were reviewable by the Public Service Board.
 - subs. 26 (1) of the Act was amended to allow a Secretary to delegate all or any of his powers or functions except for the power of delegation.

- s. 27 gave Secretaries the power to create, abolish and determine the duties of positions. This enabled Secretaries to adjust staff levels to meet programme needs, within financial limits administered by the then Department of Finance.
- The Hawke Government's reforms also implemented a number of financial management recommendations of the 1983 Reid Review of Commonwealth Administration, including a requirement that Secretaries prepare annually financial management improvement plans for consideration by the relevant Minister.

Public Service (Streamlining) Act 1986

(Received the Royal Assent on 18 December 1986—the legislation came into force in stages in 1987)

- Within two years, the Government was intent upon achieving further APS reforms to streamline APS working practices and procedures. These measures were part of a broader package of government measures that sought to address a national economic crisis stemming from a deterioration of Australia's international trading position.
- A change of a major significance was the devolution of a wide range of powers from the Public Service Board to Secretaries, for example:
 - New s. 33C gave Secretaries the power to, with the consent of the officer involved, declare people to be unattached. This power was previously exercised by the Public Service Board.
 - s. 39 altered the selection criteria for promotion—the Secretary was required to appoint the person who, in their opinion, was the most efficient person to have applied for that position.
 - New s. 47 provided inter alia that a Secretary would be able to terminate an appointment prior to confirmation if satisfied that the person would be an excess officer if appointed or that the person would not be granted Australian citizenship.
 - s. 76W dealt with the powers of Secretaries and the Board in relation to the redeployment and retirement of officers other than Secretaries. It enabled a Secretary to reduce an officer's classification or retire the officer where it was in the interests of the efficient administration of the Department. The Board retained responsibility for redeployment of officers to other agencies.
- As noted by *A History in Three Acts: Evolution of the Public Service Act 1999*⁶ these changes reflected an Australia-wide trend '*...to move away from strong, central personnel management agencies and to devolve increasingly their powers to departments and agencies*' (2004:93).

Administrative Arrangements Act 1987

(Received the Royal Assent on 18 September 1987)

- On 14 July 1987 the Public Service Board was abolished in the machinery of government changes that followed the re-election of the Hawke Government. The abolition stemmed directly from the Government's acceptance of the Efficiency Scrutiny Unit⁷ recommendations that the Public Service Board be replaced with a Public Service Commission (holding a reduced role).
- The Efficiency Scrutiny Unit also proposed that the successor arrangements include:
 - devolution to Secretaries all operational aspects of personnel matters, and management improvement programmes;
 - transfer of public service arbitration and pay and conditions to the then Department of Employment and Industrial Relations;
 - transfer of classification issues to the then Department of Finance; and

⁶ *A History in Three Acts: Evolution of the Public Service Act 1999*, Canberra 2004

⁷ David Block, *Report by Efficiency Scrutiny Unit on proposed successor arrangements to the Public Service Board*, Canberra 1987

- establishment of a part-time Management Advisory Board comprising departmental Secretaries to advise the Government on significant issues relating to the management of the APS and to act as a forum for considering major activities affecting the Service as a whole.
- Formal abolition of the Board did not occur until implementation of the legislative aspects of the 1987 Act.
- The Act also inserted a new s. 22 into the PSA Act 1922 that established the Management Advisory Board—to advise the Australian Government, through the Prime Minister, on significant management issues for the APS.
- The Board comprised the Secretaries of the Departments of the Prime Minister and Cabinet, Industrial Relations, and Finance, and the Public Service Commissioner, and at least two other Secretaries nominated by the Prime Minister.
- The Board established the Management Improvement Advisory Committee, a representative group of senior public servants to discuss and develop detailed advice for Board consideration. The Committee was broadly representative of the Service as a whole and included representation from the regional offices of departments and agencies.

Election of the Howard Government in 1996

- *Serving the Nation* observes:

The Coalition Government that came to power in 1996 was quite clear in its view that centralised rules and regulations were a straightjacket on innovation and high performance. The general principle of greater devolution to agencies accompanied by accountability for the use of the new powers drove changes on three fronts: financial management, workplace relations and public service employment. (2001:123)

Workplace Relations and Other Legislation Amendment Act 1996

- The *Workplace Relations and Other Legislation Amendment Act 1996* substantially amended the *Industrial Relations Act 1988* and inter alia retitled it as the *Workplace Relations Act 1996*.
- The amendment to the 1988 Act were wide-ranging but, from an APS perspective, the Act required the APS to operate under the same industrial relations and employment arrangements that applied to the rest of the Australian workforce.
- Under the new framework, the authority to negotiate terms and conditions of employment was devolved directly to Secretaries and other agency heads within a framework of broad policy parameters that recognised the Government as the ultimate employer. The key elements included:
 - the option for employers/employees to enter into formalised individual agreements by way of Australian Workplace Agreements (AWAs);
 - the option of formalised collective agreements by way of Certified Agreements (CAs), made with unions or made directly between employers and employees;
 - : Secretaries are the employer for both individual and collective agreements in their departments;
 - both AWAs and CAs were subject to compliance with a set of statutory minimum conditions, including no loss of previous remuneration entitlements under the relevant award(s), guaranteed equal pay for work of equal value and various minimum leave entitlements;
 - absence of discrimination was a precondition to certification of agreements;
 - freedom of association, including the choice of whether or not to be in a union or employer organisation; and

- a new unfair dismissal scheme 'fair to both employee and employer', with the Australian Industrial Relations Commission empowered to determine whether a termination of employment was 'harsh, unjust or unreasonable' and to make court-enforceable orders in relation thereto.
- The *Workplace Relations Act 1996* and the Workplace Relations Regulations 1996 allowed APS employers to override prescribed provisions of the PSA 1922 (relating principally to dismissal and retirement of people from the APS) in their certified agreements and AWAs.

Financial Management and Accountability Act 1997

- Devolution to departments and agencies of industrial relations powers was soon followed by financial management legislation with similar intent.
- The *Financial Management and Accountability Act 1997* (FMA), (together with the *Commonwealth Authorities and Companies Act 1997* (CAC Act) and *Auditor-General Act 1997*), collectively up-hold the Commonwealth's financial management reforms by providing a principles-based legislative framework which emphasises devolved responsibility, performance, propriety and accountability in the governance of Commonwealth agencies, authorities and companies.
- Secretaries and other agency heads have a significant level of responsibility and accountability under the FMA Act. s. 44 requires that the agency Chief Executive (generally also an agency head for the purposes of the *Public Service Act 1999*) must manage the affairs of the agency in a way that promotes the efficient, effective and ethical use of the Commonwealth resources, that is, public money and public property, for which the Chief Executive is responsible.
- Other specific responsibilities of Chief Executives under the FMA Act include:
 - s. 45—instituting a fraud control plan;
 - s. 46—establishing an audit committee;
 - s. 47—pursuing the recovery of debts owed to the Commonwealth for which that Chief Executive is responsible;
 - s. 48—ensuring accounts and records are kept in accordance with the Finance Minister's Orders; and
 - s. 49—providing the Auditor-General with financial statements in the required form.
- The Financial Management and Accountability Regulations, Financial Management and Accountability Orders and Finance Minister's Orders provide additional detail in relation to Chief Executives' responsibilities.

Public Service Act 1999

(Received the Royal Assent on 5 December 1999)

- The Act introduced significant changes to the legislative framework governing employment in the APS.
 - As at 30 June 1998, there were 121,262 staff employed under the 1922 Act.
- The essential elements were outlined by Minister Reith in introducing the Public Service Bill:

The new Public Service Act was to provide an effective legislative basis for public accountability, with an interlocking framework of powers and responsibilities, exercised in a devolved managerial environment.
- subs. 57(1) states that the Secretary of a Department, under the agency Minister, is responsible for managing the Department and must advise the Agency Minister in matters relating to the Department.

- Attachment E to the Explanatory Memorandum to the Public Service Bill 1999 summarises the major powers and functions of all agency heads⁸ as follows:
 - s. 12—to uphold and promote APS values
 - s. 14—to be bound by the Code of Conduct
 - s. 15—to establish procedures for determining whether an APS employee has breached the Code of Conduct and to ensure every APS employee has reasonable access to the documents setting out those procedures
 - s. 16—to receive whistleblowing reports
 - s. 18—to establish a workplace diversity program
 - s. 20—to have, on behalf of the Commonwealth, all the rights, duties and powers of an employer
 - s. 22—to engage persons as APS employees
 - s. 24—to determine the remuneration and other terms and conditions of employment for APS employees
 - s. 25—to assign duties to an APS employee
 - s. 26—to agree to movements of APS employees into the agency
 - s. 27—to notify the Public Service Commissioner that an employee is excess for the purpose of compulsory movement provision
 - s. 29—to terminate the employment of an APS employee
 - s. 31—to direct the forfeiture of additional remuneration
 - s. 37—to offer an SES employee an incentive to retire
 - s. 74—to engage persons as locally engaged employees
 - s. 77—to create a formal position
 - s. 78—to delegate powers and functions (except for the power of delegation).
- Departmental Secretaries (and Agency Heads) were also given more extensive powers in relation to the management of staff (particularly in the areas of recruitment of staff, and managing inefficiency and underperformance) in accordance with new Directions made by the Public Service and Merit Protection Commissioner.
- s. 64 of the Act establishes the Management Advisory Committee (MAC)—a forum of Secretaries and Agency Heads that advises the Australian Government on matters relating to the management of the APS. The MAC replaced the former Management Advisory Board (refer to the *Administrative Arrangements Act 1987* entry above).
- MAC is chaired by the Secretary of the Department of the Prime Minister and Cabinet, with the Public Service Commissioner as executive officer. While it has no statutory powers or executive functions, it provides a forum for Secretaries and heads of major agencies to discuss significant issues of topical and long-term interest to the APS.
- While the Act defines the role of a Secretary and various statutory responsibilities, it does not accurately describe or convey the complexity of the role of departmental Secretaries.
- According to Halligan et al⁹, for example:

Managing a public sector agency is a complex task. Secretaries can be held accountable for all policy advice, the performance of their staff, the morale of their organisation, expenditure of public money, and even the performance of their Minister.

In a single day they might be called upon to brief the Minister on a contentious issue, liaise with colleagues in other departments about

⁸ s. 7 of the Act defines an agency head as the Secretary of a department, or the head of an executive agency, or the head of a statutory agency.

⁹ John Halligan, Ian Mackintosh & Hugh Watson, *Australian Public Service: the view from the top*, Canberra 1996

Cabinet business, meet departmental clients or stakeholders, deal with staff performance, and respond to invitations to attend meetings or functions. Not an easy job. (1996:68)

- Michael Codd¹⁰ considers a Secretary's most important role and challenge as follows:

Perhaps most importantly of all, the secretary must establish an understanding of the objectives and priorities for the area laid down by the Government or determined by the minister, whether that be policy, program or administrative objectives and priorities. It is the secretary's role to keep closely in touch with changes in those objectives and priorities and ensure that the application of resources in the department best reflects those objectives and priorities understood by the minister. (1990:12-13)

- In examining the key changes in the Secretary's role, Halligan et al identified three key factors:
 - today's Secretaries are required to respond to an increasingly better educated, better informed and wealthier community with increased expectations about the role and performance of the public sector;
 - as a result many Secretaries have a higher public profile and engage in dialogue with key stakeholders than was previously the case; and
 - as a result Secretaries and their departments are more open to community scrutiny and criticism. (1996: 68)

¹⁰ Michael Codd, *The Role of Secretaries of Department in the Australian Public Service*, Canberra 1990

Departmental Secretaries - Recruitment

The recruitment of Secretaries has been guided more by convention than statute.

s. 34 of the *Public Service Act 1922* (since repealed) provided that:

A person is not eligible for appointment to the Service unless the Board is satisfied that the person is a fit and proper person to be an officer of the Service.

There is no equivalent provision in the 1999 Act.

Qualifications

According to *Serving the Nation*:

The need for Secretaries in Australia to have subject matter expertise or even professional qualifications in the area on which they advise has been, to some extent, influenced by the practices in the British Civil Service and its belief in the 'gifted amateur'. (2001:141)

Serving the Nation further observes that although Secretary appointments to the Attorney-General's Department and the Department of the Treasury are usually lawyers and economists respectively that no academic or other qualification are specified for such offices.

A previous exception was the Director-General of the Department of Health. Prior to 1983 the appointee was required to be a medical practitioner. This requirement was removed by a change to the *National Health Act*.

A 1943 study of 40 departmental heads and major agencies concluded that there was a trend towards higher standards of education and training, but that appointees were not recruited from a narrow social or economic class or a select group of schools or universities.

Australia has no equivalent to the French *Ecole Nationale d'Administration* through which almost all leaders will pass; although, since 2002, the APS has used the Australian and New Zealand School of Government (ANZSOG) and APS Commission leadership courses to hone and refine the skills of future public sector leaders.

Age

Prior to 1975 it was not unusual for Secretary appointees to be 55 or more years of age although this became increasingly rare under the Fraser and Hawke/Keating Governments. For example, 50 per cent of appointments under the Fraser Government and more than 70 per cent under the Hawke/Keating Governments were under the age of 50. In contrast, approximately 65 per cent of appointments under the Howard Government were 50 or more years of age.

However, the great majority of Secretaries had joined the APS by the time they were 30.

*Serving the Nation*¹¹ cites a study undertaken in 1987 that examined the key characteristics of Secretaries between 1945 and 1987. The study concluded that:

Secretaries are younger on first appointment and tend to spend less time in individual departments than was the case in earlier years. Associated with this is the greater likelihood today that a Secretary will move laterally and rotate through a number of different departments.

Careers

Secretaries do not fit a neat disciplinary background and do not have a common social background. However, some characteristics common to Secretary appointments can be

¹¹ *Serving the Nation*, Canberra (2001:145-6)

identified. Secretaries are career public servants, predominantly male, Canberra-based (and since the 1970s increasingly Canberra-reared) and ambitious high achievers.

Before the 1970s, it was possible for future Secretaries to have spent significant time working in the state branches of Commonwealth departments before moving to Canberra (eg. Tony Ayers and Bill Gray). Other recruiting grounds for Secretaries include:

- State government public services—not often directly to Secretary level—for example, Stephen Duckett (1994), Mike Taylor (2002), and Terry Moran (2007)—Lisa Paul (2003) was also recruited from the ACT Public Service but not directly to Secretary level;
- academia—for example, Hugh Ennor (1967) and Richard Johnston (1985)—Peter Shergold (1987), Ken Henry (2001) and Jeff Harmer (2004) were also recruited from academia but not directly to Secretary level;
- the private sector—before 1996 this sector was not a recruiting ground for Secretaries. Those recruited from the private sector usually had extensive public service experience before joining the private sector (for example, Max Moore-Wilton (1996), Paul Barratt (1996) and Roger Wilkins (2008)). Other recruits include Robert Cornall (2000) and Mark Paterson (2002);
- public services elsewhere—to date, only one Secretary was directly recruited from overseas (Charles Halton (1973)); and
- Minister's offices—for example, Peter Wilenski (1972), John Menadue (1974), and Peter Boxall (1997).¹²

From the 1970s onwards, many Secretaries were recruited directly to Canberra by graduate schemes such as the former administrative trainee scheme and the graduate administrative assistant programme—for example, Helen Williams (1985), Lynelle Briggs (2004) and Andrew Metcalfe (2005). Both schemes were centrally administered by the former Public Service Board to recruit talented graduates.

Early exposure to influential mentors also greatly assisted the careers of many future Secretaries—for example, Michael Codd (1982) and Ken Matthews (1998). An appointment as an executive officer to a departmental Secretary was often an early mark of success and provided insight into the way a department worked. Some Secretaries have also worked in the Prime Minister's office—for example, Geoffrey Yeend (1978) served under Prime Minister Menzies, Peter Wilenski under Prime Minister Whitlam, Andrew Rosalky (1995) under Prime Minister Fraser, Chris Coneybeare (1990) under Prime Minister Hawke, and Alan Hawke (1994) and Ashton Calvert (1998) under Prime Minister Keating. Others have served in Minister's Offices (for example, Andrew Metcalfe (2005)).

Many Secretaries have also had experience in one or more central agencies—Prime Minister and Cabinet, the Treasury, Finance and the former Public Service Board. According to Weller¹³, “...experience in Finance as a deputy secretary was regarded as valuable. PM&C gave an officer insights into the cabinet process and the problems of maintaining a whole-of-government view”.

In relation to women, the first female Secretary was Helen Williams (1985). When Bill Cole promoted her to the Second Division he was reported as saying:

I appointed a woman. Somebody said it would be over his dead body, so I appointed her and he didn't die.¹⁴

Two years later Ms Williams went on six months' maternity leave. She reportedly said:

I came back from maternity leave in 1987 almost on the day that the 28 departments were amalgamated in to eighteen. It was hardly surprising that I wasn't given one.¹⁵

¹² Note—examples are illustrative rather than exhaustive.

¹³ Patrick Weller, *Australia's Mandarins-The frank and the fearless*, Australia (2001:61)

¹⁴ *ibid* (2001:59)

¹⁵ *op cit* (2001:69)

Since 1985, a further four women have been appointed departmental Secretary—Jane Halton (2002), Patricia Scott (2004), Lisa Paul (2004) and Joanna Hewitt (2004).

A further two women have been appointed to the office of Public Service Commissioner—a statutory office that enjoys Secretary status and is remunerated on the same basis—Helen Williams (1998) and Lynelle Briggs (2004).

**Prime Minister's Determination
under
Section 61 of the *Public Service Act 1999*
Secretaries' Remuneration and Other Conditions**



COMMONWEALTH OF AUSTRALIA

Public Service Act 1999

Determination under Section 61: Secretaries' remuneration and other conditions

I, KEVIN MICHAEL RUDD, Prime Minister, under section 61 of the *Public Service Act 1999*, having taken advice from the Remuneration Tribunal, determine that, from the date of this determination, in relation to:

- (a) a person appointed as a Secretary under section 58 of the *Public Service Act 1999*; or
- (b) a person who is taken, under subsection 5 (1) of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, to be appointed as a Secretary under the *Public Service Act 1999*;

the remuneration and other conditions of appointment of that person shall be as set out below.

This Determination overrides all previous determinations made under section 61 of the *Public Service Act 1999*, and a Secretary's remuneration and other conditions of appointment are to be exclusively as set out in this Determination unless otherwise indicated.

Dated October 2009

Prime Minister

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PART 1 - INTERPRETATION

1.1 In this determination:

“Base Salary” means the amounts specified under clause 2.1 of this Determination.

“Benefits” means non-monetary benefits provided at the Commonwealth's expense.

“business class” means a standard of service equivalent to that offered by Qantas Airways Ltd in its Business Class.

“Commonwealth authority” means

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth or the Australian Capital Territory; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth has a controlling interest; or
- (c) an authority or body, not being a body corporate, established for a public purpose by or under a law of the Commonwealth or the Australian Capital Territory.

“DEEWR Allowance Subscription Scheme” means the Department of Education, Employment and Workplace Relations Allowance Subscription Scheme and any scheme of a similar nature which modifies, replaces or supersedes the DEEWR Allowance Subscription Scheme.

“employer's superannuation contribution” in respect of a Secretary means payments made by the Commonwealth to or in respect of the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme in order to support the provision of benefits under any of those schemes.

“Executive Vehicle Scheme Guidelines” means guidelines published from time to time by the Department of Education, Employment and Workplace Relations in respect of the Executive Vehicle Scheme or such other Department or agency as then has policy responsibility for the scheme, or any guidelines of a similar nature which modify, replace or supersede those guidelines or guidelines to any scheme of a similar nature which modifies, replaces or supersedes the Executive Vehicle Scheme.

“locality of the Australian Capital Territory” means the Australian Capital Territory and those parts of New South Wales which fall within a 100 kilometre radius of Canberra.

“other Total Remuneration elements” include superannuation contributions made by the Commonwealth and the costs associated with a Commonwealth provided vehicle.

“**Secretary**” means the holder of an office referred to in the definition of “Secretary” in section 7 of the *Public Service Act 1999*.

“**Secretary’s Minister**” in respect of a Secretary means the senior portfolio Minister who administers the Department of which the Secretary has been appointed to the office of Secretary.

- 1.2 The provisions of this determination are additional and subject to any applicable statutory entitlements or conditions, including those deriving from the following Acts and from regulations and instruments made under those Acts:
- (a) *Financial Management and Accountability Act 1997*;
 - (b) *Long Service Leave (Commonwealth Employees) Act 1976*;
 - (c) *Occupational Health and Safety (Commonwealth Employment) Act 1991*;
 - (d) *Maternity Leave (Commonwealth Employees) Act 1973*;
 - (e) *Public Service Act 1999*;
 - (f) *Safety, Rehabilitation and Compensation Act 1988*;
 - (g) *Superannuation Act 1976*;
 - (h) *Superannuation Act 1990*;
 - (i) *Superannuation Benefits (Supervisory Mechanisms) Act 1990*;
 - (j) *Superannuation Productivity Benefit Act 1988*; and
 - (k) *Fair Work Act 2009*.

PART 2 - REMUNERATION

Remuneration amounts

- 2.1 The holder of an office specified in the first column of the Schedule attached to this Determination is eligible for Base Salary and Total Remuneration in the amounts specified in the Schedule.

Total Remuneration

- 2.2 Total Remuneration is the value attributed to the remuneration to be paid to a Secretary and includes:
- (a) salary, subject to the packaging provisions of clauses 2.3, 2.4 and 2.5;
 - (b) the value, calculated in accordance with this Part, of a fully maintained Commonwealth provided vehicle plus parking and applicable fringe benefits taxation; and
 - (c) the value, calculated in accordance with this Part, of the employer’s

- superannuation contribution specified in clause 2.7 of this Part;
but does not include;
- (d) facilities provided as business support under clauses 2.11 to 2.14;
 - (e) travelling allowances and expenditure specified in Part 3;
 - (f) compensation for early loss of office specified in Part 5; or
 - (g) removal costs, accommodation allowances and reunion airfares specified in Part 7.

Remuneration packaging

- 2.3 Subject to this Part, a Secretary may elect to receive the benefit of the Total Remuneration as salary or a combination of salary and other Benefits.
- 2.4 Any election made in accordance with clause 2.3 shall be consistent with relevant taxation laws and rulings or guidelines issued by the Australian Taxation Office applicable to salary packaging schemes.
- 2.5 Any election made in accordance with clause 2.3 must not result in cost to the Commonwealth (including in relation to any fringe benefits taxation) additional to the cost which would be incurred if other Total Remuneration elements able to be taken as salary were taken as salary.

Superannuation

- 2.6 Regardless of anything else in this Determination, a Secretary's annual rate of salary for the purposes of the Superannuation (CSS) Salary Regulations shall be Base Salary as specified under clause 2.1. (Note: It will therefore be the Secretary's superannuation salary for the purposes of the *Superannuation Act 1976* and the *Superannuation Act 1990*.)
- 2.7 The Total Remuneration of a Secretary shall be taken to include the value of the employer's superannuation contributions made in respect of the Secretary. For this purpose:
 - (a) in the case of a Secretary participating in the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme, the value of the employer's superannuation contributions made in respect of the Secretary shall be taken to be:
 - (i) 13% of Base Salary until 30 June 2005; and
 - (ii) 15.4% of Base Salary on and from 1 July 2005
 - (b) in the case of a Secretary participating in any other superannuation scheme, the value of the employer's superannuation contributions made in respect of the Secretary to the superannuation scheme shall reflect the amounts actually made or liable to be made.
- 2.8 The value attributable by virtue of clause 2.7 to the employer's superannuation contribution 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.

Vehicle and parking

- 2.9.1 Where a Secretary elects to receive a Commonwealth provided vehicle, the Secretary shall have deducted from his or her Total Remuneration, an amount equal to the actual cost (including fringe benefits tax) of the vehicle to the Commonwealth, plus the value of parking, less \$3,100 a year or, where the vehicle is provided for less than a full year, \$3,100 calculated on a *pro rata* basis.
- 2.9.2 The Executive Vehicle Scheme Guidelines issued by the Department of Education, Employment and Workplace Relations apply to the selection of a vehicle referred to in subclause 2.9.1.
- 2.10.1 Where a Secretary elects not to receive a Commonwealth provided vehicle but instead enters into a salary sacrifice arrangement for the provision of another vehicle or uses his own or her own vehicle, and that vehicle is used for business-related purposes, the Secretary is entitled to an amount of \$3,100 a year, less tax at the applicable rate, or, where the vehicle is provided for less than a full year, that amount calculated on a *pro rata* basis.
- 2.10.2 An amount payable under subclause 2.10.1 shall not be taken as remuneration for any purpose.

Business support

- 2.11 A Secretary is entitled to the provision by his or her Department of communications, information technology and other office facilities necessary for the efficient conduct of the Commonwealth's business, and such provision includes incidental private use of those facilities. Where required, separate telecommunications lines to a Secretary's residence in support of these facilities may be provided at no cost to the Secretary.
- 2.12 A Secretary is entitled to be reimbursed by the Commonwealth for all costs of installation and rental of a telephone line and telephone at his or her residence and for all call charges on that telephone.
- 2.13 If a Secretary maintains two residences, he or she is entitled to be reimbursed by the Commonwealth in the terms of clause 2.12 in relation to a telephone line and telephone at one of his or her residences and, in relation to the other residence, is entitled to be reimbursed only for 50% of the call charges and no other costs.
- 2.14 A Secretary is entitled to two domestic airline lounge memberships at Commonwealth expense.

PART 3 - OFFICIAL TRAVEL

Entitlement to official travel

- 4.1 Secretaries are entitled to the travelling allowances for travel on official business within Australia and internationally in accordance with the conditions, and at the Tier 1 rate, as determined from time to time by the Remuneration Tribunal in relation to full-time public office holders.

PART 4 - LEAVE

Normal duty

- 4.1 A Secretary is to be available for duty when required by his or her Minister and on all days his or her department is open for and conducts normal business.

Recreation leave

- 4.2 A Secretary is entitled to recreation leave at a rate of 20 working days for each completed 12 months of service, or pro rata for lesser periods, to be credited in the same way as recreation leave entitlements are credited to employees generally in the Secretary's department.
- 4.3 A Secretary's recreation leave credit includes any existing recreation leave accrued either through prior service in the Australian Public Service or the ACT Government Service, or through employment in a Commonwealth authority, that in either case ceased not more than two months prior to being appointed as a Secretary.
- 4.4 Application to take recreation leave must be made to the Secretary's Minister and may be for a period up to the Secretary's existing recreation leave credit.
- 4.5 Where a Secretary ceases to be a Secretary, other than by death, and does not carry forward a recreation leave credit to other Commonwealth employment, he or she is entitled to be paid the salary equivalent of:
- (a) any recreation leave credit unused at the time he or she ceased to be a Secretary; and
 - (b) recreation leave accrued since the last 1 January at the rate of one twelfth of a full year's recreation leave accrual for each completed month of service;
- but if a Secretary has died, the Prime Minister or his or her delegate may authorise payment of this amount to a dependant of the Secretary or the Secretary's legal personal representative.

- 4.5A A Secretary is entitled to cash out up to half of his or her annual recreation leave entitlement in any year if the Secretary's department has a policy that allows employees generally in that department to cash out up to half of their annual recreation leave entitlements in accordance with the workplace agreements under which they are engaged.

Personal leave

- 4.6 A Secretary is entitled to personal leave which may be accessed at full or half pay to accommodate personal illness or injury, to care for a family member or to meet family responsibilities of an emergency and unscheduled nature.
- 4.7 A Secretary's entitlement to personal leave accrues at the rate of 15 days on the date of appointment plus a further 15 days at the end of each 12 months' service.
- 4.8 A Secretary's absence of three days or more using personal leave must be authorised by the Prime Minister or his or her delegate.
- 4.9 In addition to the personal leave entitlement specified in clause 4.7, a Secretary's sick leave entitlements accrued either through prior service in the Australian Public Service or in the service of an Australian State or Territory Government, or through employment in a Commonwealth authority, that in either case ceased not more than two months prior to being appointed a Secretary will be recognised as if accrued while as a Secretary and will be paid at full pay or half pay as originally accrued.
- 4.10 Neither unused personal leave nor unused sick leave accrued through prior service referred to in clause 5.7 will be paid out where a Secretary ceases for whatever reason to be a Secretary.
- 4.11 The Prime Minister may grant additional personal leave to a Secretary at the Prime Minister's discretion.

Miscellaneous leave

- 4.12 The Prime Minister or his or her delegate may grant leave of absence to a Secretary for a purpose that the Prime Minister or his or her delegate considers to be in the interests of the Commonwealth. Such leave of absence may be with or without pay and subject to conditions at the discretion of the Prime Minister or his or her delegate.

Statutory leave provisions

- 4.13 A Secretary is entitled to long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and maternity leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*.

- 4.14 Application to take long service leave or maternity leave must be made to the Secretary's Minister.

PART 5 - LOSS OF OFFICE

- 5.1 Where a Secretary is terminated in accordance with the provisions of sub-section 59(1) of the *Public Service Act 1999* and the Commonwealth has not made the Secretary an offer of suitable alternative employment, the Secretary shall be entitled upon his or her termination to be paid:

- (a) three months' Base Salary; or
- (b) one-third of one month's Base Salary for each full month of the balance of the term not served, subject to a maximum payment of 12 months' Base Salary calculated at the date of his or her termination

whichever is the greater.

- 5.2 In determining whether, for the purpose of clause 5.1, there has been an offer of suitable alternative employment, account is to be taken of any offer of employment with the Commonwealth, the administration of a Territory, or a public statutory corporation referred to in paragraph 3(4)(d) of the *Remuneration Tribunal Act 1973*, or an incorporated company all the stock or shares in the capital of which is or are beneficially owned by the Commonwealth or by a public statutory corporation, or an incorporated company limited by guarantee where the interests and rights of the members in or in relation to the company are beneficially owned by the Commonwealth or by a public statutory corporation.

PART 6 – NOTICE OF A DECISION NOT TO RE-APPOINT

- 6.1 A Secretary who is not given three months' notice that he or she will not be re-appointed to the position at the expiration of his or her term shall be paid three months' Base Salary unless the Commonwealth has made the Secretary an offer of suitable alternative employment.
- 6.2 In determining whether, for the purpose of clause 6.1, an offer of suitable alternative employment has been made, regard is to be had to any offer of employment of the kind described in clause 5.2.

PART 7 - REMOVAL AND RELOCATION ASSISTANCE

Interpretation

7.1 In this Part:

“home locality” means the locality where the Secretary ordinarily lives immediately before the commencement of the term of appointment as Secretary takes place.

“new locality” means the locality of the Australian Capital Territory.

Relocation costs and allowances

7.2 A Secretary is entitled to payment at Commonwealth expense of his or her relocation costs from his or her home locality to the new locality in order to take up his or her appointment as a Secretary.

7.3 For the purposes of clause 7.2, relocation costs include, as applicable:

(a) transportation of the Secretary and his or her partner and dependants, if any, from the home locality to the new locality, and their return to the home locality when the Secretary ceases to hold office as Secretary for whatever reason;

(b) the insured removal of the furniture, household effects and domestic animals of the Secretary and his or her partner and dependants from the home locality to the new locality, and their return to the home locality when the Secretary ceases to hold office as Secretary for whatever reason;

(c) costs of sale and purchase of residential housing under clause 7.10 below; and

(d) if the Secretary rents accommodation in the new locality, bond money and utility connection deposits, to be repaid to the Commonwealth at the end of the tenancy.

Disturbance allowance

7.4 In addition to removal costs under subclause 7.3(b), a Secretary is entitled to a disturbance allowance of an amount applicable to a member of the Senior Executive Service as advised from time to time under the DEEWR Allowance Subscription Scheme.

Settling out allowance

7.5 The “settling out period” is the period of 7 days beginning on the day when the furniture and other household effects of the Secretary and his or her dependants, if any, are removed from the residence of the Secretary at the home locality.

- 7.6 During the settling out period, a Secretary is entitled to settling out allowance of:
- (a) in relation to the costs of accommodation – \$1,687 per week; and
 - (b) in relation to meals and incidentals – up to the rate per week applicable to a member of the Senior Executive Service as advised from time to time under the DEEWR Allowance Subscription Scheme for Temporary Accommodation Allowances.

Settling in allowance

- 7.7 The "settling in period" is the period beginning on the day 7 days before the day when the Secretary begins duty at the new locality and ending on the earlier of:
- (a) the day when suitable accommodation or suitable temporary accommodation becomes available at that locality; or
 - (b) the day 13 weeks after the day when the Secretary begins duty at the locality.
- 7.8 During the settling in period, a Secretary is entitled to settling in allowance of:
- (a) in relation to the costs of accommodation – \$1,687 per week; and
 - (b) in relation to meals and incidentals – up to the rate per week applicable to a member of the Senior Executive Service as advised from time to time under the DEEWR Allowance Subscription Scheme for Temporary Accommodation Allowances.

Costs of sale and purchase of residential housing

- 7.9 A Secretary is entitled to reimbursement, at Commonwealth expense, of all reasonable costs of:
- (a) sale of a residence which is owned by him or her in the home locality if sold for the purposes of relocating to the new locality in order to take up the office of Secretary;
 - (b) purchase of a residence in the new locality in order to take up the office of Secretary other than the actual purchase price; and
 - (c) sale of a residence which is owned by him or her in the new locality if sold for the purposes of relocating to the home locality when the Secretary ceases to hold office as Secretary for whatever reason.
- 7.10 For the purposes of clauses 7.3 and 7.9, costs of sale and purchase which may be reimbursed comprise, as applicable:
- (a) agent's commission;
 - (b) advertising fees;
 - (c) solicitor's fees;

- (d) stamp duty; and
- (e) auction costs.

Accommodation support

- 7.11 A Secretary who did not live in the locality of the Australian Capital Territory immediately before the commencement of his or her term of appointment as Secretary is entitled to accommodation support of an amount per week equal to \$28,950 per annum for the duration of his or her term and any subsequent term as Secretary if he or she:
- (a) continues to maintain a residence in his or her home locality; and
 - (b) does not buy a property in the locality of the Australian Capital Territory.

Reunion travel

- 7.12 A Secretary who, immediately before the commencement of his or her initial term of appointment as a Secretary, did not ordinarily live in the locality of the Australian Capital Territory and who continues to maintain a residence in his or her home locality during the initial term of appointment as a Secretary and during any successive term of appointment as a Secretary, is entitled in each 12 months of service, at his or her election at the time of appointment or reappointment to:
- (a) 12 business class return airfares between Canberra and the capital city nearest the home locality each year; or
 - (b) travel for the purposes of reunion up to the value of 12 business class return fares between Canberra and the capital city nearest the home locality for each 12 month period.
- 7.13 The travel entitlement provided to a Secretary under clause 7.12 may be used by a Secretary and his or her immediate family members.
- 7.14 Travel provided to a Secretary under clause 7.12 may be exercised only while he or she occupies the office of a Secretary. Any travel not taken by the day a Secretary ceases to occupy the office of a Secretary ceases to be available.
- 7.15 The value of the travel provided to a Secretary under clause 7.12 may not be taken as a cash equivalent or converted to any other use.

Dependants education allowance

- 7.16 A Secretary who, immediately before the commencement of his or her initial term of appointment as a Secretary, did not ordinarily live in the locality of the Australian Capital Territory, is entitled to reimbursement for boarding and tuition fees for his or her dependent children under 20 years of age undertaking the second last or final

year of secondary education on the terms and conditions set out in Part 5 of Chapter 7 of Public Service Determination 1998/5, irrespective of whether or not that Determination continues in force generally, as if he or she were a prescribed officer under those terms and conditions, and at the rates of allowance and contribution as advised from time to time under the DEEWR Allowance Subscription Scheme for Education Costs Allowances.

PART 8 - ASSISTANCE FOR TRAINING AND DEVELOPMENT

Leave for training and development

- 8.1 The Prime Minister or his or her delegate may grant leave of absence with pay to a Secretary to enable him or her to pursue training or development activities that the Prime Minister or his or her delegate considers to be in the interests of the Commonwealth. Such leave of absence may be subject to conditions at the discretion of the Prime Minister or his or her delegate.

Costs of training and development

- 8.2 The Prime Minister or his or her delegate may approve reimbursement of costs incurred by a Secretary in connection with training or development activities. Such reimbursement is at the discretion of the Prime Minister or his or her delegate and may be in full or in part and may be subject to conditions.

PART 9 - DELEGATION

- 9.1 The Prime Minister may delegate any of his or her powers under this determination to another Minister under such conditions he or she thinks appropriate.

SCHEDULE

Secretary	Base Salary per annum	Total Remuneration per annum
Department of Defence	\$402,670	\$503,220
Department of the Prime Minister and Cabinet	"	"
Department of the Treasury	"	"
Department of Agriculture, Fisheries and Forestry	\$376,640	\$470,790
AttorneyGeneral's Department	"	"
Department of Broadband, Communications and the Digital Economy	"	"
Department of Climate Change	"	"
Department of Education, Employment and Workplace Relations	"	"
Department of the Environment, Water, Heritage and the Arts	"	"
Department of Families, Housing, Community Services and Indigenous Affairs	"	"
Department of Finance and Deregulation	"	"
Department of Foreign Affairs and Trade	"	"
Department of Health and Ageing	"	"
Department of Human Services	"	"
Department of Immigration and Citizenship	"	"
Department of Infrastructure, Transport, Regional Development and Local Government	"	"
Department of Innovation, Industry, Science and Research	"	"
Department of Resources, Energy and Tourism	"	"
Department of Veterans' Affairs	"	"

Superannuation

Superannuation

1. The Australian Government has provided superannuation arrangements for most of its employees since 1922. Superannuation arrangements for Australian Government employees have changed considerably since, the most important change being, arguably, the shift from defined benefit arrangements to the present accumulation scheme.

2. The main changes in Australian Government superannuation arrangements relevant to current Secretaries are:

- the establishment of the Commonwealth Superannuation Scheme (CSS) on 1 July 1976; it was closed to new members on 30 June 1990;
- the commencement of the Public Sector Superannuation Scheme (PSSDB) on 1 July 1990; it was closed to new members on 30 June 1995; and
- the commencement of the Public Sector Superannuation Scheme Accumulation Plan (PSSAP) on 1 July 1995.

3. From 1 July 1996, Australian Government employers were obliged to offer 'choice of superannuation fund' to:

- members of the PSSAP; and
- new employees and new statutory office holders.

4. Under 'choice of fund' arrangements, an employer is required to contribute to a complying superannuation fund or retirement savings account (RSA) chosen by the employee or office holder. The PSSAP is the default fund for employees engaged under the *Public Service Act 1999*.

5. Although it may be expected that, over time, all Australian Government employees will be covered only by either an accumulation scheme, the PSSAP, or by external funds as a consequence of the 'choice of fund' provisions, at present a Secretary may be covered by one of four schemes:

- the CSS;
- the PSSDB;
- the PSSAP; or
- 'choice of fund'

6. The Tribunal understands that each of these possible sources of superannuation benefit is relevant to at least one current Secretary. Several Secretaries are members of the CSS or the PSSDB.

The Existing Australian Government Schemes

7. Details about each Australian Government superannuation scheme with current contributing members may be found through the website of the Department of Finance and Deregulation^{1,2}.

8. In summary:

- the CSS is a 'hybrid' scheme consisting of a defined benefit fund and an accumulation fund. The 'defined benefit' component is an employer-financed indexed pension (being a percentage of final salary based on the period of contributory service and discounted for early retirement before age 65). The 'accumulation component' is a member-financed benefit made up of accumulated basic and supplementary contributions and fund earnings (or an equivalent non-indexed pension). There is also a 'productivity component' made up of accumulated productivity contributions (which may be taken as a non-indexed pension). CSS members make a basic contribution of 5% of superannuation salary; there is scope for optional additional contributions.

¹ <http://www.finance.gov.au/superannuation/index.html>

² PSS and CSS Long Term Cost Report 2005 - <http://www.finance.gov.au/superannuation/pss-and-css-scheme-costs.html>

- the PSSDB is a defined benefit scheme. A PSSDB member makes contributions of between 2% and 10% of superannuation salary; the employer contribution varies with the level of employee contribution. The benefits from the PSS consist of three parts (i) the employer-financed component is determined as the Total Benefit net of the productivity and member component; (ii) the productivity component - made up of accumulated productivity contributions; and (iii) the member-financed component - made up of accumulated member contributions. The maximum benefit allowable under the PSS is known as the Maximum Benefit Limit (MBL). For most members the MBL is 8 times the member's Final Average Salary. There are four options on retirement involving one or another of, or a combination of, pension and lump sum benefits.
- the PSSAP entails an employer contribution at a rate of 15.4% of superannuation salary. The employer may make additional contributions and members have the option of making voluntary personal contributions. The PSSAP benefit is a lump sum.

The Cost of the Existing Australian Government Schemes

9. The cost to the employer of the PSSAP is 15.4% of superannuation salary. The cost to the employer of the defined benefit schemes - the CSS and the PSSDB (or, simply, the PSS) - while less clear, is generally greater than this.

10. The most recent, authoritative, published data on the cost of the defined benefit schemes is the "Long Term Cost Report 2005"³ (the LTCR05) published by the Department of Finance and Deregulation.

11. The LTCR05 provides an estimate of employer contribution rates - the 'notional employer contribution rate - NECR' necessary to insure that *"employer-financed benefits for the PSS and CSS would remain fully funded in three years time if they were fully funded now"*. The LTCR05 assumes nominal general salary increases of 4% per annum.

12. The LTCR05 gives the following values for NECR:

	Notional Employer Contribution Rates (NECRs)		
	[% of superannuation salaries]		
	[including contributions towards 3% productivity superannuation benefit]		
Year of LTCR	PSS	CSS	Combined
30 June 1999	14.2	21.9	17.2
30 June 2002	15.4	28.3	19.3
30 June 2005	15.6	28.2	18.3

13. In order to ensure that its consideration of this issue is based on the most contemporary data, the Tribunal sought advice from the Department of Finance and Deregulation. The Department advised that, based on its expectations about the conclusions of the "Long Term Cost Report 2008" (LTCR08), the **NECRs**, as at 30 June 2008, were expected to be, respectively:

- CSS 21.4%
- PSS 16.3%

14. The Department advised that the significant change in the NECR for the CSS could be ascribed, at least in part, to changes in the calculation methodology. Nonetheless, the employer cost of the CSS, and that of the PSS, presently exceeds the 15.4% cost of the PSSAP.

³ PSS and CSS Long Term Cost Report 2005 - <http://www.finance.gov.au/superannuation/pss-and-css-scheme-costs.html>

15. The Tribunal also understands that increases of more than 4% in the base salary (that is, 'superannuation salary') component of a Secretary's remuneration package have significant implications for the value of the retirement pensions arising from the defined benefit schemes and, consequently, for the cost of these schemes to the employer.

Implications for the Calculation of the Value of the Remuneration Package

16. **Table 1**, below, shows the general breakdown of the 2008 'total remuneration' amounts for the two present levels of Secretary, based on a common employer superannuation contribution cost of 15.4% of base salary (superannuation salary).

Table 1 ASSESSMENT OF VALUE OF SECRETARY REMUNERATION PACKAGE Based on ascribed employer superannuation cost of 15.4%				
Secretaries of Defence, Prime Minister & Cabinet, and Treasury				
	CSS	PSS	PSSAP	AGEST or other
2008 TR [as determined]	488560	488560	488560	488560
Base salary (superannuation salary) [80% of TR as det]	390940	390940	390940	390940
Present Imputed Employer Superannuation Cost as % of Base Salary	15.40%	15.40%	15.40%	0.082568807
Imputed \$ Employer Superannuation Cost	60205	60205	60205	40340
Available Cash	428355	428355	428355	448220
Other Secretaries				
	CSS	PSS	PSSAP	AGEST or other
2008 TR [as determined]	457080	457080	457080	457080
Base salary (current SfSP) [80% of TR as det]	365670	365670	365670	365670
Present Imputed Employer Superannuation Cost as % of Base Salary	15.40%	15.40%	15.40%	0.082568807
Imputed \$ Employer Superannuation Cost	56313	56313	56313	37741
Available Cash	400767	400767	400767	419339

17. **Table 2** - which, for the reasons explained below, is indicative rather than, in respect of the CSS and PSS, definitive - shows total remuneration values based on current estimates of the long-term cost of the CSS and PSS defined benefit schemes.

Table 2 ASSESSMENT OF VALUE OF SECRETARY REMUNERATION PACKAGE Based on LTCR08 CSS & PSS superannuation costs				
Secretaries of Defence, Prime Minister & Cabinet, and Treasury				
	CSS	PSS	PSSAP	AGEST or other
2008 TR [as determined]	488560	488560	488560	488560
Base salary (current SfSP) [80% of TR as det]	390940	390940	390940	390940
LTCR08 NECRs	21.40%	16.30%	15.40%	0.082568807
'Actual' Employer Super Costs	83661	63723	60205	40340
'Actual' TR	512016	492078	488560	488560
Additional cash amount required to equate 'actual' TR between Secretaries in different schemes	0	19938	23456	23456
Equated TR	512016	512016	512016	512016
Available cash salary	428355	448293	451812	471677
% of 'equated' TR to maintain current SfSP	76.35%	76.35%	76.35%	76.35%
Other Secretaries				
	CSS	PSS	PSSAP	AGEST or other
2008 TR [as determined]	457080	457080	457080	457080
Base salary (current SfSP) [80% of TR as det]	365670	365670	365670	365670
LTCR08 NECRs	21.40%	16.30%	15.40%	0.082568807
Actual Employer Super Costs	78253	59604	56313	37741
'Actual' TR	479020	460371	457080	457080
Additional cash amount required to equate 'actual' TR between Secretaries in different schemes	0	18649	21940	21940
Equated TR	479020	479020	479020	479020
Available cash salary	400767	419416	422707	441280
% of 'equated' TR to maintain current SfSP	76.34%	76.34%	76.34%	76.34%

18. **Table 2** shows that, at a "scheme wide" level of generality, the actual value of the remuneration package was greater than the nominal (determined) value for those Secretaries who are members of the CSS or the PSS.

19. The actual discrepancy will vary according to an individual Secretary's circumstances. For example, according to the Department of Finance and Deregulation, factors such as the rate of benefit accrual under the CSS; the age of a Secretary; the scope for a Secretary to take advantage of the '54/11' retirement option; and a Secretary's length of service (with NECR decreasing with increasing length of service for CSS members) affect actual employer costs.

20. Although the LTCR08 data provided by the Department of Finance and Deregulation shows, at the scheme-wide level, that NECR for the PSS is less than that for the CSS, the Department also notes that for some Secretaries, at least, the NECR for PSS members making higher levels of employee contribution may be greater than the NECR for the CSS.

21. On the other hand, significant changes in superannuation salary late in a career can have very significant consequences for the cost to the employer of superannuation benefits derived from a defined benefit scheme.

22. In this regard, noting that the 2002, 2005 and 2008 LTCR's have assumed an average salary increase of 4% per annum, the Department of Finance and Deregulation advised the Tribunal that the results of actuarial calculations of the cost sensitivities associated with salary increases:

"..... suggest that, broadly, the NECR for Secretaries will increase, or decrease, by 5.7 percentage points in that year for each percentage point change in salary from the 4% salary increase assumed for the year. This is a result of the retrospective impact a salary increase has on superannuation benefits accrued to date. In the following year the NECR would revert to that calculated for the 4% salary increase."

Administrative Arrangements Order

Extract

The Department of the Treasury

[from Consolidated Administrative Arrangements Order made on 25 January 2008,
amended 1 May 2008 and updated 1 July 2008]

COMMONWEALTH OF AUSTRALIA

ADMINISTRATIVE ARRANGEMENTS ORDER

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, revoke all administrative arrangements previously ordered and order that:

1. The matters dealt with by a Department of State include:
 - (a) the matters referred to in the Part of the Schedule relating to that Department; and
 - (b) matters arising under the legislation administered by a Minister of State administering the Department.
2. The legislation administered by a Minister of State administering a Department is:
 - (a) the legislation referred to in the Part of the Schedule relating to that Department; and
 - (b) legislation passed before or after the date of this Order, that relates to a matter dealt with by the Department, not being legislation referred to in another Part of the Schedule.

Signed and sealed with the Great Seal of
Australia on 25 January 2008

Governor-General

By His Excellency's Command

Prime Minister

PART 18 THE DEPARTMENT OF THE TREASURY

Matters dealt with by the Department

Economic, fiscal and monetary policy
Taxation
Borrowing money on the public credit of the Commonwealth
International finance
Foreign exchange
Financial sector policy
Currency and legal tender
Foreign investment in Australia
Superannuation and retirement savings policy
Business law and practice
Corporate, financial services and securities law
Corporate insolvency
Competition and consumer policy
Prices surveillance
Excise
Census and statistics
Valuation services
Commonwealth-State financial relations

Legislation administered by the Minister

A New Tax System (Australian Business Number) Act 1999
A New Tax System (Bonuses for Older Australians) Act 1999, Parts 1 and 5
insofar as they relate to Australian Taxation Office customers and Part 4
A New Tax System (Commonwealth-State Financial Arrangements) Act 1999
A New Tax System (Goods and Services Tax) Act 1999
A New Tax System (Goods and Services Tax Imposition - Customs) Act 1999
A New Tax System (Goods and Services Tax Imposition - Excise) Act 1999
A New Tax System (Goods and Services Tax Imposition - General) Act 1999
A New Tax System (Goods and Services Tax Imposition (Recipients)—Customs)
Act 2005
A New Tax System (Goods and Services Tax Imposition (Recipients)—Excise)
Act 2005
A New Tax System (Goods and Services Tax Imposition (Recipients)—General)
Act 2005
A New Tax System (Goods and Services Tax Transition) Act 1999
A New Tax System (Luxury Car Tax) Act 1999
A New Tax System (Luxury Car Tax Imposition - Customs) Act 1999
A New Tax System (Luxury Car Tax Imposition - Excise) Act 1999
A New Tax System (Luxury Car Tax Imposition - General) Act 1999
A New Tax System (Medicare Levy Surcharge - Fringe Benefits) Act 1999
A New Tax System (Wine Equalisation Tax) Act 1999
A New Tax System (Wine Equalisation Tax Imposition - Customs) Act 1999
A New Tax System (Wine Equalisation Tax Imposition - Excise) Act 1999
A New Tax System (Wine Equalisation Tax Imposition - General) Act 1999
Aircraft Noise Levy Act 1995, subsection 6(1) insofar as it relates to levy unit,
subsections 6(3) and 6(4) and section 8 in relation to the foregoing
Aircraft Noise Levy Collection Act 1995, section 7
ANL Guarantee Act 1994
Appropriation (HIH Assistance) Act 2001
Asian Development Bank Act 1966
Asian Development Bank (Additional Subscription) Acts
Australian Bureau of Statistics Act 1975

Australian Prudential Regulation Authority Act 1998
Australian Securities and Investments Commission Act 2001
Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998
Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998
Bank Integration Act 1991
Banking Act 1959
Banking (State Bank of South Australia and Other Matters) Act 1994
Banking (Transitional Provisions) Act 1959
Bills of Exchange Act 1909
Census and Statistics Act 1905
Charter of Budget Honesty Act 1998
Cheques Act 1986
Commonwealth Authorities (Australian Capital Territory Pay-roll Tax) Act 1995
Commonwealth Authorities (Northern Territory Pay-roll Tax) Act 1979
Commonwealth Bank Sale Act 1995
Commonwealth Banks Act 1959
Commonwealth Borrowing Levy Act 1987
Commonwealth Borrowing Levy Collection Act 1987
Commonwealth Functions (Statutes Review) Act 1981, section 234
Commonwealth Grants Commission Act 1973
Commonwealth Inscribed Stock Act 1911
Commonwealth Places (Mirror Taxes) Act 1998
Commonwealth Places Windfall Tax (Collection) Act 1998
Commonwealth Places Windfall Tax (Imposition) Act 1998
Commonwealth Volunteers Protection Act 2003
Competition Policy Reform Act 1995
Co-operative Farmers and Graziers Direct Meat Supply Limited (Loan Guarantee) Act 1978
Corporations Act 2001, except to the extent administered by the Attorney-General
Corporations (Compensation Arrangements Levies) Act 2001
Corporations (Fees) Act 2001
Corporations (Futures Organisations Levies) Act 2001
Corporations (National Guarantee Fund Levies) Act 2001
Corporations (Review Fees) Act 2003
Corporations (Securities Exchanges Levies) Act 2001
Crimes (Taxation Offences) Act 1980
Crown Debts (Priority) Act 1981
Currency Act 1965
Development Allowance Authority Act 1992
Energy Grants (Cleaner Fuels) Scheme Act 2004
Energy Grants (Credits) Scheme Act 2003
European Bank for Reconstruction and Development Act 1990
Excise Act 1901
Excise Tariff Act 1921
Extension of Charitable Purpose Act 2004
Family Trust Distribution Tax (Primary Liability) Act 1998
Family Trust Distribution Tax (Secondary Liability) Act 1998
Financial Agreement Act 1994
Financial Agreement Validation Act 1929
Financial Agreements (Commonwealth Liability) Act 1932
Financial Corporations (Transfer of Assets and Liabilities) Act 1993
Financial Institutions Supervisory Levies Collection Act 1998
Financial Sector (Business Transfer and Group Restructure) Act 1999
Financial Sector (Collection of Data) Act 2001

Financial Sector (Shareholdings) Act 1998
Foreign Acquisitions and Takeovers Act 1975
Franchise Fees Windfall Tax (Collection) Act 1997
Franchise Fees Windfall Tax (Imposition) Act 1997
Fringe Benefits Tax Act 1986
Fringe Benefits Tax (Application to the Commonwealth) Act 1986
Fringe Benefits Tax Assessment Act 1986
Fringe Benefits Tax (Miscellaneous Provisions) Act 1986
Fuel Tax Act 2006
General Insurance Supervisory Levy Imposition Act 1998
General Interest Charge (Imposition) Act 1999
Health Insurance Levy Assessment Acts
HIH Royal Commission (Transfer of Records) Act 2003
Housing Loans Guarantees (Australian Capital Territory) Act 1959
Housing Loans Guarantees (Northern Territory) Act 1959
Housing Loans Insurance Corporation Act 1965
Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Act 1996
Income Tax Act 1986
Income Tax Assessment Acts
Income Tax (Bearer Debentures) Act 1971
Income Tax (Deferred Interest Securities) (Tax File Number Withholding Tax) Act 1991
Income Tax (Diverted Income) Act 1981
Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974
Income Tax (Former Complying Superannuation Funds) Act 1994
Income Tax (Former Non-resident Superannuation Funds) Act 1994
Income Tax (Franking Deficit) Act 1987
Income Tax (Fund Contributions) Act 1989
Income Tax (Mining Withholding Tax) Act 1979
Income Tax (Offshore Banking Units) (Withholding Tax Recoupment) Act 1988
Income Tax (Royalties) Act 1977
Income Tax (Securities and Agreements) (Withholding Tax Recoupment) Act 1986
Income Tax (Transitional Provisions) Act 1997
Income Tax (Withholding Tax Recoupment) Act 1971
Income Tax Rates Act 1986
Infrastructure Certificate Cancellation Tax Act 1994
Inspector-General of Taxation Act 2003
Insurance Acquisitions and Takeovers Act 1991
Insurance Act 1973
Insurance Contracts Act 1984
International Bank for Reconstruction and Development (General Capital Increase) Act 1989
International Bank for Reconstruction and Development (Share Increase) Act 1988
International Finance Corporation Act 1955
International Financial Institutions (Share Increase) Acts
International Monetary Agreements Acts
International Monetary Agreements (Quota Increase) Act 1980
International Monetary Fund (Quota Increase) Act 1983
International Tax Agreements Act 1953
James Hardie (Investigations and Proceedings) Act 2004
Life Insurance Act 1995
Life Insurance Supervisory Levy Imposition Act 1998
Loan (Temporary Revenue Deficits) Act 1953
Loans (Australian Industry Development Corporation) Act 1974

Loans Redemption and Conversion Act 1921
Loans Securities Act 1919
Loans (Taxation Exemption) Act 1978
Medical Indemnity (Prudential Supervision and Product Standards) Act 2003,
 except to the extent administered by the Minister for Health and Ageing
Medicare Levy Act 1986
Mint Employees Act 1964
Multilateral Investment Guarantee Agency Act 1997
Mutual Assistance in Business Regulation Act 1992
New Business Tax System (Franking Deficit Tax) Act 2002
New Business Tax System (Over-Franking) Act 2002
New Business Tax System (Untainting Tax) Act 2006
Northern Territory Grant (Electricity) Act 1989
Northern Territory Grant (Special Assistance) Act 1983
Northern Territory (Lessees' Loans Guarantee) Act 1954
Occupational Superannuation Standards Regulations Application Act 1992
Papua and New Guinea Loan (International Bank) Acts
Papua New Guinea Loan (Asian Development Bank) Acts
Papua New Guinea Loan Guarantee Act 1973
Papua New Guinea Loan (International Bank) Acts
Papua New Guinea Loans Guarantee Acts
Papua New Guinea (Transfer of Banking Business) Act 1973
Payment of Tax Receipts (Victoria) Act 1996
Payment Systems and Netting Act 1998
Payment Systems (Regulation) Act 1998
Pay-roll Tax Act 1941
Pay-roll Tax (State Taxation of Commonwealth Authorities) Act 1971
Petroleum Excise (Prices) Act 1987
Petroleum Resource Rent Tax Act 1987
Petroleum Resource Rent Tax Assessment Act 1987
Petroleum Resource Rent Tax (Interest on Underpayments) Act 1987
Petroleum Resource Rent Tax (Installment Transfer Interest Charge Imposition)
Act 2006
Petroleum Resource Rent Tax (Miscellaneous Provisions) Act 1987
Prices Surveillance Act 1983
Product Grants and Benefits Administration Act 2000
Productivity Commission Act 1998
Productivity Commission (Repeals, Transitional and Consequential
Amendments) Act 1998
Qantas Airways Limited (Loan Guarantee) Acts
Qantas Sale Act 1992, sections 14, 16 and 17
Queensland Grant (Special Assistance) Acts
Reserve Bank Act 1959
Retirement Savings Accounts Act 1997
Retirement Savings Account Providers Supervisory Levy Imposition Act 1998
Sales Tax (World Trade Organization Amendments) Act 1994
Shortfall Interest Charge (Imposition) Act 2005
Small Superannuation Accounts Act 1995
States Grants Act 1927
States Grants (Capital Assistance) Acts
States (Works and Housing) Assistance Acts
Statistical Bureau (Tasmania) Act 1924
Statistics (Arrangements with States) Act 1956
Superannuation Contributions Tax (Application to the Commonwealth) Act
1997
Superannuation Contributions Tax (Application to the Commonwealth -
Reduction of Benefits) Act 1997

Superannuation Contributions Tax (Assessment and Collection) Act 1997
Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997
Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997
Superannuation Contributions Tax Imposition Act 1997
Superannuation (Departing Australia Superannuation Payments Tax) Act 2007
Superannuation (Excess Concessional Contributions Tax) Act 2007
Superannuation (Excess Non-concessional Contributions Tax) Act 2007
Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007
Superannuation (Financial Assistance Funding) Levy Act 1993
Superannuation (Government Co-contribution for Low Income Earners) Act 2003
Superannuation Guarantee (Administration) Act 1992
Superannuation Guarantee Charge Act 1992
Superannuation Industry (Supervision) Act 1993
Superannuation (Resolution of Complaints) Act 1993
Superannuation (Self Managed Superannuation Funds) Taxation Act 1987
Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991
Superannuation Supervisory Levy Imposition Act 1998
Superannuation (Unclaimed Money and Lost Members) Act 1999
Taxation Administration Act 1953
Taxation Boards of Review (Transfer of Jurisdiction) Act 1986
Taxation (Deficit Reduction) Acts
Taxation (Interest on NonResident Trust Distributions) Act 1990
Taxation (Interest on Overpayments and Early Payments) Act 1983
Taxation Laws Acts
Taxation Laws (Clearing and Settlement Facility Support) Act 2004
Taxation Laws Improvement (Substantiation) Act 1995
Taxation (Trustee Beneficiary Non-disclosure Tax) Acts
Tax Law Improvement Acts
Termination Payments Tax (Assessment and Collection) Act 1997
Termination Payments Tax Imposition Act 1997
Terrorism Insurance Act 2003
Trade Practices Act 1974, except to the extent administered by the Minister for Broadband, Communications and the Digital Economy, the Minister for Innovation, Industry, Science and Research and the Minister for Infrastructure, Transport, Regional Development and Local Government
Treasury Bills Act 1914
Trust Recoupment Tax Act 1985
Trust Recoupment Tax Assessment Act 1985

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